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Country report

Non-discrimination

Spain

2023

including summary

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EUROPEAN COMMISSION

Country report
Non-discrimination

Transposition and implementation at national level of Council Directives 2000/43 and 2000/78

Spain

Ferran Camas Roda

Reporting period 1 January 2022 – 1 January 2023

2023 Directorate-General for Justice and Consumers

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EXECUTIVE SUMMARY

1. Introduction

There have been great social and political changes in Spain over the past 45 years. Major transformations have taken place in the country's social structure, forming a much more diverse society in ethnic and religious (and other) terms. Two of the major interrelated changes have been a demographic transformation and the conversion of Spain into a country of net immigration.

Between 1975 and 2022 the population has grown from 36 million to just over 47 million (47 435 597 inhabitants).[1] What is most interesting about this figure is that immigration has played an important role in population growth. Of the total population in 2022, 41 923 039 were of Spanish nationality (88.4 %) and 5 512 558 were foreign nationals (11.6 %).[2]

In relation to the main factors or causes behind situations of discrimination that are covered by legislation (e.g. religion, age), the following can be said: regarding religion, the survey conducted in December 2022 by the Centre for Sociological Research should be taken into consideration: It found that 56.4 % of the population declared themselves Catholic (down 2.5 % from December 2021); that said, 18.7 % considered themselves practising Catholics and 37.7 % non-practising. Only 2.8 % of the population declared themselves members of another religious faith (mainly Islam and Protestantism). In addition, in 2022, it was found that the agnostic, atheist or indifferent population had reached 39.3 %, far exceeding the number of practising Catholics. In fact, 15.1 % of the population consider themselves atheists (they deny the existence of God); 11.5 % of the population consider themselves agnostics (they do not deny the existence of God, but neither do they rule it out); and 12.7 % define themselves as indifferent.[3]

The average age of the population registered in the municipal census is 44.1 years. More specifically, the average age of Spaniards is 45.0 years and that of foreigners is 37.1 years (39.6 years for EU citizens).[4] In general, it can be confirmed that the age structure of the foreign population is contributing considerably to the rejuvenation of the Spanish population. By age, 14.9 % of the population are under 16 years old, 35 % are between 16 and 44 years old, 30.1 % are between 45 and 64 years old, and 20 % are 65 or older.[5] These data enable us to visualise the ageing process of the population living in Spain. According to a report by the National Institute of Statistics on population projections in Spain between 2020 and 2070, if current demographic trends are maintained, the largest age group in January 2021, which is people born between 1970 and 1979 (currently 40-49 years old), would still be the largest group in 2050 (by then aged 70-79). It should be mentioned that the percentage of the population aged 65 or over, which currently stands at 19.6 % of the overall population, would reach a maximum of 31.4 % in about 2050. From then on, it should begin to decrease.[6]

On the other hand, it is worth mentioning the data on the Spanish Roma population in Spain. The report by the Fundacion Secretariado Gitano entitled 'Estudio comparado sobre la situación de la población gitana en España en relación al empleo y la pobreza 2018'

1 See Instituto Nacional de Estadística 2022, https://t.co/Nq9UKX95uN.
2 See Instituto Nacional de Estadística 2022, https://t.co/Nq9UKX95uN.
3 Centro de Investigaciones Sociológicas, December 2022: https://www.cis.es/cis/export/sites/default/-Archivos/Marginales/3380_3399/3388/es3388mar.pdf.
4 Data from 1 January 2021. Avance de la Estadística del Padrón Continuo a 1 de enero de 2021 (Preview of continuous register statistics as at 1 January 2021), Instituto Nacional de Estadística: https://www.ine.es/prensa/pad_2021_p.pdf.
5 Data from 1 January 2021. Avance de la Estadística del Padrón Continuo a 1 de enero de 2021 (Preview of continuous register statistics as at 1 January 2021), Instituto Nacional de Estadística: https://www.ine.es/prensa/pad_2021_p.pdf.
6 Proyecciones de Población 2020-2070, INE: https://www.ine.es/prensa/pp_2020_2070.pdf.

(Comparative study on the situation of the Roma population in Spain in relation to employment and poverty 2018), states that in the absence of a census of the Spanish Roma population, the study is based on the 'Study-Map on housing and the Roma population, 2015', according to which the Roma population stood at 516 862 people. It is worth noting that the Roma population is much younger than the overall national population, as 66 % of the Roma population are under 30 years of age, while only 30 % of the general population in Spain are under that age. It should also be noted that only 17 % of Roma people have completed compulsory secondary education (ESO), compared with 77 % of the general population.

A new coalition Government was formed on 7 January 2020, comprising the Socialist Party and the Unidas Podemos (a coalition of leftist political parties). During 2022, Law 15/2022, of 12 July, comprehensively covering equal treatment and non-discrimination, was passed, which completed the transposition of Directives 2000/43 and 2000/78. This Law entered into force on 14 July 2022. These Directives had already been transposed in 2003 by Law 62/2003, of 30 December, on fiscal, administrative and social measures. The new Law 15/2022 of 12 July 2022 complements Law 62/2003, which is still in force. Moreover, on 30 December 2019, both parties signed a Government programme entitled 'Progressive Coalition. A New Agreement for Spain', in which they committed to promoting a package of measures to foster equal treatment, non-discrimination and positive attitudes towards diversity. In particular, they agreed to pass a comprehensive law to address discrimination against LGBTI persons[7] (in this area regarding the sexual orientation of people in Spain, it is worth mentioning the survey conducted by the Spanish Sociological Research Centre in 2021, according to which 93.9 % of respondents declared themselves heterosexual, 2.3 % bisexual, 1.9 % homosexual, 0.1 % asexual and 0.1 % another orientation)[8].

The coalition Government also agreed to adopt public policies aimed at improving access and permanence in education and employment for the Roma people. In fact, as an example of good practice also developed in 2021, it should be mentioned that the *National Strategy for Roma Equality, Inclusion and Participation 2021-2030* was adopted on 2 November 2021[9] (see section 10).

2. Main legislation

Equality is one of the highest values of the legal system established by the Spanish Constitution of 1978. Article 14 of the Constitution says: 'Spaniards are equal before the law and may not in any way be discriminated against on the grounds of birth, race, sex, religion, opinion or any other condition or personal or social circumstance'. The Constitutional Court has established that age,[10] disability[11] and sexual orientation[12] are included under 'any other condition or personal or social circumstance'.

The most notable international instruments combating discrimination have been ratified during Spain's democratic period since 1976, and these instruments have informed the Constitution and the laws passed since then (all of these international instruments can be found in the list in the annex to the report).

Spanish law has developed the principle of equal treatment in various legal fields, mainly labour and criminal law. The main labour legislation is Royal Legislative Decree 2/2015 of

7 This law was passed after the cut-off date for this report: on 28 February 2023, Law 4/2023 of 28 February for the real and effective equality of trans people and for the guarantee of the rights of LGTBI people was adopted. As it is a law from 2023, it is outside the scope of this report.

8 See: https://www.cis.es/cis/export/sites/default/-Archivos/Marginales/3320_3339/3325/es3325mar.pdf.

9 Government of Spain, *National Strategy for Roma Equality, Inclusion and Participation 2021-2030*, available at: https://www.mdsocialesa2030.gob.es/derechos-sociales/poblacion-gitana/docs/estrategia_nacional/Estrategia_nacional_21_30/Estrategia_aprob_cm_2_nov_ENGLISH.pdf.

10 Constitutional Court Judgment 31/1984, 7 March 1984.

11 Constitutional Court Decision 269/1994, October 1994.

12 Constitutional Court Decision 41/2006, February 2006.

23 October 2015, approving the consolidated text of the Workers' Statute, which establishes that discriminatory legislative provisions, clauses of collective agreements, individual agreements and unilateral managerial decisions are considered as null and void, and discriminatory acts by employers are specified as very serious offences. Under the criminal law, racism or xenophobia is an aggravating circumstance in the commission of a crime, and several provisions specify racist offences and consider serious discrimination in employment as an offence. There are also anti-discriminatory measures in the administrative, civil and educational spheres.

The transposition of Directives 2000/43 and 2000/78 was made in Chapter III of Title II of Law 62/2003,[13] on fiscal, administrative and social measures. Articles 27-28 contain a general transposition of the definitions of direct and indirect discrimination, harassment and instructions to discriminate. Law 62/2003 was amended in 2014 in relation to the independent body, the Council for the Elimination of Racial or Ethnic Discrimination.[14] Following Law 62/2003, EU directives have been implemented in various other laws and have influenced policy changes in Spain on anti-discrimination legislation for different grounds and in different fields.

In any case, as mentioned above, Law 15/2022 was passed in 2022. One of the objectives of this law was to transpose the European Non-Discrimination Directives 2000/43/EC and 2000/78/EC in a 'more adequate' way than Law 62/2003 did. This more adequate transposition is manifested above all in the regulation by the new Law 15/2022 of a regime of infringements and sanctions for non-compliance with the right to equal treatment and non-discrimination as well as the creation of a new equality body.

Various other laws are relevant. Royal Legislative Decree 3/2015 of 23 October 2015, approving the consolidated text of the Employment Act, establishes that guaranteeing effective equality of opportunities and non-discrimination is the objective of employment policies. Under this decree, public employment services, collaborating entities and employment agencies that manage labour mediation must specifically ensure that both direct and indirect discrimination in access to employment are avoided. Of note in the area of disability is Royal Legislative Decree (RLD) 1/2013[15] of 29 November 2013, approving the General Law on the Rights of Persons with Disabilities and their Social Inclusion, which regulates all aspects of disability and replaces the three pieces of disability legislation that were in force up to that date. Law 27/2007 of 23 October 2007 recognises 'Spanish sign languages' and regulates 'speech communication aids for the deaf, hard of hearing and deafblind'. Note that the Spanish title of the law has been translated literally into English.[16]

Finally, it is worth mentioning a law adopted by one region (autonomous community) of Spain, namely the Autonomous Community of Catalonia. This is an equality law not related to gender equality, on the basis of which may other regions in Spain have adopted their own laws; rather, it is a generic equality law: Act 19/2020 of 30 December 2020. Applicable exclusively on the territory of Catalonia, it aims to prevent any form of discrimination on the following grounds, set out here in general terms: territorial or national origin; sex or gender; sexual orientation or gender identity and any form of LGBTI phobia or misogyny;[17]

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[13] Law 62/2003 of 30 December 2003 on Fiscal, Administrative and Social Measures (*Ley 62/2003, de 30 de diciembre, de medidas fiscales, administrativas y de orden social*) *Official State Bulletin* (*Boletín Oficial del Estado, BOE*), 31 December 2003.

[14] Law 15/2014 of 16 September 2014 on the rationalisation of the public sector and other measures of administrative reform (*Ley 15/2014, de 16 de septiembre, de racionalización del Sector público y otras medidas de reforma administrativa*), *BOE*, 17 September 2014, https://www.boe.es/boe/dias/2014/09/17/pdfs/BOE-A-2014-9467.pdf.

[15] Royal Legislative Decree (RLD) 1/2013, General Law on the Rights of Persons with Disabilities and their Social Inclusion (*Ley General de derechos de las personas con discapacidad y de su inclusión social*),*BOE*, 3 December 2013.

[16] See the English translation of the law on the Disability Information Service website (Government of the Region of Castile and León) at: https://sid.usal.es/idocs/F3/LYN11795/LEYLSE.pdf.

[17] This Catalan law does not define 'LGBTI phobia' or 'misogyny', but it does regulate the definition of biphobia: 'the aversion or discrimination against bisexual people'; of homophobia: 'the aversion or

age; race or ethnic origin; language or cultural identity; ideology or political opinion; religious convictions; social or economic condition; disability; health problems or illness; physical appearance or clothing, or for any other characteristic of the human condition.

3. Main principles and definitions

The Spanish Constitution states that Spaniards are equal before the law and that they may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other condition or personal or social circumstance (Article 14). Moreover, it enjoins the public authorities to promote conditions that ensure that the freedom and equality of individuals and of the groups that they form are real and effective; to remove obstacles that impede or hamper the fulfilment of such freedom and equality; and to facilitate the participation of all citizens in political, economic, cultural and social life (Article 9). The Spanish Constitutional Court[18] has ruled that the principle of equality is not breached by action on the part of the public authorities to counter the disadvantages experienced by certain social groups even when they are given more favourable treatment, as the aim is to give different treatment to effectively different situations.

On the other hand, according to the new law adopted in 2022, Law 15/2022, different types of discrimination have been regulated: in addition to the traditional indirect and direct discrimination (although it is interesting to note that a legislative innovation in the field of direct discrimination is to consider the denial of reasonable accommodation to persons with disabilities as direct discrimination), it is worth mentioning as an innovation the regulation in Spanish law of discrimination by association, by mistake (which in English would be equivalent to discrimination by assumption), multiple and intersectional discrimination.

4. Material scope

The material scope of the prohibition of discrimination is of a general nature. All the fields mentioned by Directives 2000/43 and 2000/78 are covered by the general principle of equality laid down in Article 14 of the Spanish Constitution. Prohibition of discrimination on various grounds is addressed in the Spanish legal system, and according to the new law adopted in 2022, entitled Law 15/2022, the grounds of unlawful discrimination specified are birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, gender expression, illness or health condition, serological status and/or genetic predisposition to suffer pathologies and disorders, language, socio-economic status, or any other personal or social condition or circumstance. The grounds of 'illness or health condition', 'serological status and/or genetic predisposition to suffer pathologies and disorders', 'sexual identity', 'gender expression', 'language' and 'socio-economic situation' are now added to the grounds of discrimination prohibited by Article 14 of the Constitution. Nevertheless, an open clause has been kept, to allow for the recognition of other grounds of discrimination.

With Law 15/2022, the areas in which the discriminatory principle is applicable have been extended. The full material scope of EU anti-discrimination law is covered. The set of areas to which the new legislation applies are: a) Employment, both employed and self-employed, covering access, working conditions, including pay and conditions of dismissal, career advancement and job training; b) Access, promotion, working conditions and training in public employment; c) Membership and participation in political, trade union, business, professional, social or economic interest organisations; d) Education; e) Healthcare; f) Transport; g) Culture; h) Public safety; i) Administration of Justice; j) Social protection, social benefits and social services; k) Access to, supply and provision of goods and services available to the public, including housing, which are provided outside the sphere of private and family life; l) Access to and stay in establishments or spaces open to

discrimination against homosexual people'; and of transphobia: 'the aversion or discrimination against transsexual people' and transphobia: 'Aversion or discrimination against transgender persons'.

[18] Constitutional Court Decision 128/1987, 1 July 1987.

the public, as well as the use of and presence on public roads and streets; m) Advertising, media and information society services; n) Internet, social networks and mobile applications ; ñ) Sports activities, in accordance with Law 19/2007 of 11 July 2007 against violence, racism, xenophobia and intolerance in sport ; o) Artificial intelligence and big data management, as well as other areas of similar significance

5. Enforcing the law

The Spanish Constitution provides that all fundamental rights are protected by the ordinary courts of law. Moreover, appeals for protection in respect of such rights may be lodged at the Constitutional Court once ordinary proceedings have been exhausted. As well as having recourse to administrative proceedings (through the Labour Inspectorate and the Education Inspectorate), the conciliation procedures for civil and social matters, the ordinary courts and the Constitutional Court, victims of discrimination may appeal to the ombudsmen if the issue concerns acts by the public administration.

The Spanish Constitution entitles any physical or legal person invoking a legitimate interest to be a party to proceedings relating to the violation of fundamental rights and freedoms. Organisations and trade unions are entitled to act on behalf of (but not in support of) victims of discrimination. This general rule (Law 1/2000[19] of 7 January 2000, regulating civil procedure, and Law 29/1998[20] of 13 June 1998, regulating administrative jurisdiction) also relates to anti-discrimination legislation: in Law 62/2003 (in cases of discrimination on the ground of racial or ethnic origin and only in fields other than employment); in Law 36/2011 on Social Jurisdiction (on grounds of racial or ethnic origin, religion or beliefs, disability, age or sexual orientation in the field of employment); and in the General Law on the Rights of Persons with Disabilities (RLD 1/2013) (on the ground of disability in the fields of access to and supply of goods and services and employment).

Of special interest is the opening by Law 15/2022 of a regulation on standing, for instance, according to Article 29, without prejudice to the legal standing of persons affected by discriminatory acts, 'political parties, trade unions, professional associations of self-employed workers, consumer and user organisations and legally constituted associations and organisations whose aims include the defence and promotion of human rights shall have legal standing, under the terms established by procedural laws, to defend the rights and interests of their members or associates or users of their services in civil, contentious-administrative and social judicial proceedings, provided that they have their express authorisation'.

On the other hand, penalties for non-compliance with non-discrimination legislation have been established in a general manner by Law 15/2022. Title IV (Articles 46 to 52) establishes the infringements and sanctions in the field of equal treatment and non-discrimination (these infringements covered by the Law are of an administrative nature). Infringements can be minor, serious or very serious, although the Law establishes that actions or omissions that constitute multiple discrimination, among others, will be considered very serious infringements. In terms of penalties, offences committed will be punishable by fines of between EUR 300 000 and EUR 500 000. It should also be taken into account that, according to Article 50, when the infringements are very serious, the sanctioning body may impose as an accessory sanction, in addition to the corresponding fine, the suppression, cancellation or total or partial suspension of the official aid that the sanctioned party has been granted or has applied for in the sector of activity in which the infringement took place (e.g. official aid granted by the public administration to promote the company's activity, or to hire workers, etc.), the closure of the establishment in which the discrimination took place, or the cessation of the economic or professional activity carried out by the offender for a maximum period of five years. In any case, the offences

[19] Law 1/2000 of 7 January 2000 regulating civil procedure, *BOE*, 8 January 2000.
[20] Law 29/1998 of 13 June 1998 regulating administrative jurisdiction, *BOE*, 14 June 1998.

and penalties that were in force before this law are maintained in the field of employment for all grounds and for the ground of disability in all fields. In the field of employment, Law 5/2000[21] of 4 August 2000, on offences and penalties in social matters, was first amended by Law 62/2003.

There are generally few rulings on racial discrimination in the courts, which usually treat cases as violations of other types of legal right, such as aggression and damage to property, without taking account of racist motivation. A further complication is that those concerned do not bring many actions, owing to bureaucracy and to the small number of convictions. However, court actions have been brought on account of discrimination – against Roma, immigrants or black Spaniards – that have attracted a degree of public interest.

The main positive action measures in place on a national level are (1) broad social policy measures (such as positive action for Roma or the use of sign language and speech aid systems for persons with disabilities); (2) quotas for persons with disabilities; and (3) some preferential treatment for persons with disabilities (such as access to special employment centres and occupational centres or a preferential right to geographical mobility).

6. Equality bodies

Law 62/2003 (amended by Law 15/2014 on the rationalisation of the public sector and other measures of administrative reform) established the *Council for the Elimination of Racial or Ethnic Discrimination* (Consejo para la eliminacion de la discriminación racial o étnica). The council was set up on 28 October 2009 and became operational on that date. It should also be noted that In June 2010, the Council launched the Network of Centres of Assistance for Victims of Racial or Ethnic Discrimination, involving seven major NGOs. In any case, the Council is still not well known by the public, and its scope for anti-discrimination action is limited. It can be stated that the formal recognition of its independence by Law 15/2014 and the launch of the network have not promoted public knowledge of this organisation, although they have served to produce some interesting reports on the assistance work carried out by the NGOs in the network.

However, in 2022, Law 15/2022 created a new equality body. Title III of the Law (Articles 40 to 45) created the Independent Authority for Equal Treatment and Non-Discrimination. It is a body of the General State Administration, which means that it is configured as a public law entity that acts for the fulfilment of its purposes with full independence and functional autonomy with respect to the public administrations; it is responsible for the protection and promotion of equal treatment and non-discrimination of persons on the grounds of the causes and in the areas of state competence provided for in this Law, both in the public and private sectors. Consequently, the Independent Authority for Equal Treatment and Non-Discrimination was created as the equality body responsible for the promotion of equal treatment of all persons.

This body will replace the Council for the Elimination of Racial or Ethnic Discrimination, but, however, it had not yet been established as of the end of 2022.

7. Key issues

Potential breaches of the directives include the following:

- It could be said that the requirement to establish a degree of impairment (of 33 % or greater) in order to be protected from disability discrimination and to claim a reasonable accommodation (under General Law on the Rights of Persons with

[21] Law 5/2000 of 4 August 2000 on offences and penalties in social matters, *BOE*, 5 August 2000.

Disabilities and their Social Inclusion, RLD 1/2013) is a potential breach of Directive 2000/78, as the directive does not specify that certain degrees of impairment must be established in order for persons to be recognised as such.

Other issues of concern are:

- The effectiveness of the Council for the Elimination of Racial or Ethnic Discrimination is questionable, because it is made up primarily of Government representatives. This could jeopardise the independence of the Council.
- The potential delay in setting up the Independent Authority for Equal Treatment and Non-Discrimination to replace the Council.
- The legislation based on the directives is not well known or understood by the main players in the legal system. This is one of the main reasons why there have so far been hardly any proceedings in Spain in which these provisions have been applied.
- Notable progress has been made in the fields of disability and sexual orientation, with highly significant legal innovations. However, this notable legal progress has not been accompanied by actual changes in behaviour in society (there was an increase in cases recorded by the police from 2021: the author of this report considers that the political discussion of a new law for the protection of this group may have led to an increase in incidents due to people's sexual orientation, but also that there is more awareness on the part of LGTBQI groups of the need to file complaints.)[22]
- The situation of teachers of religion in state schools is difficult to resolve because of the international agreement between the Holy See and Spain signed in 1976.
- Current best practice in Spain includes:
- Positive actions for Roma (racial or ethnic origin in all fields), that alleviate some of the problems suffered by the Roma population.
- The adoption of the Government's 2022 Hate Crime Plans as well as the adoption of the Disability Strategy for the coming years.
- Sign languages and speech aid systems (positive action measures on the ground of disability), a pioneering law in its time that has allowed an extensive use of sign language.
- The National Disability Council (for disability in all fields), in which disability organisations can be heard and defend their interests before the administration.

Integral Laws on the rights of gay and lesbian persons (sexual orientation) in five Spanish regions: Andalusia, the Balearic Islands, Catalonia, the Valencian Community and Navarre). Despite these regional laws, it may be necessary to adopt an equality and non-discrimination law with regard to sexual orientation and gender identity issues.

From 2020, the Government started drafting a law for the equality of LGTBI people and for non-discrimination on the basis of sexual orientation, gender identity, gender expression and sexual characteristics.[23] The Government report on the draft bill aims to ensure that transgender people are no longer classified legally as ill, as already outlined by the World Health Organization.[24]

In this area, in November 2021, the Spanish Government approved Order SND/1215/2021, of 5 November, amending Annex III of Royal Decree 1030/2006, of 15 September, which establishes the National Health System's common services portfolio and the procedure for

[22] See table based on author's elaboration from statistical yearbooks of the Ministry of Interior (Section 6).

[23] Finally, in 2023, this law was passed. As mentioned in the Introduction above, this law was passed after the cut-off date for this report: on 28 February 2023, Law 4/2023 of 28 February for the real and effective equality of trans people and for the guarantee of the rights of LGBTI people was adopted. As it is a law from 2023, it is outside the scope of this report.

[24] See the Spanish Government's press release on the adoption of this report: 'Anteproyecto de ley para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI' ('Preliminary bill for the real and effective equality of trans people and for the guarantee of the rights of LGTBI people'), *Lamoncloa.gob.es*, 29 June 2021, available at: https://www.lamoncloa.gob.es/consejodeministros/Paginas/enlaces/290621-enlace-lgtbi.aspx.

updating it, and Annexes I and II of Royal Decree 1277/2003, of 10 October, which establishes the general bases for authorising health centres, services and establishments[25]. As will be seen in section 3.2.5 below, this legislation was adopted following court rulings on non-discrimination on the basis of sexual identity. According to this legislation, which falls within the competence of the Government and does not need to be adopted by the Spanish Parliament, lesbian women, bisexual and transgender people with gestational capacity and women without a partner who want to have children alone will once again (after seven years in which they could not do so) be able to have access to assisted human reproduction techniques in the National Public Health System.[26]

[25] Order SND/1215/2021, of November 5, which modifies Annex III of Royal Decree 1030/2006, of September 15, which establishes the portfolio of common services of the National Health System and the procedure for updating, and annexes I and II of Royal Decree 1277/2003, of October 10, which establishes the general bases on the authorisation of health centres, services and establishments (*Orden SND/1215/2021, de 5 de noviembre, por la que se modifica el anexo III del Real Decreto 1030/2006, de 15 de septiembre, por el que se establece la cartera de servicios comunes del Sistema Nacional de Salud y el procedimiento para su actualización, y los anexos I y II del Real Decreto 1277/2003, de 10 de octubre, por el que se establecen las bases generales sobre autorización de centros, servicios y establecimientos sanitarios*), *BOE*, 9 November 2021, available at: https://www.boe.es/eli/es/o/2021/11/05/snd1215.

[26] The reference to this legislation is mentioned again in section 12.1, and a specific comment will be made in section 3.2.5 below.

INTRODUCTION

The national legal system

The public administration, as defined in the Spanish Constitution (SC)[27] of 1978, is structured on three levels: central Government; autonomous communities (regional Governments); and local authorities. Central Government has a series of exclusive powers (SC, Article 149) that include criminal and procedural law, civil legislation, labour and social security law, the basic structure and coordination of healthcare, the basic structure of education and the basic legal system for public administration. The autonomous communities manage some of these fields, such as health and education, and have the power to adopt legal regulations developing or complementing central Government legislation in some fields. In some of the fields mentioned in Directive 2000/43, such as 'social advantages' (i.e. benefits), and access to and supply of goods and services that are available to the public, including housing, all three tiers of government – central, regional and local – have jurisdiction. Conflicts of power between central Government and the autonomous communities are resolved by the Constitutional Court (SC, Article 161).

International treaties signed by Spain are included in the domestic legal system (SC, Article 96). Spain has ratified practically all the international instruments combating discrimination, including Protocol 12 to the ECHR. These instruments can be relied upon before national courts.

List of main legislation transposing and implementing the directives

The main pieces of legislation transposing and implementing the two anti-discrimination directives are the following laws:

Official Title of the Law: Law 62/2003 of 30 December 2003 on Fiscal, Administrative and Social Measures (*Ley 62/2003, de 30 de diciembre, de medidas fiscales, administrativas y de orden social*) Name used in this report: Law 62/2003, of 30 December 2003 Abbreviation: Law 62/2003 Date of adoption: 30 December 2003 Entry into force: 1 January 2004 Latest relevant amendment: / Web link: https://www.boe.es/buscar/act.php?id=BOE-A-2003-23936 Grounds covered: Racial or ethnic origin, religion or beliefs, disability, age, sexual orientation Material scope: Employment, social protection, social advantages (i.e. benefits), education, access to goods and services Principal content: It is a law with a diverse content: economic, fiscal and labour issues, which also includes specific measures for equal treatment and non-discrimination.
Official Title of the Law: General Law on the Rights of Persons with Disabilities and their Social Inclusion (*Real Decreto Legislativo 1/2013, de 29 de noviembre, por el que se aprueba el Texto Refundido de la Ley General de derechos de las personas con discapacidad y de su inclusión social* Name used in this report: RDL 1/2013, 29 November 2013 Abbreviation: RDL 1/2013 Date of adoption: 29 November 2013 Entry into force: 4 December 2013 Latest relevant amendment: Law 6/2022 of 31 March to establish and regulate cognitive accessibility and its conditions of requirement and application.

[27] Spanish Constitution (*Constitución Española*), *BOE*, 29 December 1978, https://www.boe.es/eli/es/c/1978/12/27/(1)/con.

Web link:https://www.boe.es/buscar/act.php?lang=en&id=BOE-A-2013-12632&tn=2&p=20230301
Grounds covered: disability
Material scope: Employment, social protection, social advantages (i.e. benefits), education, access to goods and services
Principal content: It is a law that seeks to guarantee the right to equal opportunities and treatment, as well as the real and effective exercise of rights by persons with disabilities on equal terms with other citizens, through the promotion of personal autonomy, universal accessibility, access to employment, inclusion in the community and independent living and the eradication of all forms of discrimination. It also establishes the system of infractions and sanctions that guarantee the basic conditions in terms of equal opportunities, non-discrimination and universal accessibility for people with disabilities.

Official Title of the Law: Law 15/2022, of 12 July, comprehensive for equal treatment and non-discrimination has been tested (*Ley 15/2022, de 12 de julio, integral para la igualdad de trato y la no discriminación*)
Name used in this report: Law 15/2022, of 12 July.
Abbreviation: Law 15/2022
Date of adoption: 12 July 2022
Entry into force: 14 July 2022
Latest relevant amendment: /
Web link: https://www.boe.es/buscar/act.php?id=BOE-A-2022-11589
Grounds covered: birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, gender expression, illness or health condition, serological status and/or genetic predisposition to suffer pathologies and disorders, language, socio-economic situation, or any other personal or social condition or circumstance.
Material scope: employment, both employed and self-employed, covering access, working conditions, including pay and conditions of dismissal, career advancement and job training; access, promotion, working conditions and training in public employment; membership and participation in political, trade union, business, professional, social or economic interest organisations; education; healthcare; transport; culture; public safety; administration of justice; social protection, social benefits and social services; access to, supply and provision of goods and services available to the public, including housing, which are provided outside the sphere of private and family life; access to and stay in establishments or spaces open to the public, as well as the use of and presence on public roads and streets; advertising, media and information society services; Internet, social networks and mobile applications; sports activities, in accordance with Law 19/2007 of 11 July 2007 against violence, racism, xenophobia and intolerance in sport; artificial intelligence and big data management, as well as other areas of similar significance
Principal content: it is a comprehensive law on the grounds of discrimination and of general application, to guarantee the principle of equality and non-discrimination.

Official Title of the Law: (Catalonia) Law 19/2020 of 30 December 2020, on equal treatment and non-discrimination
Name used in this report: Act 19/2020.
Abbreviation: Law 19/2020
Date of adoption: 30 December 2020
Entry into force: 1 March 2021
Latest relevant amendment: /
Web link: https://www.boe.es/buscar/doc.php?id=BOE-A-2021-1663
Grounds covered: territorial or national origin and xenophobia; Sex or gender, sexual orientation or identity, and any form of LGBTIphobia or misogyny; age; race, ethnicity or skin colour, and any form of racism such as anti-Semitism or anti-Gypsyism; language or cultural identity; ideology, political or other opinion or ethical convictions of a personal

nature: religious convictions, and any manifestation of Islamophobia, Christianophobia or Judeophobia; social or economic status, administrative situation, profession or condition of deprivation of liberty, and any manifestation of aporophobia or hatred of the homeless; physical, sensory, intellectual or mental disability or other types of functional diversity; alterations in health, serological status or genetic characteristics; physical appearance or clothing; any other characteristic, circumstance or manifestation of the human condition, real or attributed, that are recognised by international law instruments.
Material scope: this applies to all natural and legal persons, both in the public and private sectors, located or operating in the territory of Catalonia, in all areas of activity and regardless of whether they operate in person, in person and directly, in the social network environment or by telematic means with origin or destination in the territory of Catalonia.
Principal content: the purpose of this law is to guarantee the right to equal treatment and non-discrimination and to eradicate any action or behaviour that may violate the dignity of persons and the free development and free expression, without any form of discrimination, of one's own personality and personal abilities.

Official Title of the Law: (Comunidad de Madrid), Law 3/2016, of July 22, on Comprehensive Protection against LGTBI phobia and Discrimination on grounds of Sexual Orientation and Sexual Identity in the Community of Madrid (*Ley 3/2016, de 22 de julio, de Protección Integral contra LGTBIfobia y la Discriminación por Razón de Orientación e Identidad Sexual en la Comunidad de Madrid*), *BOE*, No. 285, 25 November 2016
Name used in this report: Law 3/2016
Abbreviation: Law 3/2016
Date of adoption: 22 July 2016
Entry into force: 11 August 2016
Latest relevant amendment: /
Web link: https://boe.es/buscar/act.php?id=BOE-A-2016-11096&p=20160810&tn=1
Grounds covered: sexual orientation and sexual identity.
Material scope: the Administration of the Region of Madrid, its constituent local bodies and the public or private law entities linked to or dependent on them.
Principal content: this law aims to regulate the principles, measures, instruments and procedures to guarantee the right of all persons in the Region of Madrid not to be discriminated against on the grounds of their sexual orientation or diversity or gender identity or expression, real or perceived, not to suffer pressure, contempt or discrimination for this reason, as well as the right to their physical and psychological integrity, at all stages of their lives and in all spheres of action, both public and private.

Official Title of the Law: (Comunidad Valenciana), Law 8/2017, of April 7, comprehensive recognition of the right to gender identity and gender expression in the Valencian Community (*Ley 8/2017, de 7 de abril, integral del reconocimiento del derecho a la identidad y a la expresión de género en la Comunitat Valenciana*), *BOE*, No. 112, 11 May 2017
Name used in this report: Law 8/2017
Abbreviation: Law 8/2017
Date of adoption: 7 April 2017
Entry into force: 12 April 2017
Latest relevant amendment: /
Web link: https://www.boe.es/buscar/act.php?lang=en&id=BOE-A-2017-5118&tn=1&p=.
Grounds covered: gender identity and gender expression
Material scope: This law shall be applicable to any natural or legal person, public or private, whatever their age, domicile or residence, who is located or acts within the territory of the Comunitat Valenciana (Region of Valencia).

The Government of Valencia, the provincial councils and town councils, as well as any public or private law entity linked to or dependent on these institutions, shall guarantee compliance with the law and shall promote the conditions to make it effective within the scope of their respective competencies.
Principal content: this law aims to establish an appropriate regulatory framework to guarantee the right to gender self-determination for persons who manifest a gender identity different from that assigned at birth.

Official Title of the Law: (Andalucía), Law 8/2017, of December 28, to guarantee the rights, equal treatment and non-discrimination of LGTBI people and their families in Andalucia (*Ley 8/2017, de 28 de diciembre, para garantizar los derechos, la igualdad de trato y no discriminación de las personas LGTBI y sus familiares en Andalucía*), *BOE*, No. 33, 6 February 2018
Name used in this report. Law 8/2017 (Andallucia)
Abbreviation: Law 8/2017 (Andalucia)
Date of adoption: 28 December 2017
Entry into force: 5 February 2018
Latest relevant amendment: /
Web link: https://www.boe.es/buscar/act.php?id=BOE-A-2018-1549&p=20180115&tn=1
Grounds covered: Equal treatment and non-discrimination of LGTBI people and their family members.
Material scope: This law shall apply to the Administration of the Autonomous Community of Andalusia, to the local entities of Andalusia and to the public or private law entities linked to or dependent on them, without prejudice to the provisions of the legislation on aliens, the applicable international treaties and the rest of the legislation in force.
Principal content: The purpose of this law is to guarantee the rights and equal treatment on grounds of sexual orientation, sexual identity and gender identity of homosexual, bisexual, transsexual, transgender and/or intersex (LGBTI) persons and their families in the Autonomous Community of Andalusia.

Official Title of the Law: (Region of Aragón), Law 18/2018, of December 20, on equality and comprehensive protection against discrimination based on sexual orientation, expression and gender identity in the Autonomous Community of Aragon (*Ley 18/2018, de 20 de diciembre, de igualdad y protección integral contra la discriminación por razón de orientación sexual, expresión e identidad de género en la Comunidad Autónoma de Aragón*), *BOE*, No. 50, 27 February 2019
Name used in this report: Law 18/2018
Abbreviation: Law 18/2018
Date of adoption: 20 December 2018
Entry into force: 20 January 2019
Latest relevant amendment: /
Web link: https://www.boe.es/buscar/act.php?id=BOE-A-2019-2712
Grounds covered: discrimination on grounds of sexual orientation, gender expression and gender identity
Material scope: this law shall apply to any natural or legal person, public or private, whatever their domicile or residence, who is located or acts in the territory of the Autonomous Community of Aragon.
Principal content: The purpose of this law is to regulate, within the territorial scope of the Autonomous Community of Aragon and within the framework of its competences, the principles, measures and procedures aimed at guaranteeing full real and effective equality and the rights of LGBTI persons, as well as those of their families, with special attention to minors in their care, through the prevention and elimination of all discrimination for reasons of sexual orientation, gender expression or gender identity in the public and private sectors of the Autonomous Community of Aragon.

Official Title of the Law: Cantabria, Law 8/2020, of November 11, Guaranteeing the Rights of Lesbian, Gay, Trans, Transgender, Bisexual and Intersex Persons and Non-Discrimination on the Ground of Sexual Orientation and Gender Identity (*Ley 8/2020, de 11 de noviembre, de Garantía de Derechos de las Personas Lesbianas, Gais, Trans, Transgénero, Bisexuales e Intersexuales y No Discriminación por Razón de Orientación Sexual e Identidad de Género*), *BOE*, No. 322, 10 December 2020
Name used in this report: Law 8/2020
Abbreviation: Law 8/2020
Date of adoption: 11 November 2020
Entry into force: 30 December 2020
Latest relevant amendment: /
Web link: https://www.boe.es/buscar/act.php?id=BOE-A-2020-15880.
Grounds covered: Lesbian, Gay, Trans, Transgender, Bisexual and Intersex Persons and Non-Discrimination on Grounds of Sexual Orientation and Gender Identity
Material scope: The Administration of the Autonomous Community of Cantabria, the local entities within its territorial scope and the public or private law entities linked to or dependent on them, without prejudice to the provisions of the rest of the legislation in force.
Principal content: The purpose of this law is to establish the regulatory framework to guarantee in the Autonomous Community of Cantabria the right to privacy and the principles of equal treatment and non-discrimination on grounds of sexual orientation and sexual identity or gender identity or any other form of expression or experience of sexuality of lesbian, gay, bisexual, trans and intersex persons and the freedom of gender self-determination of persons who manifest a sexual identity or gender identity other than that assigned at birth.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Constitution of Spain includes the following articles dealing with non-discrimination:

Article 14: 'Spaniards are equal before the law and may not in any way be discriminated against on the grounds of birth, race, sex, religion, opinion or any other condition or personal or social circumstance'.

Age, disability and sexual orientation are not expressly included in Article 14 of the Constitution, but the Constitutional Court ruled that age (Decision 31/1984, 7 March 1984),[28] disability (Decision 269/1994, October 1994)[29] and sexual orientation (Decision 41/2006, February 2006)[30] are included in the generic phrase 'any other personal or social circumstance'.[31]

Article 16: 'Freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than that necessary to maintain public order according to the law'.

Article 23(2): Citizens 'have the right to access on equal terms to public office, in accordance with the requirements determined by law'.

Article 49: 'The public authorities shall carry out a policy of preventive care, treatment, rehabilitation and integration of the physically, sensorially and mentally handicapped by giving them the specialised care they require, and affording them special protection for the enjoyment of the rights granted by this Part to all citizens.'[32]

Article 53 introduces guarantees of fundamental rights and freedoms and also of the principle of equality and non-discrimination.

Article 9 provides a positive obligation on the part of public authorities to promote equality, since they have to 'promote conditions that ensure that the freedom and equality of

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[28] Constitutional Court Decision 31/1984, 7 March 1984: http://hj.tribunalconstitucional.es/HJ/docs/BOE/BOE-T-1984-8175.pdf.

[29] Constitutional Court Decision 269/1994, 3 October 1994: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/2786.

[30] Constitutional Court Decision 41/2006, 13 February 2006: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/5643. (See also Constitutional Court Decisions 92/2014 of 10 June 2014 and 157/2014 of 6 October 2014).

[31] The doctrine of the Constitutional Court on the principle of equality and the prohibition of discrimination (Article 14 CE) was summarised in Constitutional Court Decision 200/2001, 4 October 2001: http://hj.tribunalconstitucional.es/HJ/docs/BOE/BOE-T-2001-20621.pdf.

[32] The Spanish Constitution approved in 1978 included Article 49 to protect persons with disabilities. On 7 December 2018, the Spanish Government adopted a draft text to reform this article of the Constitution to adapt to the Convention on the Rights of Persons with Disabilities of 2006. The wording proposed by the Government for Article 49 is based on the work carried out in the commission for comprehensive disability policies of the Congress of Deputies. Furthermore, the Spanish Committee of Representatives of Persons with Disabilities, which had been demanding this change of orientation in the constitutional text for several years, participated in the drafting (the draft amendment is still pending).
In the Government draft, Article 49 of the Spanish Constitution is worded as follows:
1. 'Persons with disabilities are holders of the rights and duties set forth in this Title in conditions of real and effective freedom and equality, without discrimination.
2. The public authorities shall carry out the necessary policies to guarantee full personal autonomy and social inclusion of persons with disabilities. These policies will respect their freedom of choice and preferences and will be adopted with the participation of organisations representing persons with disabilities. The specific needs of women and girls with disabilities will be particularly addressed.
3. The reinforced protection of persons with disabilities will be regulated for the full exercise of their rights and duties.
4. Persons with disabilities enjoy the protection provided in international agreements that ensure their rights.'

individuals and of the groups that they form are real and effective; to remove obstacles that impede or hamper the fulfilment of such freedom and equality; and to facilitate the participation of all citizens in political, economic, cultural and social life'. This article views positive action and measures promoting equality not as exceptions to the principle of equality but rather as constitutionally legitimate ways to implement equality.

The Constitutional Court[33] has ruled that the principle of equality is not breached by action on the part of the public authorities to counter the disadvantages experienced by certain social groups 'even when they are given more favourable treatment, for the aim is to give different treatment to effectively different situations'.

Article 10(2) recognises the role of the international treaties on human rights in construing domestic provisions: 'provisions relating to fundamental rights and freedoms recognised by the Constitution shall be interpreted pursuant to the Universal Declaration on Human Rights and the international treaties and agreements ratified by Spain'.[34]

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives.

These provisions are directly applicable.

These provisions can be enforced against private individuals (as well as against the state).

[33] Constitutional Court Decision 128/1987, 1 July 1987: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/860.

[34] For example, Constitutional Court Decision 41/2006 on sexual orientation discrimination cites international law such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 14), the International Covenant on Civil and Political Rights (Article 26) and numerous examples of international jurisprudence.

2 THE DEFINITION OF DISCRIMINATION

2.1 Definition of the grounds of unlawful discrimination within the directives

a) Racial or ethnic origin

National law on discrimination (in particular, the Workers' Statute and the Criminal Code) does not define the terms 'racial origin' or 'ethnic origin'.

Neither of the two decisions of the Constitutional Court (STC 13/2001[35] and STC 69/2007)[36] which have addressed the issue of racial or ethnic origin provides a definition of 'racial origin' or 'ethnic origin'. The Court refers to 'Romani ethnic origin' (*étnia gitana*) but without defining traits that might characterise it.

b) Religion or belief

Religion is not defined in Spanish legislation. There is, however, a *negative* definition of religion. In other words, legislators have specified only what religion is not, not what it is. Article 3(2) of the Organic Law on Religious Freedom[37] states that 'activities, intentions and entities relating to or engaging in the study of and experimentation on psychic or parapsychological phenomena or the dissemination of humanistic or spiritual values or other similar non-religious aims do not qualify for the protection provided in this Act'.

The Directorate General for Religious Affairs, under the authority of the Ministry of Justice, used a definition of 'religious organisation': in order for a group or organisation to be properly described as religious, the following prerequisites must be met: (1) belief in the existence of a higher being, transcendent or otherwise, with whom communication is possible; (2) belief in a body of doctrine (dogma) and rules of behaviour (moral rules), somehow derived from this higher being; (3) ritual practice, whether individual or collective (worship), constituting the adherents' institutional means of communication with the higher being.

Consequently, for a long time the practice of the Directorate was to refuse to register religious denominations on the Register of Religious Entities on the ground of these denominations' lack of religious aims. However, the situation has changed since Constitutional Court Decision 46/2001.[38] The Court asserted that the administrative resolutions that denied the registration of the religious entities in the register of religious organisations violated the right to collective religious freedom because the state, in the activity of registration, can only check that the entity is not excluded by Article 3(2) of the Organic Law on Religious Freedom. Following this Decision, the Government cannot judge the religious character of entities wishing to join the register, and must confine itself to verifying that, in view of their statutes, goals and aims, these entities are not excluded by Article 3(2).

Article 3(2) of the Law on Religious Freedom allows 'sects' to be excluded from the Register of Religious Associations. Registration on the register is voluntary for religious organisations, but it gives them a religious legal personality, which gives their places of worship the right of inviolability and provides some tax benefits. Religious freedom is protected regardless of whether a religious organisation is inscribed on the register. There is no special legislation or specific register for sects.

[35] Constitutional Court Decision 13/2001, 29 January 2001: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/4309.
[36] Constitutional Court Decision 69/2007, 16 April 2007: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/6036.
[37] Organic Law 7/1980, the Organic Law on Religious Freedom (*Ley Orgánica de Libertad religiosa*), *BOE*, 6 July 1980: http://www.boe.es/boe/dias/1980/07/24/pdfs/A16804-16805.pdf.
[38] Constitutional Court Decision 46/2001, 15 February 2001: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/4342.

The 1978 Constitution (Article 16.1) states that 'Freedom of ideology, religion and worship of individuals and communities is guaranteed, with no other restriction on their expression than may be necessary to maintain public order as protected by law'. The same provision (Article 16.2), establishes that 'No one may be compelled to make statements regarding his religion, beliefs or ideologies'. Therefore, although ideological freedom and religious freedom are distinct freedoms, the Constitution contemplates them together, giving them largely the same treatment: in any case, all people can conduct their lives according to their political beliefs or their religious beliefs, i.e. they can express themselves publicly according to their religious criteria.

On the other hand, Article 1.2 of Organic Law 7/1980 of 5 July 1980 on Religious Freedom stipulates that 'religious beliefs' shall not constitute grounds for inequality or discrimination before the law. On the other hand, among other rulings of the Constitutional Court, rulings 19/1985; 120/1990, 137/1990 and 177/1996 state that 'The right to religious freedom in art. 16.1 C.E. guarantees the existence of an intimate set of beliefs and, therefore, a space of intellectual self-determination in the face of the religious phenomenon, linked to one's own personality and individual dignity. But, together with this internal dimension, this freedom, like the ideological freedom of art. 16.1 C.E. itself, also includes an external dimension of *agere licere* which empowers citizens to act in accordance with their own convictions and to maintain them vis-à-vis third parties...'.

In consequence, on the question of belief, traditionally, legislation has dealt jointly with the prohibition of discrimination on grounds of religion or belief. For example, Law 62/2003, which was the first to transpose Directives 2000/78 and 2000/43 in 2003, prohibits discrimination on the grounds of 'religion or belief'. Subsequently, Law 15/2022, adopted in July 2022, states that no one may be discriminated against on the basis of 'religion, conviction or opinion'.

c) Disability

In Article 4, the General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013), which prohibits disability discrimination, provides that they 'Are persons with disabilities who have physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others (Article 4(1)) ... For the purposes of this law, persons with a disability shall be deemed to be those with a recognised degree of impairment equal to or greater than 33 %'. In any event, those (under the general system) with a recognised entitlement to social security pensions for permanent incapacity rated as total, absolute or severe 'shall be deemed to be affected by an impairment equal to or greater than 33 % … with a recognised entitlement to a retirement pension or a pension for retirement due to permanent incapacity' (Article 4(2)). This provision affects the existing material scope of the law because, according to the Article, those people who are recognised as having a permanent incapacity pension (i.e. a situation in which they are unable to perform their work and are therefore beneficiaries of a financial pension from the Social Security), will be considered as people with disabilities. The Law covers social benefits, social security, education, work and housing and access to goods and services[39].

This definition has two parts, with very different orientations and implications. The first part (Article 4(1)), inspired by the CRPD, is based on the social model of disability and is coherent with the concept of 'disability' established by the Court of Justice of the European

[39] Consequently, outside the timeframe of this study, on 22 March 2023, Royal Decree 193/2023 of 21 March was published, establishing the basic conditions for accessibility and non-discrimination of persons with disabilities for access to and use of goods and services available to the public. This Royal Decree maintains the definitions of disability as set out in Article 4 of the General Law on the Rights of Persons with Disabilities and their Social Inclusion, approved by Royal Legislative Decree 1/2013, of 29 November.

Union in joined cases C-335/11 and C-337/11.[40] The second part (Article 4(2)) retains the medical perspective of disability and has an administrative utility: individuals need to have this degree of impairment in order to claim some rights. It could be said that the need to establish a degree of impairment (of 33 % or greater and which has been officially assessed as such) is potentially in breach of Directive 2000/78, as the directive does not specify that certain degrees of impairment must be established for a person to be recognised as having a disability (see CJEU joined cases C-335/11 and C-337/11).

The jurisprudence, which was well established in Spain, did not accept that an incapacity for work could be considered as a disability (and, therefore, dismissal could not be considered null because it did not amount to discrimination by disability). For that reason, a Spanish judge decided to submit a preliminary ruling before the CJEU. Among other questions, the judge raised the interpretation of the concept of disability in Directive 2000/78/EC. On 1 December 2016, the CJEU delivered its decision on the *Daouidi* case (C-395/15).[41]

In the synthesis of the answer to the question of the Spanish judge, the Court established 'that Directive 2000/78 must be interpreted as meaning that:

- the fact that the person concerned finds himself or herself in a situation of temporary incapacity for work for an indeterminate amount of time, as the result of an accident at work, does not mean, in itself, that the limitation of that person's capacity can be classified as being 'long-term', within the meaning of the definition of 'disability' laid down by that directive;
- the evidence which makes it possible to find that such a limitation is 'long-term' includes the fact that the incapacity of the person concerned does not display a clearly defined prognosis as regards short-term progress or the fact that that incapacity is likely to be significantly prolonged before that person has recovered; and
- in the context of the verification of that 'long-term' nature, the referring court must base its decision on all of the objective evidence in its possession' (Paragraph 59).

Regarding the sentence that the Spanish judge should issue, the CJEU clarifies three questions. First, the Court noted that it is necessary to determine whether the claimant's limitation is 'long-term'. Second, the 'long-term' nature of the limitation must be assessed in relation to the claimant's condition of incapacity at the time of the allegedly discriminatory act. Finally, if the limitation is found to be 'long-term' the Court recalled that unfavourable treatment on grounds of disability undermines the protection provided for by the directive only in so far as it constitutes discrimination within the meaning of Article 2(1).

After the decision of the CJEU, Social Court No. 33 of Barcelona issued a decision on 23 December 2016 (case 1219/2014) and declared the claimant's dismissal null and void for discrimination on the ground of disability. The judge ruled that, at the time of the allegedly discriminatory act, the claimant's incapacity did not display a clearly defined prognosis as regards short-term progress and thus constituted a long-term limitation. Therefore, his 'temporal incapacity' must be regarded as a disability. The judge further considered that the claimant's dismissal had occurred due to his condition as a person with disability and, therefore, must be declared null by discrimination: 'The dismissal of the injured worker, almost two months after the accident, when he was still on sick leave and had reported that his reinstatement would not be in the short term, constitutes direct discrimination on the grounds of disability' (Para. XI.10).

[40] Judgment of 6 December 2012, joined cases of *HK Denmark (Ring)*, C-335/11 HK, and *HK Denmark (Skouboe Werge),* C-337/11: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62011CA0335.

[41] Judgment of 1 December 2016, *Daouidi*, C-395/15: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-395/15.

In 2016, Social Court No. 1 of Cuenca referred another issue to the CJEU concerning the interpretation of the concept of disability in Directive 2000/78. Under Spanish legislation (Workers' Statute, Article 52(d)), an employer is entitled to dismiss an employee on objective grounds for intermittent absences from work, even if justified, if this amounts to 20 % of the employee's working hours in two consecutive months or 25 % of their working hours over four non-consecutive months within a 12-month period. Given that workers with disabilities are more likely to have work absences, the judge asked the CJEU whether the Spanish legislation was in line with the provisions of Directive 2000/78. On 18 January 2018 the CJEU passed judgment,[42] declaring that Article 2(2)(b)(i) of Directive 2000/78 (indirect discrimination) 'must be interpreted as precluding national legislation under which an employer may dismiss a worker on the grounds of his intermittent absences from work, even if justified, in a situation where those absences are the consequence of sickness attributable to a disability suffered by that worker, unless that legislation, while pursuing the legitimate aim of combating absenteeism, does not go beyond what is necessary in order to achieve that aim, which is a matter for the referring court to assess'.

On 7 March 2018, Social Court No. 1 of Cuenca ruled in Decision 171/2018 that the dismissal of the worker was null and void because there had been 'indirect discrimination' by disability. The ruling of the Cuenca court cites both Directive 2000/78 and CJEU judgment C-270/16.

In 2018, Social Court No. 3 of Barcelona referred another issue to the CJEU about whether the concept of 'workers particularly susceptible to certain risks' (under Article 25 of Law 31/1995, 8 November, on the Prevention of Occupational Risks) is equivalent to the concept of 'disability' within the meaning of Directive 2000/78, as interpreted by the Court. The purpose of Law 31/1995 is to protect the safety and health of workers at work; in this respect, it should be mentioned that Article 25 of Law 31/1995 contains a specific provision for the protection of 'workers especially sensitive to certain risk': these people who are 'especially sensitive' are those workers who 'because of their personal characteristics or known biological state, including those who have a recognised condition of physical, psychical or sensorial disability, are especially sensitive to the risks derived from work.' To this end, 'the employer shall take into account those aspects on assessing the risks and, accordingly, shall take the necessary preventive and protective measures.' The summary of the facts is as follows: a female worker was classified as particularly 'sensitive to risks' (Article 25 of Law 31/1995) in her company and, consequently, the company had to adopt specific occupational risk prevention measures for her; in any case, the worker was dismissed for objective reasons as, due to her condition, she was unable to carry out the work; the Spanish judge who heard the case referred a question to the Court of Justice of the European Union for a preliminary ruling on whether these workers 'sensitive to occupational risks' could be classified as 'persons with disabilities', as in that case discrimination could have occurred.

In its 2019 judgment on Case C-397/18, *D.W. v. Nobel Plastiques Ibérica SA*,[43] the CJEU ruled that 'Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the state of health of a worker categorised as being particularly susceptible

[42] Judgment of 18 January 2018, *Ruiz Conejero v. Ferroser*, C-270/16: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-270/16 (Prior to this judgment, there had been two very important previous judgments on the concept of disability (the CJEU judgment of 11 July 2006 (C-13/05, *Chacón Navas v. Eurest*), and that of 11 April 2013 (C 335/11 and C 337/11, *Ring v. Dansk & Werge v. Dansk*). Compared to these earlier judgments, what is important in the judgment under discussion (18 January 2018) is that, as we will see in the text, it assesses whether the dismissal of a worker is discriminatory on the grounds of disability because of the reiteration in the number of short-term absences from work, i.e. 'intermittent absences' or 'intermittent short-term absences' from work).

[43] Judgment of 11 September 2019, *D.W. v. Nobel Plastiques Ibérica SA*, C-397/18: http://curia.europa.eu/juris/document/document.jsf?text=&docid=217624&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=501000.

to occupational risks, within the meaning of national law, which prevents that worker from carrying out certain jobs on the ground that such jobs would entail a risk to his or her own health or to other persons, only falls within the concept of 'disability', within the meaning of that directive, where that state leads to a limitation of capacity arising from, *inter alia*, "long-term" physical, mental or psychological impairments which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in their professional life on an equal basis with other workers. It is for the national court to determine whether those conditions are satisfied in the main proceedings.'

Regarding the criteria on the objective dismissal established by the company and applied in the dismissal of D.W., the CJEU indicated in its judgment that this could constitute indirect discrimination if the company has not established a reasonable accommodation for the worker: 'Article 2(2)(b)(ii) of Directive 2000/78 must be interpreted as meaning that dismissal for 'objective reasons' of a worker with disability on the ground that he or she meets the selection criteria taken into account by the employer to determine the persons to be dismissed, namely having productivity below a given rate, a low level of multi-skilling in the undertaking's posts and a high rate of absenteeism, constitutes indirect discrimination on grounds of disability within the meaning of that provision, unless the employer has beforehand provided that worker with reasonable accommodation, within the meaning of Article 5 of that directive, in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, which it is for the national court to determine.'

Subsequently, the judgment issued by Labour Court No. 3 of Barcelona of 19 November 2019 following the judgment of the CJEU in case C-397/18, *D.W. v. Nobel Plastiques Ibérica SA in 2019,* found that the worker was 'particularly sensitive to risks' in the workplace[44] regardless of the corrective measures that could be taken to adapt the work to his/her health condition, confirming that 'he/she was a person with a disability' (as explained above, the Spanish judge had addressed the European Court for a preliminary ruling on whether these workers sensitive to occupational risks could be classified as persons with disabilities) (for further commentary on this judgment, see section 2.5).

d) Age

The national law on discrimination does not define the term 'age', and neither does the Workers' Statute or the Criminal Code. The courts do not give a definition of 'age'. However, 'age' is commonly understood to mean the number of years attained by an individual, and 'age discrimination' to mean discrimination on the ground of young age or older age.[45]

e) Sexual orientation

It should be recalled that 'sexual orientation' as a prohibited grounds for discrimination is already included in the current Law 62/2003. However, neither this law nor the Workers' Statute or the Criminal Code define what is meant by 'sexual orientation'.[46] The Constitutional Court's Decision STC 41/2006, in *PC v. Alitalia Italian Airlines*,[47] recognises

[44] See on p. 32 the definition of 'workers especially sensitive to certain risk' on the basis of Article 25 of Law 31/1995. As explained there, the purpose of this Law is to protect the safety and health of workers at work.

[45] For example, Constitutional Court, Decision 66/2015 of 13 April 2015, which accepts that the criterion of being aged over 55 is used as a criterion for the selection of workers affected by a collective dismissal and that this does not constitute age discrimination because of the rigorous demands of justification and proportionality: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/24413.

[46] In February 2023, and therefore outside the timeframe of this report, Law 4/2023, of 28 February, for the real and effective equality of trans people and for the guarantee of the rights of LGTBI people, was passed. This law defines, among other terms, 'sexual orientation', 'sexual identity', 'gender expression' and 'intersexuality'.

[47] Constitutional Court, Decision 41/2006, 13 February 2006: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/5643.

that 'sexual orientation' is a protected ground under Article 14 of the Spanish Constitution. However, the Constitutional Court does not define 'sexual orientation'.

Reference should be made in this section to the Constitutional Court's (TC) judgment 67/2022 of 2 June 2022 (STC 67/2022), in which it gave a definition of 'sexual orientation' in a case that primarily concerned gender identity. The Constitutional Court maintained that sexual orientation, as well as sex, gender and gender identity, cannot be strictly defined as rights, but rather as conditions or states that have an impact on the exercise of fundamental rights and that make up one of the many identity elements that can come to define the right to personal self-determination or to develop, with full respect for human dignity (Article 10 EC), one's own personal identity. The TC continued by stating that the same is true for personal conditions relating to 'sexual orientation' and 'gender identity'. For the TC, the former refers to the preference for establishing affective relationships with persons of either sex and the latter to the identification of a person with gender-defining characteristics that may or may not coincide with the sex attributed to him or her, by virtue of the predominant biological characteristics that he or she presents from birth. Personal conditions of sex and gender, and sexual orientation or gender identity, all of which are fundamentally linked to the right to develop a specific private and family life (Article 8 of the European Convention on Human Rights), and where the TC, assuming the jurisprudence of the European Court of Human Rights, includes the sexual life and sexual orientation of persons, or the gender identity of trans persons, within the concept of private life. The TC thus confirms that Article 8 of the Convention protects the right of transgender persons to personal development and to physical and moral security.

All of the above TC doctrine may be of interest since Law 15/2022 was passed after this ruling. Article 2.1 has included people's 'sex', 'sexual orientation or identity' and 'gender expression' as anti-discrimination factors. As regards 'sexual orientation or identity', it should be recalled that 'sexual orientation' as a prohibited ground for discrimination is already included in the pre-existing Law 62/2003, although now, with Law 15/2022, legal mention is made using a disjunctive conjunction such as 'or' when referring to the prohibition of discrimination on the grounds of 'sexual orientation or identity' (it seems that the law assimilates both notions, but whether or not they are similar concepts is a matter for judicial interpretation). In turn, as regards discrimination on grounds of 'gender expression', the addition of this reasoning is new to the law, although neither the notion of 'gender identity', nor other expressions such as non-discrimination on grounds of 'sexual characteristics' are used in the text.

2.2 Multiple discrimination

In Spain, multiple discrimination has been prohibited by law since 14 July 2022, which is the date on which Law 15/2022 came into force. In addition, intersectional discrimination is prohibited in law by the same Law.

In July 2022, Law 15/2022 was adopted, establishing so-called multiple or intersectional discrimination as a violation of the right to equal treatment and non-discrimination (Article 4).

Under this Law, multiple discrimination occurs when a person is discriminated against simultaneously or consecutively on two or more of the grounds set out in Law 15/2022.

Also under Law 15/2022, intersectional discrimination occurs when several of the causes foreseen therein concur or interact, generating a specific form of discrimination.

It should also be recalled that a situation is not considered discriminatory when a difference in treatment is based on one of the grounds set out in the law, where this difference can be objectively justified by a legitimate aim and as an appropriate, necessary and proportionate means of achieving that aim. On that basis, Law 15/2022 states that in order

to recognise multiple or intersectional discrimination, the reason for the difference in treatment must be given for each of the grounds or causes of discrimination.

In addition to the above legislation, it should also be noted that Organic Law 3/2007 on the Effective Equality of Women and Men[48] contains the first reference to multiple discrimination in Spanish law. Article 20 provides that 'the public authorities shall, in the preparation of studies and statistics, devise and introduce the necessary mechanisms and indicators to show the incidence of other variables whose recurrence generates situations of multiple discrimination in the various spheres of action.'

Turning to case law, the TC has recognised the possibility of multiple discrimination on the grounds of disability and age.[49] The doctrine of the TC points out that in multiple discrimination, situations of discrimination may simultaneously affect more than one human right. The TC states that the most frequent cases of multiple discrimination refer to sex and ethnic origin, and/or the immigrant status of those affected, but of course other possible combinations cannot be ruled out.

2.3 Assumed and associated discrimination

a) Discrimination by assumption

In Spain, discrimination based on a perception or assumption of a person's characteristics, is explicitly prohibited in national law.

In July 2022, Law 15/2022 was adopted, which considers so-called 'erroneous' discrimination as a violation of the right to equal treatment and non-discrimination. According to Article 6 of the Law, erroneous discrimination is discrimination based on an incorrect assessment of the characteristics of the person or persons being discriminated against.

Prior to this legislation, the Workers' Statute, Article 28 of Law 62/2003 (transposing Directives 2000/43 and 2000/78) and the Criminal Code speak only of personal characteristics and not of 'assumed characteristics'. However, discrimination on the ground of 'assumed characteristics' may be regarded as implicitly included in these laws.

b) Discrimination by association

In Spain, Law 15/2022 has now explicitly established as a violation of the right to equal treatment and non-discrimination the so-called discrimination 'by association'. According to Article 6, discrimination by association exists when a person or group of which that person forms part, is subject to discriminatory treatment on account of their relationship with another person or group for whom one of the grounds of discrimination provided for by law is applicable.

In this regard, prior to Law 15/2022, the prohibition of discrimination by association was only recognised for persons with disabilities. Following this law, the prohibition of discrimination has been extended to any of the areas covered by Law 15/2022 (employment, education, etc.).

The General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) formally introduced into Spanish legislation the concept of discrimination by association in the field of disability. RLD 1/2013 defines discrimination by association (Article 2(e)): 'Discrimination by association exists when a person or group to which they

[48] Organic Law 3/2007 of 22 March 2007 for the effective equality of women and men (*Ley Orgánica 3/2007, de 22 de marzo, para la igualdad efectiva de mujeres y hombres*), *BOE*, 23 March 2007: https://www.boe.es/buscar/pdf/2007/BOE-A-2007-6115-consolidado.pdf.

[49] Constitutional Court, judgment 3/2018, of 22 January 2018.

belong is subjected to discriminatory treatment due to their relationship with another by reason of disability'. Article 63 of RLD 1/2013 notes that the principle of equal opportunities for persons with disabilities is infringed when 'direct or indirect discrimination, discrimination by association', etc. occur.

Prior to Law 15/2022, although not explicitly covered by anti-discrimination legislation (except for disability), this principle may be assumed to have been implicitly covered by Law 62/2003 (Article 28). However, this is a matter that should be decided by judges, considering the CJEU judgment in *Coleman v. Attridge Law and Steve Law*.[50]

2.4 Direct discrimination (Article 2(2)(a))

a) Prohibition and definition of direct discrimination

In Spain, direct discrimination is prohibited in national law.

First, it is enshrined in Law 62/2023. Law 62/2003 on Fiscal, Administrative and Social Measures (Article 28(1)(b)) defines direct discrimination as 'where a person is treated less favourably than another in a comparable situation on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation'. Consequently, the expression 'has been or would be treated' (Directive 2000/43 and Directive 2000/78, Article 2(2)(a)) is not included in the Spanish definition of direct discrimination provided for in Law 62/2003.

The solution to this problem has been provided by Law 15/2022, adopted in July 2022. Under the new law, direct discrimination is a situation in which a person or group 'is, has been, or would be treated' less favourably than others in a similar or comparable situation on any of the grounds provided for by the Law. This new definition confirms that the prohibition of direct discrimination is in full compliance with the directives, because it does explicitly provide for past and hypothetical comparisons.

Secondly, Article 2(c) of the General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) states that direct discrimination 'shall be taken to occur where a person is treated less favourably than another in a comparable situation on the grounds of his or her disability'.

b) Justification for direct discrimination

The law does not permit justification of direct discrimination generally, or in relation to particular grounds (excluding specific exceptions stipulated by the directives, for which see Chapter 4).

2.5 Indirect discrimination (Article 2(2)(b))

a) Prohibition and definition of indirect discrimination

In Spain, indirect discrimination is prohibited in national law.

Under Law 62/2003, adopted in 2003, indirect discrimination is defined as follows: 'where a legal or administrative provision, a clause of a collective agreement or contract, an individual agreement or a unilateral decision, although apparently neutral, would put a person of a certain racial or ethnic origin, religion or belief, disability, age or sexual orientation at a particular disadvantage in relation to others, provided that such provision is not objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary' (Article 28(1)(c)).

[50] Judgment of 17 July 2008, *Coleman v. Attridge Law and Steve Law*, C-303/06: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-303/06.

In the field of disability, the General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) also defines indirect discrimination: 'where a legal or administrative provision, a clause of a collective agreement or contract, an individual agreement or a unilateral decision, or a criterion or practice, or an environment, product or service, though apparently neutral, may put a person at a particular disadvantage in relation to others owing to a disability, provided that such provision is not objectively justified by a legitimate aim and means of achieving that aim, are not appropriate and necessary' (Article 2(d)).

Under this legislation, there are two differences in relation to Article 2(2)(b) of Directive 2000/43 (also included in Directive 2000/78). The first is that the directive refers to a 'provision, criterion or practice', whereas the Spanish law transposing the directives (62/2003) refers to a 'legal or administrative provision, a clause of a collective agreement or contract, an individual agreement or a unilateral decision'. All these situations are referred to as 'provision', and the words 'criterion or practice' are not included. The second difference is that the directive says 'persons' in the plural, whereas the Spanish transposition says 'person' in the singular. This use of the singular generates a certain ambiguity in both Law 62/2003 and RLD 1/2013 as to whether a group of persons is covered as such. These differences in the literalness of the transposition of the directives have no practical legal consequences since the jurisprudence interprets indirect discrimination in the same sense as the European directives.[51] This need for ordinary courts to take into account EU law when applying Spanish rules has been reiterated by the Constitutional Court (STC 64/1991 of 22 March 1991; 58/2004 of 19 April 2004 and 329/2005 of 15 December 2005).

However, following Law 15/2022, adopted in July 2022, it can be confirmed that the definition in domestic law of indirect discrimination is fully in line with the European Directives.

Under Law 15/2022, indirect discrimination occurs when an apparently neutral 'provision, criterion or practice' causes or is likely to cause 'one or more persons' a particular disadvantage compared with others on grounds provided for by the law. In this sense, the words, criterion or practices as instruments of discrimination are provided for in the Law, as well as the fact that indirect discrimination can affect one or several persons.

On the other hand, in the field of disability, it is important to recall a landmark case law: in 2015, a worker with disability, Ruiz Conejero, was dismissed by his employer following several periods of sickness absence from work. The Spanish Workers' Statute (Article 52(d)), which concerns termination of the contract on objective grounds, provides that the labour contract may be terminated 'for absences from work, albeit justified but intermittent, that amount to 20 % of working hours in two consecutive months provided that total absences in the previous 12 months amount to 5 % of working hours, or 25 % of working hours in four non-continuous months within a 12-month period'. Social Court No. 1, Cuenca (Social Court No. 1 of Cuenca), decided to refer the case to the CJEU. The question was whether this legislation was in conflict with Directive 2000/78 in cases where a worker is absent from work on account of his or her disability.

'The CJEU's Judgment C-270/16 of 18 January 2018 in the case of *Ruiz Conejero v. Ferroser*[52] answered the question raised by Social Court No. 1 of Cuenca and upheld the approach of the Spanish judge. The Court (Third Chamber) established:

[51] See, for example, Constitutional Court, Decision 61/2013, 14 March 2013: http://hj.tribunalconstitucional.es/HJ/docs/BOE/BOE-A-2013-3797.pdf.

[52] See: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-270/16 (prior to this judgment of 18 January 2018, there had been two very important previous judgments on the concept of disability (the CJEU judgment of 11 July 2006 (C-13/05, *Chacón Navas v. Eurest*), and that of 11 April 2013 (C 335/11 and C 337/11, *Ring and Skouboe Werge*). Its conclusions are dealt with in the text. Compared to these earlier judgments, what is important in the judgment under discussion, of 18 January 2018, is that it assesses

> 'Article 2(2)(b)(i) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding national legislation under which an employer may dismiss a worker on the grounds of his intermittent absences from work, even if justified, in a situation where those absences are the consequence of sickness attributable to a disability suffered by that worker, unless that legislation, while pursuing the legitimate aim of combating absenteeism, does not go beyond what is necessary in order to achieve that aim, which is a matter for the referring court to assess.'

On 7 March 2018, after the CJEU's decision, Social Court No. 1 of Cuenca issued a judgment (case 171/2018) and declared the claimant's dismissal null and void for discrimination on the ground of disability. The judge considers that, in this case, there is indirect discrimination against the claimant, as an apparently neutral business decision -such as the use of the Article 52(d) of the Workers' Statute that allows the dismissal of a worker due to absences from work- causes a situation of particular disadvantage to a person with disability with respect to other workers, because the absences from work are due to illnesses derived from his officially recognised disability. The fundamental argumentation of the judge is that the labour absences that have caused the dismissal of the claimant have occurred, 'exclusively and precisely, for diseases attributable to his disability', even if the employer was not aware of it[53]. In addition, the Spanish judge, following the judgment of the CJEU, 'considers that there is an evident collision between the Spanish norm and the EU norm, and that, unlike the Danish case, there is no legislative integration element or objective, so a response from the Spanish legislator would be necessary to include in national law ... and, specifically, in Article 52(d)) of the Workers' Statute ... the exception of its application, for the purposes of computing the days of absences from work, to workers who have a recognised disability status, when said temporary disability processes derive from or are linked to the diseases causing the recognition of their disability.'[54]

Finally, as mentioned above, the judgment issued by Labour Court No. 3 of Barcelona of 19 November 2019, and the judgment of the CJEU in case C-397/18, *D.W. v. Nobel Plastiques Ibérica SA in 2019,* found that the worker was 'particularly sensitive to risks' in the workplace[55] regardless of the corrective measures that could be taken to adapt the work to his/her health condition, confirming that 'he/she was a person with a disability'.

It was found that the company had not taken sufficient measures to adapt the workplace to the worker. As a result, the judgment ruled that there had been 'indirect discrimination on the grounds of disability' by taking the worker's absenteeism as a criterion for dismissal (a person with disability is more exposed to the risk of having a high rate of absenteeism

whether the dismissal of a worker is discriminatory on the grounds of disability because of the reiteration in the number of short-term absences from work, i.e. intermittent short-term absences from work.)

53 This judgment of the Social Court No. 1 of Cuenca was confirmed by the (regional) High Court of Justice of Castilla-La Mancha of 10 April 2019: the dismissal of the worker had been discriminatory because of her disability following the parameters of the CJEU judgment of 18 January 2018. However, this judgment of 10 April 2019 was appealed before the Spanish Supreme Court, which on 23 February 2022 confirmed the interpretation of the discriminatory dismissal in line with the Directive.

54 As a result of this process, the Spanish Government approved Royal Decree-Law 4/2020 of 18 February 2020 (*BOE*, 19 February 2020), which repeals the provisions on objective dismissal due to absences from work established in Article 52(d) of the Workers' Statute, approved by Royal Legislative Decree 2/2015 of 23 October 2015. Royal Decree-Law 4/2020 entered into force on 21 February 2020. In the explanatory statement on the Decree-Law, the Government relies on both Directive 2000/78/EC and the CJEU ruling in *Ruiz Conejero*. The Spanish Government points out that this legal reform 'guarantees compliance with the regulations of the European Union and, specifically, of Council Directive 2000/78/EC thus complying with the principle of primacy of European law. In addition, it ensures the adequate and immediate transfer to the Spanish legal system of what is established by the CJEU in its Judgment of 18 January 2018, which admits only on an exceptional, limited and conditioned basis the application of Article 52(d) of the Workers' Statute and subject to a specific analysis of adequacy and proportionality': https://www.boe.es/boe/dias/2020/02/19/pdfs/BOE-A-2020-2381.pdf.

55 See on p. 32 the definition of 'workers especially sensitive to certain risk' on the basis of Article 25 of Law 31/1995. As explained there, the purpose of this Law is to protect the safety and health of workers at work.

than a worker without a disability, given that he/she incurs the additional risk of taking sick leave due to an illness related to his/her disability). The judgment ruled that the company's decision was null and void; ordered the reinstatement of the worker; and established a EUR 25 000 compensation payment.

b) Justification test for indirect discrimination

Law 62/2003 (neither RLD 1/2013) does not specify how indirect discrimination is to be justified. The general provision in Article 2(2)(b) includes the phrase: 'unless [the indirect discrimination] is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary'. The courts must analyse whether the measure is appropriate and necessary to pursue a legitimate aim and whether there is any case law on this issue. In most cases of indirect discrimination, statistics are used as circumstantial evidence.

Regarding Law 15/2022, which also includes references to indirect discrimination as seen above, it establishes the same regulation as the one discussed in the previous paragraph provided for in Law 62/2003. In this sense, a difference in treatment is not considered discrimination if it derives from a provision, conduct, act, criterion or practice that can be objectively justified by a legitimate aim and as an appropriate, necessary and proportionate means to achieve that aim.

2.5.1 Statistical evidence

Section 2.5.1 is not updated for 2022. For both the legal framework and the practice, please see *Country report: Non-discrimination Spain 2022, Transposition and implementation at national level of Council Directives 2000/43 and 2000/78 – Spain, reporting period 1.1.2021 – 1.1.2022*.

2.6 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Spain, harassment is prohibited in national law. It is defined.

Law 62/2003 (Article 28(1)(d)) defines harassment as 'all unwanted conduct related to racial or ethnic origin, religion or belief, disability, age or sexual orientation that takes place with the purpose or effect of violating the dignity of a person and creating an intimidating, humiliating or offensive environment'. This law is applicable to all persons, in both the public sector and the private sector (Article 27). The full material scope of both directives is covered. On the ground of racial or ethnic origin, it expressly covers education, health, social services and social protection, housing and access to any goods and services, as well as access to employment, self-employment and professional practice, membership and participation in trade union and business organisations, working conditions, vocational promotion and vocational training (Article 29). On grounds of religion or belief, disability, age or sexual orientation, the law expressly covers access to employment, membership and participation in trade union and business organisations, working conditions, professional advancement and vocational training, as well as access to self-employment and professional activity (Article 34).

The Workers' Statute (RLD 2/2015), applicable to salaried workers on all grounds, states (in Article 4(2)(e)) that workers are entitled 'to their privacy and to due respect of their dignity, including protection against harassment on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation, and sexual harassment and harassment based on sex'. Besides this, Article 54(2)(g) of the Workers' Statute considers 'harassment on the grounds of racial or ethnic origin, religion or belief, disability, age or

sexual orientation, towards the employer or the people that work in the enterprise' to be an offence meriting disciplinary dismissal.

Finally, Law 15/2022 establishes that harassment is a violation of the right to equal treatment and non-discrimination. It should be noted that Law 15/2022 does not repeal the existing legislation on harassment or extend the material scope of the protection against harassment, but strengthens the consideration of harassment as an act of discrimination. In Spain, harassment explicitly constitutes a form of discrimination.

1/ Law 62/2003 (Article 28(2)) and the General Law on the Rights of Persons with Disabilities and their Social Inclusion (Article 2.f) specify harassment as a form of discrimination. Under this Law, the words 'hostile' and 'degrading' (Directive 2000/43 and Directive 2000/78, Article 2(3)) are not included in the Spanish definition of harassment.

2/ This loophole has been closed by Law 15/2022, which defines what constitutes discriminatory harassment. According to the Law, harassment is any conduct carried out on any of the grounds of discrimination set out in the Law, with the purpose or effect of violating the dignity of a person or group of which he or she is a member and creating an 'intimidating, hostile, degrading, humiliating or offensive' environment.

b) Scope of liability for harassment

In Spain, in general terms, where harassment is perpetrated by an employee, the employee is liable but the employer is not liable, although this should be tempered.

Liability for discrimination is personal and only affects individuals or organisations that have committed acts of discrimination, both in civil and criminal law. For example, employers or, in the case of racial or ethnic origin, service-providers such as landlords, schools and hospitals, cannot be held liable for the actions of employees or for the actions of third parties (e.g. tenants, clients or customers). Likewise, trade unions or other professional associations cannot be held liable for the actions of their members.

Nevertheless, regarding compensation to a victim of discrimination (or harassment) for the damage suffered, Law 15/2022 now states that employers or providers of goods and services shall be liable for the damage caused when discrimination, including harassment, occurs in their area of organisation or management 'and they have not complied with the obligations' provided for in Article 25.1 of the Law. The latter Article provides that protection against discrimination requires the application of sufficient methods or instruments for its detection; the adoption of preventive measures; and the articulation of appropriate measures for the cessation of discriminatory situations. Consequently, if a company fails to adopt measures to prevent or eliminate situations of harassment, it will give rise to several types of liability: the liability shall give rise to administrative, as well as, where appropriate, criminal and civil liabilities for the damages that may arise, which may include both restitution and compensation, until full and effective reparation is achieved for the victims.

2.7 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Spain, instructions to discriminate are prohibited in national law. Instructions are not defined.

In Spain, instructions explicitly constitute a form of discrimination.

Law 62/2003 (Article 28(2)) provides that 'any instruction to discriminate against persons on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation, will be considered discrimination'.

Law 15/2022 also considers that any 'inducement, order or instruction' to discriminate on any of the grounds set out in this Law is discriminatory; consequently, the 'inducement, order or instruction' to discriminate or to commit an act of intolerance as a violation of the right to equal treatment and non-discrimination. However, it adds that the 'inducement' must be specific, direct and effective in bringing about a discriminatory action in another person (see Articles 4 and 6 of Law 15/2022). It must be recalled that according to the European Directives (2000/78 and 2000/43) 'an instruction to discriminate against persons on any of the grounds referred to in Article 1 shall be deemed to be discrimination within the meaning of paragraph 1'. In this sense, the regulation of the 'order' and 'instruction' of the Law and of the Directives is equivalent. In any case, the Law also speaks of 'inducement', and when this instrument is used, the Law requires it to be specific and direct. In any case, it may be considered that what the Directives say is respected.

In the disability field, RLD 1/2013 (Article 35(7)) states that 'Any order to discriminate against people on the basis of or by reason of their disability will equally be considered as discrimination.'

Instructions to discriminate may also be considered to be covered by Article 314 of the Criminal Code, which specifies 'causing discrimination' as an infringement against workers' rights. Article 18 of the Criminal Code includes incitement as a crime, and this may be applied to cases of incitement to discrimination.

b) Scope of liability for instructions to discriminate

In Spain, the instructor and the discriminator are liable. The jurisdictional body must determine the responsibility of each one of them. However, RLD 1/2013 (Article 79(2)) states: 'The liability shall be joint and several when there are several responsible and it is not possible to determine the degree of participation of each of them in the commission of the offence.' The person acting under instruction could, through civil law, seek indemnity against the person who has ordered them to discriminate for the damages that that person has caused to them.

Liability for discrimination is personal and only applies to natural or legal persons who cause discrimination or harassment or who make instructions to discriminate, but we should remember that the instruction to discriminate is a discriminatory act (as expressly noted in Article 28(2) of Law 62/2003 on Fiscal, Administrative and Social Measures and Articles 4 and 6 of Law 15/2022).

2.8 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

a) Implementation of the duty to provide reasonable accommodation for persons with disabilities in the area of employment

In Spain, the duty on employers to provide reasonable accommodation for persons with disabilities is included in the law and is defined.

Law 15/2022 states that denial of reasonable accommodation 'is prohibited'. Reasonable accommodation is defined in Article 6 of Law 15/2022 as 'necessary and appropriate modifications and adaptations to the physical, social and attitudinal environment that do not impose a disproportionate or undue burden, when required in a particular case in an effective and practical manner, to facilitate accessibility and participation and to ensure that persons with disabilities enjoy or exercise all rights on an equal basis with others'. In

any case, this Law does not provide for a specific duty on employers to provide such accommodation, stating only that: 1/ the ban on denial of reasonable accommodation; 2/ and the lack of reasonable accommodation implies direct discrimination.

On the other hand, the General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) sets out a duty to provide reasonable accommodation for persons with disabilities (Articles 2(m), 40(2) and 63). Article 2(m) defines reasonable accommodation as:

> 'necessary and appropriate modifications and adaptations of the physical, social and attitudinal environment to the specific needs of persons with disabilities not imposing a disproportionate or undue burden, where needed in a particular case effectively, and practice to facilitate accessibility and participation and to ensure to persons with disabilities the enjoyment or exercise, on an equal basis with others, of all human rights.'

In the interaction of Law 15/2022 and RDL 1/2013, one can say that RDL 1/2013 establishes the obligation to establish reasonable accommodation measures. The lack of such measures as defined by Law 15/2022 implies discrimination (prior to Law 15/2022, the lack of reasonable accommodation measures was considered as a measure of discrimination only under judicial interpretation).

Article 40(2) states that 'Employers are obliged to take appropriate measures to adapt the job and the accessibility of the company, according to the needs of each specific situation, in order to allow persons with disabilities to access employment, perform their work, progress professionally and have access to training, unless these measures place an excessive burden on the employer.' Article 63 states that 'It is understood that the right to equality of opportunity for persons with disabilities is violated ... when by reason of disability ... [a] breach [occurs] of the requirements of accessibility and of reasonable accommodation'.[56]

The Spanish law therefore establishes a multilevel obligation of a general nature but has not fixed how that obligation might be carried out.

Law 3/2012 on Urgent Measures to Reform the Labour Market[57] has established some positive action measures in favour of persons with disabilities that could be regarded as specific kinds of reasonable accommodation measures. Among them is a preferential right to geographical mobility to protect the health of persons with disabilities: to exercise their right to health protection, workers with disabilities evidencing a need for rehabilitation treatment in another city have a prior right to take another job in the same professional group if the company has another vacancy in a locality where such treatment is more accessible (Article 11(3)). This Law also establishes the possibility of making priorities in collective agreements for persons with disabilities, as well as the possibility for them to stay in jobs in cases of redundancy or in relation to measures of geographical mobility (Article 11(4)). These modifications have been incorporated into the Workers' Statute (Article 40).

The reasonable accommodation duty is imposed on both private and public employers and arises if the employer knows of the existence of the disability. In Spain, persons with disabilities do not have a general obligation to inform their employer about their disability;

[56] The Workers' Statute does not provide for a reasonable accommodation duty. Article 38(2) of Law 62/2003 modified an article in Law 13/1982 on Social Integration of the Handicapped (new Article 37), introducing a reasonable accommodation duty. However, Law 13/1982 was superseded by the passing of the General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013).

[57] Law 3/2012 of 6 July 2012 on Urgent Measures to Reform the Labour Market (*Ley 3/2012, de 6 de julio, de medidas urgentes para la reforma del mercado laboral*), *BOE*, 7 July 2012: https://www.boe.es/buscar/pdf/2012/BOE-A-2012-9110-consolidado.pdf.

however, if they request a reasonable accommodation, they must notify their employer of their disability (RLD 1/2013, Article 68(2)). When a person with disabilities requests an accommodation, the employer should consider whether it is necessary and 'reasonable'.

The Law states that,

> 'In order to determine whether an accommodation is reasonable ... the costs of the measure, the relevant discriminatory effects for persons with disabilities of the non-adoption of the accommodation, the structure and characteristics of the person, entity or organisation which must implement the accommodation and the possibility of obtaining official funding or other assistance shall be considered.
>
> To this end, the competent public authorities [the Regions of Spain] may establish a system of public subsidies to help cover the costs of the obligation to provide reasonable accommodation' (RLD 1/2013, Article 66(2)).

In relation to the question: 'Is the availability of financial assistance from the state to be taken into account in assessing whether there is a disproportionate burden?' the following aspects should be considered:

1. As mentioned above, employers are obliged to adopt appropriate measures to adapt the workplace and access of persons with disabilities to the company 'unless these measures imply a disproportionate burden for the employer'. As we have seen, this 'disproportionate' factor derives from RDL 1/2013, although in Law 15/2022 the notion of 'disproportionate or undue' has been added. The meaning of 'undue' will have to be subject to judicial interpretation, although in the opinion of the author of this report, it does not imply any restriction on the application of reasonable accommodation: it should be noted that there is no obligation to make reasonable accommodation when it is either disproportionate or undue.

2. Article 40(2) of RDL 1/2013 states that, to determine whether the burden is disproportionate, the amount received by the company in 'aid or public subsidies for persons with disabilities' will be taken into consideration. Likewise, financial and other costs entailed by the measure, as well as the company's size and total turnover, will also be considered.

   Consequently, the granting of financial aid by the state is a factor to consider in determining whether a disproportionate burden exists when applying measures to adapt a company's workplace and access to it.

3. To combat discrimination against persons with disabilities in general (i.e. in all areas of employment and beyond), Article 66 of RDL 1/2013 states that reasonable accommodation shall be made 'as long as it does not impose a disproportionate or undue burden'. It also states that, in order to determine whether the accommodation made is reasonable, the costs of the measure and any potential official funding or other assistance will be considered. Finally, it sets out that, to this end, the competent public administrations may establish a public subsidy system to help cover the costs of this obligation.

Thus, in the fight against disability discrimination, official financial aid is a factor to be taken into consideration with regard to the proportionality of the measure to provide reasonable accommodation in the workplace.

In some regions of Spain, such as Andalusia and Catalonia, regulations have been adopted on the issue of reasonable accommodation. In Andalusia, for example, Law 4/2017 of 25 September 2017, on the Rights and Care of Persons with Disabilities in Andalusia, sets out that reasonable accommodation to facilitate the access and participation of persons

with disabilities to ensure they enjoy or exercise all their rights on equal terms with others should not impose a disproportionate or undue burden. The Autonomous Community of Catalonia passed Act 19/2020 of 30 December 2020, on equal treatment and non-discrimination. Article 4 defines reasonable accommodation as 'the necessary and appropriate modifications and adjustments that, without imposing disproportionate or undue burden, are applied when required in a particular case, to guarantee persons with disabilities the enjoyment or exercise of all human rights and freedoms on an equal basis with others'. It adds that 'the burden cannot be considered disproportionate if it is sufficiently compensated by measures within the framework of policies in favour of persons with disabilities'.

RLD 1/2013 establishes the obligation of reasonable accommodation. Law 15/2022 does not directly establish a duty of reasonable accommodation, although it prohibits the denial of reasonable accommodation: in fact, it considers the denial of reasonable accommodation as direct discrimination (Articles 6 and 4). Although the regulations that establish the obligation of reasonable accommodation are state regulations, subsidies to facilitate their actual implementation depend on the 17 regional governments.

National law does not provide clearly for a shift in the burden of proof for claims relating to reasonable accommodation. However, Article 77 of Law RLD 1/2013 could allow a judge to shift the burden of proof if a person with disabilities is demanding the right to reasonable accommodation.

Employers are required to consult the person with disabilities in question and may consult other accredited entities specialised in occupational risk prevention services (RD 39/1997, Articles 23-28) about what accommodations would be helpful or appropriate. The need for consultation is deduced from the reference in the law to possible 'discrepancies' between the two parties. The law makes it clear that these possible discrepancies between the worker with disabilities and the employer 'can be resolved through the arbitration system' (RLD 1/2013, Article 66(2)). However, recourse to the arbitration system is voluntary (RLD 1/2013, Article 74(2)).

Employers will be eligible for subsidies or other state funding to help with the costs of accommodation needed by workers with disabilities (RLD 1/2013, Article 40). However, the various regional Governments in Spain (including, in some cases, municipalities, which can provide some subsidies) set different conditions.

In addition to the reasonable accommodation duty foreseen by RLD 1/2013, Law 31/1995 of 8 November 1995 on the Prevention of Occupational Risks[58] (Articles 14, 15 and 25) and Royal Decree 39/1997 of 17 January 1997 on the Regulation of Prevention Services[59] include a duty to provide reasonable accommodation in the specific context of risks to health and safety in the workplace.

In its judgment of 11 September 2019 on Case C-397/18, *D.W. v. Nobel Plastiques Ibérica SA*,[60] the CJEU established that some general criteria established for the evaluation of workers and their possible dismissal (such as their productivity being below a given rate, a low level of multi-skilling in the undertaking's posts or a high rate of absenteeism) would constitute indirect discrimination on grounds of disability if the employer has not adopted

[58] Law 31/1995 of 8 November 1995 on the Prevention of Occupational Risks (*Ley 31/1995, de 8 de noviembre, de Prevención de Riesgos Laborales*), *BOE*, 10 November 1995, http://www.boe.es/boe/dias/1995/11/10/pdfs/A32590-32611.pdf.

[59] Royal Decree 39/1997 of 17 January 1997 on the Regulation of Prevention Services (*Real Decreto 39/1997, de 17 de enero, por el que se aprueba el Reglamento de Servicios de Prevención*), *BOE*, 31 January 1997, http://www.boe.es/boe/dias/1997/01/31/pdfs/A03031-03045.pdf.

[60] Judgment of 11 September 2019, *D.W. v. Nobel Plastiques Ibérica SA*, C-397/18, http://curia.europa.eu/juris/document/document.jsf?text=&docid=217624&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=501000.

effective and practical reasonable accommodation measures to adapt the workplace for the disability. Measures may include the adapting of premises, equipment, working patterns and the distribution of tasks, the provision of training and the provision of resources for integration.

b) Case law

During 2021, an interesting and landmark judicial conflict was resolved by the Constitutional Court's judgment of 15 March 2021.[61]

Briefly, it can already be said that the main points of the court case were as follows: In April 2013, a lawyer working in the Administration of Justice took office as Court Secretary. In the next few years, inspections carried out by the Administration detected serious problems in the running of the Court due to the Secretary's failure to do his work adequately. The lawyer revealed that he had Asperger's syndrome. He also asked for his right to 'reasonable adjustments' in his workplace to be recognised because the problems relating to his work were due to his disability and could be resolved if adjustments were made. The Administration of Justice failed to respond to the Secretary's requests, which led him to claim he was being discriminated against because of his disability. In relation to the Secretary's claim to have been discriminated against based on Article 14 of the Constitution, the Constitutional Court recognised that the failure to provide reasonable adjustments of the claimant's workplace did indeed constitute discrimination. The Court considered that when a person requests reasonable adjustments to their work due to disability, the request should be attended to from the moment it is made and the extent of the disability proven. The employer's response should be expressly and duly motivated, particularly when the requested adjustments are denied, considering them disproportionate or inappropriate.

c) Definition of disability and non-discrimination protection

The definition of disability for the purposes of requesting reasonable accommodation (both regarding employment and more generally) is the same as for seeking protection from discrimination in general. This means that only those meeting the threshold of 33 % disability are entitled to reasonable accommodation[62]. The person with disability (someone who is officially recognised as a person with disabilities) must inform the employer of his or her disability status in order to request a reasonable accommodation (RLD 1/2013, Article 68(2)). This requirement could potentially be in breach of Directive 2000/78 and is not in line with CJEU joined cases C-335/11 and C-337-11[63]. With Law 15/2022, there have been no changes in this regard.

[61] See Constitutional Court, judgment of 15 March 2021: https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2021_029/2018-2950STC.pdf.

[62] This issue has finally been resolved in 2023 with the passage of Employment Act 3/2023 of 28 February. Because this law is outside the timeframe of this report, it is not commented on.

[63] It is interpreted that the requirement to have a certain percentage of disability in order to obtain the implementation of reasonable accommodation could be in breach of the CJEU's judgment of 11 April 2013 in joined Cases C 335/11 and C 337/11, *Ring v. Dansk almennyttigt Boligselskab* (C 335/11), and *Skouboe Werge v. Dansk Arbejdsgiverforening* as it expresses that 'the concept of 'disability' in Directive 2000/78 must be interpreted as including a condition caused by an illness medically diagnosed as curable or incurable where that illness entails a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers, and the limitation is a long-term one. The nature of the measures to be taken by the employer is not decisive for considering that a person's state of health is covered by that concept'; see paragraph 47: https://curia.europa.eu/juris/document/document.jsf?pageIndex=0&docid=136161&doclang=EN&text=&cid=4511251.

d) Failure to meet the duty of reasonable accommodation for persons with disabilities

As stated in Article 2(m) of RLD 1/2013, reasonable accommodation is the necessary and appropriate modification and adjustments of the physical, social and attitudinal environment to the specific needs of persons with disabilities that do not impose a disproportionate or undue burden, when needed in a particular case in an effective and practical manner, to facilitate accessibility and participation and to ensure that persons with disabilities can enjoy or exercise all rights on an equal basis with others.

Article 63 of RLD 1/2013 states that 'the right to equal opportunities' of persons with disabilities is violated when, on the grounds of their disability, there is direct or indirect discrimination, harassment, or failure to comply with the requirements of accessibility, reasonable accommodation and positive action measures. Therefore, it is not expressly stated in this provision that failure to provide reasonable accommodation amounts to discrimination, but rather that it violates the right to equal opportunities. On the other hand, Article 66 goes on to state that measures against discrimination include the provision of reasonable accommodation within the company, but it does not classify failure to provide reasonable accommodation as discriminatory or non-discriminatory.[64]

The breach of reasonable accommodation duties is considered a serious offence (RLD 1/2013, Article 81(3)). Therefore, the public administration may punish the perpetrator with a penalty of up to EUR 90 000 (RLD 1/2013, Article 83(3)). Furthermore, it may impose additional penalties on companies, such as prohibiting access to official benefits (like economic subsidies or any other public aid). If the company persists with its breach of duties on reasonable accommodation, the infringement may be regarded as very serious (RLD 1/2013, Article 81(4)). Consequently, the sanctions may be higher (to a maximum of EUR 1 million).

If the demand reaches a court, it may approve compensation for the claimant (the person with disability). The law does not impose any ceiling for this potential compensation: 'Any payment or compensation to which the corresponding claim may give rise shall not be limited by a previously established ceiling. Compensation for moral damage shall be payable even where there are no damages of a pecuniary nature and shall be set according to the circumstances of the infringement and the seriousness of the injury' (RLD 1/2013, Article 75.2).

In any case, it should be noted that from 2022, as a result of Law 15/2022, the denial of reasonable accommodation to persons with disabilities in areas such as employment will be considered as a case of 'direct discrimination'.

e) Duties to provide reasonable accommodation in areas other than employment for persons with disabilities

In Spain, there is a legal duty to provide reasonable accommodation for persons with disabilities outside the area of employment.

The material scope of Law RLD 1/2013, which sets out a duty to provide reasonable accommodation for persons with disabilities, is: social protection; healthcare; education; employment; telecommunications and the information society; urbanised public spaces, infrastructure and construction; transport; goods and services to the public; relations with public administrations; the administration of justice; cultural heritage; and employment.

[64] For a study of this issue, see Gutiérrez Colominas, D. (2018), 'La obligación de realizar ajustes razonables en el puesto de trabajo para personas con discapacidad: origen, evolución y configuración actual. Una perspectiva desde el derecho comparado y el derecho español' ('The obligation to make reasonable adjustments in the workplace for persons with disabilities: origin, evolution and current configuration. A perspective from comparative law and Spanish law'), available at: https://www.tesisenred.net/handle/10803/565828#.

As regards social housing, RLD 1/2013 establishes the reservation of social housing for persons with disabilities and ensures its accessibility (Article 32), as well as the refurbishment of housing for persons with disabilities (support for the adaptation of housing to make it accessible for a person with a disability) (Article 33).

On 2 November 2009, the National Court[65] resolved a landmark case of disability discrimination in the field of education. L.X., a person with physical and intellectual disabilities of 75 %, applied for a scholarship to study law during the academic year 2005-06. The ministry denied the scholarship, using the same standards as applied to other students. The National Court began its judgment by recalling that, 'on 21 April 2008 the Spanish Official Gazette published the Instrument of Ratification of the CRPD, made in New York on 13 December 2006' (although the CRPD was not yet transposed into positive law in Spain, and this did not occur until 2011, with Law 26/2011). The court went on to recall that the CRPD required the introduction of 'reasonable accommodation' in education, and it concluded that it is a reasonable accommodation to modify some scholarship requirements for certain persons with disabilities (for example, the requirement to have obtained an average rating of 5 out of 10 in the previous academic year; this means that the requirements for obtaining the scholarship were set at a lower level). The court therefore ordered the scholarship that L.X. requested to be recognised. This was a highly innovative judgment, because it pointed directly to the CRPD and provided for reasonable accommodation that was not formally established in Spanish law at the time.

The definition of 'disproportionate burden' in this context is the same definition that is used with regard to employment.

In Spain, several groundbreaking court rulings made prior to 2020 should be mentioned. It is worth highlighting two Constitutional Court rulings that established the doctrine in relation to this right: Constitutional Court judgment 10/2014 of 27 January 2014 and Constitutional Court judgment 3/2018.

In the first ruling, dating from 2014, a conflict arose when the education authorities of an autonomous community resolved that a minor with disabilities should attend a 'special education' state school instead of an ordinary state school. The ruling was upheld by the Constitutional Court, which stated that the education authorities should promote the schooling of minors with disabilities in regular schools, and only when the accommodation for their inclusion was disproportionate or unreasonable should they provide for the schooling of these pupils in special schools. The Court considered that the decision of the authorities was justified, since it took into consideration the minor's special educational needs.

The second Constitutional Court ruling sought to protect a severely mentally person with disability who had been denied an individualised care programme in a government-run care centre for persons with disabilities due to being over 60 years of age. The Constitutional Court found in favour of the person with disability and annulled the decision of the public authorities. The Court observed double discrimination on grounds of age and disability. In relation to the latter, the Court stated that, based on the right to reasonable accommodation, the public authorities should ensure the provision of a care service adapted to the needs of the persons with disabilities, as the authorities had centres for this purpose.

f) Duties to provide reasonable accommodation in respect of other grounds

Section 2.8.f is not updated for 2022. Please see Country report Non-discrimination Spain 2022, Transposition and implementation at national level of Council Directives 2000/43 and 2000/78, reporting period 1.1.2021 – 1.1.2022.

[65] See National Court (Audiencia Nacional), Appeal 160/2007, 2 November 2009.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2), Directive 2000/43 and Recital 12 and Article 3(2), Directive 2000/78)

In Spain, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. The personal scope of protection against discrimination is general for all residents.

The seventh additional provision of Law 62/2003, entitled 'Non-applicability to immigration law', states that the articles transposing the directives do not affect the regulations provided 'in respect of the entry, stay, work and establishment of aliens in Spain under Organic Law 4/2000'. This law is applicable only to third-country nationals, not EU citizens. The justification for this provision is based on Article 3(2) of Directives 2000/43 and 2000/78.

However, it should not be forgotten that Law 4/2000 regulates the issues of 'work and establishment', which are liable to be affected by the directives and are not covered by the exclusion outlined in Article 3(2) of the directives. In this regard, several aspects of interest should be considered. First, Law 4/2000 establishes that foreign nationals enjoy fundamental rights and freedoms (including non-discrimination) in the terms laid down in international treaties and in Law 4/2000 itself. It adds that, as a general criterion for interpretation, it is understood that foreign nationals exercise the rights recognised by this law in conditions of equality with Spanish nationals.

Nonetheless, Article 10 recognises the right of only 'resident' foreigners to work; that is, foreigners who have regularised their status because they have obtained the corresponding residence and work permits. Foreigners in an irregular situation are not authorised to reside or work, unlike foreigners who have obtained the corresponding permits. However, in the event that irregular migrants do work, Law 4/2000 recognises that their working conditions must be same as those provided for by law for all workers.

Finally, reference should be made to Law 15/2022, adopted in July 2022, in which Article 2 acknowledges the right of all persons to equal treatment and non-discrimination irrespective of their nationality, whether they are minors or adults, or whether they are legally resident or not. Based on this provision, it is understood, *prima facie*, that both immigrants authorised and unauthorised to reside in Spain have the right not to be discriminated against. Furthermore, it is interesting to note that Article 15 of Law 15/2022 regulates in relation to the right to healthcare that no one may be excluded or suspended from basic or specialised health care in conditions of equality, nor be excluded from health treatment due to the absence of documentary proof or 'a demonstrable minimum length of stay'. The latter would mean that the length of time a person has been in Spain (whether authorised to reside or not) would not be taken into account when providing healthcare. However, these interpretations must be called into question by virtue of the fourth additional provision of Law 15/2022 (this provision is entitled 'Non-affectation of legislation on aliens'), which literally states: 'The provisions of this law are without prejudice to the regulation established in Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration and in its implementing regulations'. This implies that despite the provisions of Law 15/2022, the above-mentioned regime of rights provided for in Law 4/2000 is applied. This means that what Law 15/2022 establishes on equality and non-discrimination with respect to foreigners is subordinate, or yields, to what the legislation on aliens (LO 4/2000) says.

3.1.2 Natural and legal persons (Recital 16, Directive 2000/43)

a) Protection against discrimination

In Spain, the personal scope of anti-discrimination law covers all natural and legal persons for the purpose of protection against discrimination.

The prohibition of discrimination in the Constitution (Article 14), in Law 62/2003 (Article 27(1)) and in the Workers' Statute applies to both natural and legal persons. Article 27(2) of Law 62/2003 provides that measures for the application of the principle of equal treatment under it apply to every person (both natural and legal), in both the public and private sectors. Law 15/2022 also states that its regulation is applicable to the public sector and also to private natural or legal persons residing, located or acting in Spanish territory, whatever their nationality, domicile or residence, in the terms and with the scope contemplated in this law and in the rest of the legal system (Article 2.4).

b) Liability for discrimination

In Spain, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination.

The situation in respect of liability is the same as that for protection (Law 62/2003, Article 27(2)), in that liability for discrimination is personal and affects individuals or organisations who have committed acts of discrimination. As Rubio-Marín (2004) indicates, for the private sector, the prohibition on discrimination and the violation of workers' fundamental rights is mainly addressed to the employer, but this can also be made applicable to managers, and presumably to co-workers or the relevant labour union. Linking Article 2 and Articles 25 to 27 of Law 15/2022, a breach of the prohibition of discrimination can give rise to various types of liability for both natural and legal persons, including the nullity of discriminatory acts, as well as compensation for the damage caused or financial liability.

3.1.3 Private and public sector including public bodies (Article 3(1))

a) Protection against discrimination

In Spain, the personal scope of national law covers the private sector and the public sector including public bodies for the purpose of protection against discrimination.

The prohibition of discrimination in the Constitution (Article 14) and in the Workers' Statute applies to both private and public bodies. Article 27(2) of Law 62/2003 provides that measures for the application of the principle of equal treatment under it apply to every person (both natural and legal), in both the public and private sectors.

In addition, Law 15/2022, adopted in 2022, on the right to equal treatment and non-discrimination, applies to both the private sector and the public sector. It states that its regulation laid down in the law prohibiting discrimination shall apply to the public sector as well as to private natural or legal persons residing, located or acting in Spanish territory, whatever their nationality, domicile or residence.

b) Liability for discrimination

In Spain, the personal scope of anti-discrimination law covers the private sector and the public sector including public bodies for the purpose of liability for discrimination.

Law 62/2003 (Article 27(2)) establishes that liability for discrimination is personal and affects individuals or organisations who have committed acts of discrimination. In addition,

according to Law 15/2022, both the private sector and the public sector can be subject to different types of liability (Article 2 in connection with Articles 25 to 27 of Law 15/2022).

3.2 Material scope

The material scope of the prohibition of discrimination is of a general nature.

All the fields mentioned by Article 3 of Directive 2000/43 on racial or ethnic origin are covered by the general principle of equality laid down in Article 14 of the Spanish Constitution, which prohibits discrimination 'on the grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance'.

Although Directive 2000/78 refers only to the field of employment, discrimination on the grounds on religion or belief, disability, age or sexual orientation is prohibited in all areas, public and private. This applies not only to the fields mentioned in Directive 2000/43 (social protection, 'social advantages' (i.e. benefits), education, access to and supply of goods and services available to the public, including housing), but also to other possible fields, even if there is not an explicit anti-discrimination provision, because of the general and direct applicability of Article 14 of the Constitution.

On the other hand, with specific reference to non-discrimination on racial grounds, as provided for in Directive 2000/43, there is a general recognition of the principle of non-discrimination on the grounds of racial or ethnic origin in these areas in line with Article 3(1) of Directive 2000/43, and discrimination in these fields is unlawful. However, it could be considered that a violation of the Directive had been taking place until 2022, because the law did not provide for any sanctions and was therefore not 'real and effective' (although the application of the Penal Code might be possible under judicial interpretation). With Law 15/022, a set of sanctions has been regulated, both in terms of discrimination on the grounds of race and other factors.

On this background, Law 15/2022 applies to the following areas:

- Employment, both employed and self-employed, covering access, working conditions, including pay and conditions of dismissal, career advancement and job training
- Access, promotion, working conditions and training in public employment
- Membership and participation in political, trade union, business, professional, social or economic interest organisations
- Education
- Healthcare
- Transport
- Culture
- Public safety
- Administration of justice
- Social protection, social benefits and social services
- Access to, supply and provision of goods and services available to the public, including housing, which are provided outside the sphere of private and family life
- Access to and stay in establishments or spaces open to the public, as well as the use of and presence on public roads and streets
- Advertising, media and information society services
- Internet, social networks and mobile applications
- Sports activities, in accordance with Law 19/2007 of 11 July 2007 against violence, racism, xenophobia and intolerance in sport
- Artificial intelligence and big data management, as well as other areas of similar significance

3.2.1 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

In Spain, national legislation prohibits discrimination in relation to conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy, for the five grounds, and in both private and public sectors, as described in the directives (Law 62/2003, Article 34). Article 3 of Law 15/2022 in relation to Articles 9 and 11 also establishes a specific regulation on employees and self-employed workers): in this regard, Law 15/2022 prohibits discrimination on the grounds of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, gender expression, illness or health condition, serological status and/or genetic predisposition to pathologies and disorders, language, socio-economic status, or any other personal or social condition or circumstance. This prohibition applies in the field of access to employment, to self-employment and to occupation. The grounds of gender identity and sex characteristics are thus not explicitly covered, and would require judicial interpretation.

1. Regarding employees, self-employed workers, and civil servants, it should be noted that Article 4(2)(c) of the Workers' Statute (RLD 2/2015), which covers the employee scheme, also applies to conditions of access to employment and internal promotion. Article 3 of Law 15/2022 in conjunction with Articles 9 and 11 also establishes a specific regulation on employees, civil servants and self-employed workers, according to which no limitations, segregations or exclusions may be established on the grounds provided for in Law 15/2022 for access to public or private employment as an employee. On the other hand,
Article 8(12) of Law 5/2000 considers direct or indirect discrimination in promotion in employment to be a very serious offence and subject to sanctions.

Moreover, Article 2 of Royal Decree-Law 3/2015, which confirms the text of the employment law,[66] specifies the foremost general objective of employment as being: 'To guarantee real equality of opportunities and non-discrimination, considering the provisions of Article 9.2 of the Spanish Constitution, in access to employment and in actions aimed at providing such access, along with a free choice of profession or trade without discrimination, on the terms provided in Article 17 of the Workers' Statute'.

The General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) establishes that conditions for access to employment must avoid discrimination, direct or indirect, on the ground of disability (Articles 35-47) and establishes a system of sanctions that mean that the prohibition can be said to be real and effective (Articles 80-88).

The employment of civil servants is regulated by the Civil Service Statute, which establishes special standards in the public sector, but all employees are equally subject to the principle of equal treatment.

Finally, Article 34 of Law 62/2003 makes a specific reference to self-employed workers: in particular, it says that the principle of non-discrimination applies to access to self-employment and professional practice. Consequently, the law applies to all types of self-employed workers: either ordinary self-employed workers or economically dependent self-employed workers – that is, those who obtain more than 75 % of their income from a single client.

[66] Royal Legislative Decree 3/2015 of 23 October 2015, which approves the revised text of the Employment Law (*Real Decreto Legislativo 3/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley de Empleo*), *BOE*, 24 October 2015, https://www.boe.es/boe/dias/2015/10/24/pdfs/BOE-A-2015-11431.pdf.

In this field, it is important to mention Law 20/2007 of 11 July 2007, on the Statute of Self-employment Work. This Act states that public authorities and those who contract the professional activity of self-employed workers are subject to the prohibition of discrimination (Article 4.3(a)(b)). The ban on discrimination affects both free economic initiative and the hiring of the workers, as well as working conditions. Therefore, contractual clauses that violate the right to non-discrimination or any fundamental right will be null and void and will be deemed not to have been placed in the contract between the self-employed worker and their client.

All labour regulations affect labour relations in both the private and public sectors.

2. Precisely in relation to the public and private employment services sector, Law 15/2022 states that public employment services, collaborating entities and employment agencies or authorised entities are charged with the duty to specifically ensure respect 'for the right to equal treatment and indirect non-discrimination' on the grounds set out in the Law, thereby favouring the application of measures to achieve this end, such as the anonymous curriculum vitae (Article 9.3). From the point of view of the author of this report, with the notion of 'indirect non-discrimination', the Law should be understood as referring to the need to avoid direct discrimination, although the exact meaning of the term is not clear.

From the reading of the norm, it must be said that it does not impose an exclusive duty to implement an anonymous curriculum, but rather that it constitutes an appropriate option alongside others that may achieve the purpose intended by the norm.

3. With regard to self-employment (Article 11), as in the case of employed work, it is not possible to establish limitations, segregations or exclusions for the reasons set out in this Law in access to the exercise and development of a self-employed activity. It is stressed that this general duty is applicable to agreements established individually between self-employed workers and the client for whom they carry out their professional activity, as well as to agreements of professional interest concluded between associations or trade unions representing economically dependent self-employed workers and the companies for which they carry out their activity.

3.2.2 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In Spain, national legislation prohibits discrimination in working conditions, including pay and dismissals, for all five grounds and for both private and public employment.

Spanish legislation contains two specific provisions on this issue.

First, Law 15/2022, which addresses equal treatment and non-discrimination in a general way, applies to the field of employment, both employed and self-employed, covering access, working conditions, including remuneration and dismissal, professional promotion and training for employment (Article 3). Its Article 9 refers to the field of employment. Article 9 stipulates the general prohibition of establishing limitations, segregation or exclusions based on the causes set out in this Law (birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity[67], gender expression, illness or health condition, serological status and/or genetic predisposition to suffer pathologies and disorders, language, socio-economic status, or any other personal or social condition or circumstance) in job training, career advancement, pay, working hours and other working conditions, as well as in suspension, dismissal or other causes of the termination of an employment contract.

[67] These references are taken literally from the Law, whereas the expressions 'gender identity' and 'sex characteristics' are not explicitly included in this Article of the Law. The inclusion of these notions should be subject to judicial interpretation.

Following this general requirement, employers are charged with two specific duties: firstly, that they 'may not inquire about the medical conditions' of the job applicant. Secondly, that upon adoption of Government regulations, employers whose enterprises have more than 250 workers 'may be required to publish the wage information necessary to analyse wage differential factors, taking into account the conditions or circumstances of Article 2.1' (birth, racial or ethnic origin, sex, religion, conviction or opinion, age, etc.).

Non-discrimination in employment and working conditions, including pay and dismissals, is expressly recognised in Article 17(1) of the Workers' Statute (RLD 2/2015) (according to the wording that Law 63/2003 introduced into the Statute), which is headed 'Non-discrimination in working relations. It states:

> 'all legislative provisions, clauses of collective agreements, individual agreements and unilateral managerial decisions which provide for unfavourable direct or indirect discrimination on the grounds of age or disability, or which provide for unfavourable or adverse discrimination in employment, whether in relation to remuneration, working time, or other working conditions, on the grounds of sex, origin, including racial or ethnic origin, civil status, social condition, religion or belief, political ideas, sexual orientation, membership or non-membership of a trade union, adherence to trade union agreements, or family ties to other workers in the enterprise, or by reference to the languages of the Spanish state, shall be regarded as void and without effect.'

With the distinction between 'unfavourable direct or indirect discrimination on the grounds of age or disability' and 'unfavourable or adverse discrimination in employment' in relation to other grounds, the provision facilitates positive action in the fields of age and disability. Article 8(12) of RLD 2/2000 on violations and sanctions of labour laws (modified by Law 62/2003, Article 41) considers 'unilateral decisions by the employer which involve unfavourable direct or indirect discrimination for reasons of age or disability or which contain positive or adverse discrimination relating to remuneration, working time, training, promotion, and other employment conditions, on the grounds of sex, origin, including racial or ethnic origin, civil status, social condition, religion or belief, political ideas, sexual orientation, membership or non-membership of a trade union, adherence to trade union agreements, family ties with other workers in the enterprise, or language within the Spanish State' to be very serious infringements.

The General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) establishes that employment and working conditions must avoid discrimination, direct or indirect, on the ground of disability (Articles 35-47) and establishes a system of sanctions that mean that the prohibition can be said to be real and effective (Articles 80-88).

Judicial disputes before labour courts have recognised that dismissals on grounds of sexual orientation are discriminatory and therefore the worker's dismissal was declared void.[68]. The courts have also heard law cases of discrimination on the grounds of religion (wearing the headscarf). In this sense, the judgment of Social Court of Palma de Mallorca on 6 February 2017[69] declared 'the existence of violation of the fundamental right to religious freedom (of the claimant), and consequently the nullity of the sanctions imposed by the company'. The ruling recognised that the company had the right 'to impose on its employees the use of a uniform', but that 'there are no unlimited rights' and that this right

[68] Social Court No. 35 of Madrid, Decision 84/2009, 23 February 2009.

[69] See: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjX3bLTo9j5AhUH-hoKHXJGBsEQFnoECAUQAQ&url=https%3A%2F%2Fwww.poderjudicial.es%2Fsearch%2Fcontenidos.action%3Faction%3Dcontentpdf%26databasematch%3DAN%26reference%3D7942475%26links%3D%2522MARIA%2520DEL%2520PILAR%2520RAMOS%2520MONSERRAT%2522%26optimize%3D20170224%26publicinterface%3Dtrue&usg=AOvVaw1i1ZeW5USphX3pRixVxdCK.

cease, if it clashes with a fundamental right, such as that to religious freedom. Nevertheless, if one considers that the company had a policy of neutrality, one should apply the judgment of 15 July 2021, C-804/18 and C-341/19, *WABE and MH Müller Handels*, in which the Court clarified that an internal rule prohibiting workers from wearing visible signs of religious beliefs in the workplace can be justified by the employer's desire to pursue a policy of religious neutrality (if a series of conditions are respected).[70]

Occupational pensions in Spain are governed by RLD 1/2002 of 29 November 2002, which regulates pension plans and funds. Occupational pensions constituting part of pay are designated as 'pension plans by system of employment' (*planes de pensiones por sistema de empleo*). These are plans, whose promoter is an entity or company and whose partners are its employees. The RLD only contains a general anti-discrimination clause that establishes that the pension plan 'must guarantee access as a participant to any natural person who meets the conditions of relationship with the promoter' (Article 5(1)).

In general, pension plans by 'employment system' (sector-specific occupational pension schemes) are established through collective agreements, and they are covered by the anti-discrimination clauses for employment and working conditions laid down in Article 17.1 of the Workers' Statute (RLD 2/2015) and Article 8(12) of RLD 2/2000 on violations and sanctions in labour laws.

3.2.3 Access to all types and all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

In Spain, national legislation prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

The Workers' Statute (Article 4(2)) recognises promotion and professional training as rights. These are protected against discrimination on all of the grounds included in the directives. Furthermore, it should be recalled that Law 15/2022 prohibits discrimination on the grounds of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity,[71] gender expression, illness or health condition, serological status and/or genetic predisposition to pathologies and disorders, language, socio-economic status, or any other personal or social condition or circumstance. This prohibition applies in the field of vocational training.

Article 34 and 41 (in the field of labour law) of Law 62/2003 includes this subject in relation to all the grounds of Directives 2000/43 and 2000/78: 'measures are aimed at the real and effective realisation of the principle of equal treatment and non-discrimination in relation to access to ... professional promotion and vocational and continuous professional training'. Given the structure of the education and training system in Spain, this text includes all the aspects covered by Article 3(1)(b) of Directive 2000/43. Law 15/2022 also prohibits discrimination in employment training (Article 9 in connection with Article 3).

Law 62/2003 (Article 41) introduced modifications to Law 5/2000 on Offences and Penalties in Social Matters. Article 8 of Law 5/2000 contains a list of very serious infractions in the area of employment. With the revision introduced by Law 62/2003, Article 8(12) considers direct or indirect discrimination in vocational training in employment to be a very serious offence and subject to sanctions.

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[70] See: https://curia.europa.eu/juris/document/document.jsf?text=&docid=244180&pageIndex=0&doclang=ES&mode=req&dir=&occ=first&part=1&cid=2150604.

[71] These references are taken literally from the Law, whereas the expressions 'gender identity' and 'sex characteristics' are not explicitly included in this Article of the Law. The inclusion of these notions should be subject to judicial interpretation.

In the field of vocational training, Organic Law 3/2022, of March 31, 2022, on the organisation and integration of Vocational Training, was approved in 2022. Its general principle is the centrality of the individual, i.e. the promotion of the maximum development of his or her capabilities, the promotion of his or her active participation, the development of interpersonal skills and the contribution to overcoming any discrimination based on birth, national or ethnic origin, gender, disability, social or labour vulnerability, or any other personal or social condition or circumstance.[72]

The General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) establishes that vocational guidance must avoid discrimination, direct or indirect, on the ground of disability (Article 17) and establishes a system of sanctions that mean that the prohibition can be said to be real and effective (Articles 80-88).

3.2.4 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In Spain, national legislation prohibits discrimination in relation to membership of and involvement in workers' or employers' organisations, as formulated in the directives for all five grounds and for both private and public employment.

Article 34 of Law 62/2003 includes this subject in relation to all the grounds of Directives 2000/43 and 2000/78: 'measures are aimed at the real and effective accomplishment of the principle of equal treatment and non-discrimination in relation to ... membership of or involvement in organisations of workers or employers ... or to occupation and membership of and involvement in any organisation whose members carry out a particular profession'. On the other hand, Article 3 in conjunction with Article 12 of Law 15/2022 also prohibits discrimination in terms of membership and participation in political, trade union, business, professional and social or economic interest organisations: in this regard, Law 15/2022 prohibits discrimination on the grounds of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity[73], gender expression, illness or health condition, serological status and/or genetic predisposition to pathologies and disorders, language, socio-economic status, or any other personal or social condition or circumstance, on the basis of membership and participation in political, trade union, business, professional and social or economic interest organisations.

Article 17(1) of the Workers' Statute and Article 8(12) of the Law on Offences and Penalties in Social Matters also include this aspect of equal treatment.

3.2.5 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In Spain, national legislation prohibits discrimination in social protection, including social security and healthcare, as formulated in the Racial Equality Directive. It should be noted that Law 15/2022, adopted in 2022, recognises the principle of non-discrimination on grounds of equal treatment in a number of areas, including social protection, social benefits and social services (Article 3, linked to Articles 15 and 16). In this sense, Law 15/2022 prohibits discrimination on the grounds of birth, racial or ethnic origin, sex, religion,

[72] See: https://www.boe.es/buscar/act.php?id=BOE-A-2022-5139. Organic Law 3/2022 has repealed Organic Law 5/2002 of 19 June 2002 on Qualifications and Vocational Training (*Ley Orgánica 5/2002, de 19 de junio, de las Cualificaciones y de la Formación Profesiona*l), which stated that one of the principles of the national system of qualifications and vocational training is 'access, on equal terms for all citizens, to the various forms of vocational training'.

[73] These references are taken literally from the Law, whereas the expressions 'gender identity' and 'sex characteristics' are not explicitly included in this Article of the Law. The inclusion of these notions should be subject to judicial interpretation.

conviction or opinion, age, disability, sexual orientation or identity[74], gender expression, illness or health condition, serological status and/or genetic predisposition to pathologies and disorders, language, socio-economic status, or any other personal or social condition or circumstance, on the basis of social protection, healthcare and social services.

With regard to Law 62/2003, one can say the following. Literally, Article 29 of Law 62/2003 establishes the measures to ensure that the principle of non-discrimination on grounds of race or ethnicity is effective in health, social benefits and services, housing (the reference to housing is broad in nature) and, in general, the supply of and access to any goods and services. In any case, Law 62/2003 does not establish specific sanctions in these fields[75], which means that judicial interpretation is important to establish repressive mechanisms, for example in the criminal law. As will be mentioned later, judges must consider whether Article 512 of the Criminal Code (Organic Law 10/1995)[76] is applicable ('Those who, in the exercise of their professional or business activities, deny a person a benefit to which they are entitled by virtue of their ... religion or belief, their ethnicity or race ... their sexual orientation ... or, for reasons of ... disability, incur the penalty of special disqualification for the exercise of profession, trade, industry or commerce and special disqualification for educational profession or trade, in the field of teaching, sports and leisure for a period of one to four years.'). The key is whether social protection, social security and healthcare should come under the concept of 'a benefit' (*una prestación*) as mentioned in the Criminal Code.

The social security system is based on four principles: universality, unity, solidarity and equality (RLD 8/2015 of the General Social Security Act, Article 2).[77] Furthermore, Article 29(1) of Law 62/2003 states that its purpose is to 'establish measures to ensure that the principle of equal treatment and non-discrimination on the grounds of racial or ethnic origin is real and effective in education, health, social benefits and services, housing and, in general, the supply of and access to goods and services'.

Law 62/2003 does not provide any measure to make the principle of equal treatment 'real and effective', because it does not establish any sanctions if the law is breached. However, according to Law 15/2022, which complements Law 62/2003, a series of infractions and sanctions have been established, which make the right to non-discrimination effective. This means that Law 15/2022 has established a regime of infringements and sanctions in all the areas it covers, and therefore also in social protection. In this sense, judges must take into account the sanctions provided for in Law 15/2022, which are of an administrative nature. Should they consider that the situation may give rise to the recognition of a criminal

[74] These references are taken literally from the Law, whereas the expressions 'gender identity' and 'sex characteristics' are not explicitly included in this Article of the Law. The inclusion of these notions should be subject to judicial interpretation.

[75] Although the Law prohibits discrimination in the field of social protection, social security and healthcare, no sanctions are proposed, thus making the law ineffective.

[76] Organic Law 10/1995 of 23 November 1995 of the Criminal Code (*Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*), *BOE*, 24 November 1995, https://www.boe.es/buscar/pdf/1995/BOE-A-1995-25444-consolidado.pdf.

[77] Widowhood pensions were a focus of litigation in Spain a few years ago. The social security authorities did not recognise the right to a widow's pension for surviving unmarried homosexual partners, because the law did not allow marriage between two people of the same sex. Litigation was brought to the Constitutional Court several times, and it had to rule on whether Article 174(1) of the General Social Security Act (Royal Legislative Decree 1/1994, which was then in force) was discriminatory based on sexual orientation. In its Decision 92/2014 of 10 June 2014, the Constitutional Court accepted in a landmark judgement that both homosexual couples (not being able to marry) and de facto couples (not having been able to marry legally) were excluded from the widow's pension, and that Article 174(1) of the General Social Security Act was not discriminatory for reasons of sexual orientation. The Court noted, however, that legislators could change that situation if they considered it convenient to do so.
The events that gave rise to this sentence took place in 2002. Three years later, the Spanish Parliament passed Law 13/2005, which modifies the Civil Code regarding the right to marry, allowing the surviving spouses of gay marriages to request the corresponding widow's pension. Law 40/2007 was passed a few years later. It extended the right to a widow's pension to all stable couples, both heterosexual and homosexual, with certain limitations and requirements; the same amending legislation allows the law to be applied to situations that occurred prior to its entry into force.

offence under Article 512 of the Criminal Code, they must apply the latter (what they cannot do is apply the sanctions of Law 15/2022 and the Criminal Code simultaneously).

In the field of healthcare, one can state the following: Article 3 of General Health Law 14/1986[78] establishes that 'Public healthcare will be extended to the entire Spanish population. Access and health benefits will be carried out under conditions of effective equality'. This declaration of universality in terms of equality has been regulated in Law 16/2003 on the Cohesion and Quality of the National Health System[79] (as amended since 2012 and last reformed in 2018). Following the reform introduced by RLD 7/2018 on universal access to the National Health System,[80] Article 3(1) of the amended Law 16/2003 now establishes that 'They are holders of the right to protection of health and healthcare for all persons with Spanish nationality and foreign persons who have established (legally) their residence in Spanish territory'. Furthermore, Article 3(*ter*)(1) establishes that 'Foreign persons not registered or authorised as residents in Spain have the right to health protection and healthcare under the same conditions as people with Spanish nationality, as is established in Article 3(1).'[81]

As we know, Law 15/2022 covers social protection. In any case, it is worth making a specific comment on healthcare. This Law states that no one may be excluded from a health treatment or health action protocol because of a disability, homelessness, age, sex or pre-existing or recurrent illnesses, unless justified by duly accredited medical reasons (Article 15). The Law goes on to say that the health administrations will promote actions aimed at those population groups with specific health needs, such as 'the elderly, minors, people with disabilities, members of the LGTBI group, people suffering from mental, chronic, rare, degenerative or terminal illnesses, people with incapacitating syndromes, virus carriers, victims of abuse, people in a situation of homelessness, people with drug dependency problems, ethnic minorities, among others, and, in general, people belonging to groups at risk of exclusion and homelessness in order to ensure effective access to and enjoyment of health services in accordance with their needs'.

Immigrants are also included in these groups or collectives, although the Law does not mention them as such. Thus, Article 15.6 of Law 15/2022 states that no one may be excluded or suspended from basic or specialised health care on equal terms, nor be excluded from health treatment 'due to lack of documentary proof or a demonstrable minimum length of stay'.

Regarding persons with disabilities, the General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) establishes that the social protection must avoid discrimination, direct or indirect, on the ground of disability (Articles 48-52) and establishes a system of sanctions that mean that the prohibition can be said to be real and effective (Articles 80-88).

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78 General Health Law 14/1986 of 24 April 1985 (*Ley 14/1986, de 25 de abril de 1986, General de Sanidad*) *BOE*, 29 April 1986, https://www.boe.es/buscar/pdf/1986/BOE-A-1986-10499-consolidado.pdf.

79 Law 16/2003 of 28 May 2003 on the Cohesion and Quality of the National Health System (*Ley 16/2003, de 28 de mayo, de cohesión y calidad del Sistema Nacional de Salud*), *BOE*, 29 May 2003, https://www.boe.es/buscar/pdf/2003/BOE-A-2003-10715-consolidado.pdf.

80 Royal Decree-Law 7/2018 of 27 July 2018 on universal access to the National Health System (*Real Decreto-ley 7/2018, de 27 de julio, sobre el acceso universal al Sistema Nacional de Salud*), *BOE*, 30 July 2018, https://www.boe.es/buscar/pdf/2018/BOE-A-2018-10752-consolidado.pdf.

81 Although both Law 14/1986 (in general terms) and Law 16/2003 (as drafted by RLD 7/2018) formally establish a universal system of access to health in Spain, as other articles of Law 16/2003 introduced some requirements to access healthcare from public funds, there are some groups (albeit very few) that may be excluded from access to the public health system, for example, older legal immigrants who do not work or who do not have social security coverage in their countries of origin. Paradoxically, all undocumented immigrants have the right to access publicly funded healthcare.

In its Decision 3/2018,[82] which can be treated as a landmark judgment, the Constitutional Court considered a resolution (and the legal provisions on which it was based) of the Community of Madrid to be discriminatory. Under this resolution, a person with psychosocial disabilities was denied a place in a specialist centre for persons with such disabilities. It was argued that he was over the age of 60, which is the age limit established in a formal regulation of the Community of Madrid. In its decision, the Constitutional Court noted that the appellant had suffered multiple discrimination. First, this was because of his disability: as a result of the application of the regulation, the person lost the right to the medical care he needed because of his psychosocial disability. The identification of an age criterion, which is based on a personal circumstance, introduces a further cause of discrimination. According to the Constitutional Court, there was therefore multiple discrimination, due to both disability and age. The Court consequently declared 'that his fundamental right to not be discriminated against has been violated on the ground of age and disability'.

a) Article 3(3) exception (Directive 2000/78)

Law 62/2003 does not contain any specific provisions in relation to the exception in Article 3(3) of Directive 2000/78 on the grounds of religion or belief, age, disability and sexual orientation. Various social security and social protection provisions establish differences on grounds of age, and of other conditions, but not religion or belief, disability, sexual orientation or racial or ethnic origin.

The ECtHR held on 3 April 2012, in the case of *Manzanas v. Spain*,[83] that there had been a violation of Article 14 (prohibition of discrimination) of the ECHR. The case concerned a difference in treatment between priests of the Catholic Church and Evangelical ministers regarding the calculation of their pension rights before 1999. The court agreed with the Government that there had been objective and non-discriminatory reasons for integrating religious ministers into the general social security scheme at different times. However, the refusal to recognise Mr Manzanas's right to receive a retirement pension amounted to a different treatment, the only difference here being one of religious faith. Although the reasons for the delay in bringing religious ministers into the general social security scheme fell within the state's margin of appreciation, the court considered that the Government had failed to justify the reasons why a difference of treatment between similar situations, based solely on grounds of religious belief, had been maintained.

3.2.6 Social advantages (Article 3(1)(f) Directive 2000/43)

In Spain, national legislation prohibits discrimination in social advantages (i.e. benefits), as formulated in the Racial Equality Directive.

The social security system is based on four principles: universality, unity, solidarity and equality (RLD 8/2015 of the General Social Security Act, Article 2). Article 29(1) of Law 62/2003 recognises the principle of non-discrimination on the grounds of racial or ethnic origin in social benefits, in line with Directive 2000/43.

However, Law 62/2003 does not provide for sanctions in this area of social benefits, but according to Law 15/2022, which complements Law 62/2003, a series of infractions and sanctions have been established. Judicial interpretation in relation to the repression of such discriminatory conduct was required since this Law does not provide specific sanctions in this field. However, judges must consider whether Article 512 of the Criminal Code (Organic Law 10/1995) could be applied and must decide whether 'social advantages' should be included under the concept of 'a benefit' (*una prestación*) as mentioned in the Criminal

[82] Constitutional Court, Decision 3/2018, 22 January 2018, https://hj.tribunalconstitucional.es/docs/BOE/BOE-A-2018-2459.pdf. An explanation of the case can be seen in Section 2.1.2 (multiple discrimination) of this report.

[83] *Manzanas v. Spain*, No. 17966/10, 3 April 2012, http://hudoc.echr.coe.int/eng?i=001-110180.

Code. However, as mentioned above, it should be noted that in 2022, Law 15/2022 was adopted, which also recognises the principle of non-discrimination on grounds of equal treatment in a number of areas, including social protection, social benefits (or social advantages) and social services (the Law uses the Spanish notion of *prestaciones*, which in its English translation implies social advantages or social benefits). Moreover, according to this Law, which complements Law 62/2003, a number of infringements and sanctions have been established, which render the right to non-discrimination effective, and therefore an infringement of the prohibition of non-discrimination in the field of social advantages will be sanctioned. In consequence, with Law 15/2022, in the field of social advantages, any kind of discrimination is prohibited: as stated in Article 2, any discrimination is prohibited on the grounds of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity,[84] gender expression, illness or health condition, serological status and/or genetic predisposition to pathologies and disorders, language, socio-economic status, or any other personal or social condition or circumstance) on the basis of social advantages (Article 3).

The General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) establishes that the 'social advantages' must avoid discrimination, direct or indirect, on the ground of disability (Articles 48-52) and establishes a system of sanctions that mean that the prohibition can be said to be real and effective (Articles 80-88).

Any clauses introducing differences of treatment in 'social advantages' on the grounds of racial or ethnic origin, religion or belief, disability or sexual orientation would be discriminatory (Spanish Constitution, Article 14), but not on the grounds of age if the differences are 'objectively and reasonably justified by a legitimate aim'. For example, it is common practice for there to be special discount rates for young people and the elderly for public transport and some private transport.

Beyond the measures established by Law RLD 1/2013, there are some benefits available for persons with disabilities, such as special discounts for transport or in accessing some services at local level. Other social benefits, such as benefits for large families and childbirth benefits, whether national, regional or local, must respect the principle of non-discrimination and should be proportionate to the special circumstances for which they are designed.

Law RLD 1/2013 establishes that services available to the public, buildings and infrastructure should be designed and built in a disability-accessible way.
In Spain, the lack of a definition of 'social advantages' does not raise legal problems.

3.2.7 Education (Article 3(1)(g) Directive 2000/43)

In Spain, national legislation prohibits discrimination in education, as formulated in the Racial Equality Directive. Furthermore, it must be borne in mind that under Law 15/2022, in the field of education, any kind of discrimination is prohibited: in this sense, Article 2 in conjunction with Article 3 of Law 15/2022 prohibits discrimination on the grounds of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity,[85] gender expression, illness or health condition, serological status and/or genetic predisposition to pathologies and disorders, language, socio-economic status, or any other personal or social condition or circumstance, on the basis of education.

[84] These references are taken literally from the Law, whereas the expressions 'gender identity' and 'sex characteristics' are not explicitly included in this Article of the Law. The inclusion of these notions should be subject to judicial interpretation.

[85] These references are taken literally from the Law, whereas the expressions 'gender identity' and 'sex characteristics' are not included literally in this Article of the Law. The inclusion of these notions should be subject to judicial interpretation.

Article 29(1) of Law 62/2003 recognises the principle of non-discrimination on the grounds of racial or ethnic origin in education in line with Directive 2000/43.

However, Law 62/2003 does not provide any measure to make the principle of equal treatment 'real and effective', because it does not establish sanctions. To be 'real and effective', judicial interpretation would be required. The judges could consider whether Article 512 of the Criminal Code (Organic Law 10/1995) could be applied and whether education should be included under the concept of 'a benefit' (*una prestación*) as mentioned in the Criminal Code. However, from 2022, Law 62/2003 has been supplemented by Law 15/2022, which provides for comprehensive regulation of equal treatment and non-discrimination. This Law does establish a regime of infringements and sanctions for the violation of this principle. Moreover, Law 15/2022 specifically regulates the right to equal treatment and non-discrimination in the field of education. Consequently, any discrimination in the field of education is prohibited.

Accordingly, Article 13 of Law 15/2022 stipulates that educational administrations must take effective measures to suppress stereotypes (the rule does not specify the effective measures it provides for) and must guarantee the absence of any form of discrimination on the grounds set out in the Law (racial or ethnic origin, religion, etc.), and always in the criteria and practices regarding admission and permanence in the use and enjoyment of educational services, regardless of the ownership of the schools that provide them. The Law adds that schools that discriminate against groups or individuals and exclude them from admission will not be eligible for any form of public funding. Finally, as far as this section of the report is concerned, Article 13 states that the education authorities shall pay due attention to pupils who, for any of the reasons set out in the Law (racial origin, religion, etc.) or because they are in an unfavourable situation due to disability, socio-economic or cultural reasons, a serious lack of knowledge of the language of instruction or any other reason, have specific educational support needs or the group to which they belong is found to have higher absenteeism or dropout rates. In this regard, the Law states that special attention should be paid to the situation of girls and adolescents.

The General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) establishes that the education system must avoid discrimination, direct or indirect, on the ground of disability (Articles 16 and 18-21) and establishes a system of sanctions that mean that the prohibition can be said to be real and effective (Articles 80-88).

Equal treatment and non-discrimination have been consolidated as basic principles of education in Spain.

The main Spanish legislation in this area comprises Organic Law 2/2006 on Education (OLE),[86] modified by Organic Law 8/2013 on Improving the Quality of Education[87] and, more recently, Organic Law 3/2020 of 29 December 2020.

The law adopted in 2020, amending the Organic Law on Education, introduces important references to the principle of equality and non-discrimination.

First, with regard to the principles on which the Spanish education system is based, under the new principle set out in Article 1a-*bis*), the education system must be based on quality education for all students without discrimination on grounds of birth, sex, racial, ethnic or geographical origin, disability, age, illness, religion or beliefs, sexual orientation or sexual identity, or any other personal or social condition or circumstance. According to the

[86] Organic Law 2/2006 of 3 May 2006 on Education (*Ley Orgánica 2/2006, de 3 de mayo, de Educación*), *BOE*, 4 May 2006, http://www.boe.es/boe/dias/2006/05/04/pdfs/A17158-17207.pdf.

[87] Organic Law 8/2013 of 9 December 2013 on Improving the Quality of Education (*Ley Orgánica 8/2013, de 9 de diciembre, para la mejora de la calidad educativa*), *BOE*, 10 December 2013, http://www.boe.es/boe/dias/2013/12/10/pdfs/BOE-A-2013-12886.pdf.

principle set out in Article 1b), the education system is based on equity, helping to overcome any form of discrimination and affording universal access to education. It shall act as a compensating factor for personal, cultural, economic and social inequalities, especially those stemming from any type of disability, in accordance with the Convention on the Rights of Persons with Disabilities, which was ratified by Spain in 2008.

Second, following the amendments to the Organic Law on Education, the law is aimed at providing education in respect for fundamental rights and freedoms, equality of rights and opportunities between men and women, equal treatment and non-discrimination of people on grounds of birth, racial or ethnic origin, religion, beliefs, age, disability, sexual orientation or identity, illness, or any other condition or circumstance.

Third, the law lays down that primary education (six-12 years) should contribute to developing children's capacity to know about, understand and respect different cultures, differences between peoples, and equal rights and opportunities for men and women, without any discrimination against people based on ethnicity, sexual orientation or identity, religion or beliefs, disability, or any other condition.

Fourth, the Baccalaureate (taken from the age of 16) must also contribute to developing students' capacity to promote real equality and non-discrimination based on birth, sex, racial or ethnic origin, disability, age, religion or beliefs, sexual orientation or gender identity, or any other personal or social condition or circumstance.

Fifth, it should also be noted that state inspection interventions in the education system are based on the principle of respect for fundamental rights and public freedoms, on the defence of the common interest and democratic values, and on preventing any conduct that may generate discrimination on grounds of origin, gender, sexual orientation, religious convictions, opinion, or any other personal or social circumstance.

Finally, the law requires that equal treatment and non-discrimination be addressed at the different stages of basic education (as a general rule, basic education is considered to cover education between the ages of six and 16). It adds that the study of, and respect for, other cultures, particularly those of the Roma and other groups, shall be taken into consideration. The aim is to contribute to appreciating cultural differences and recognising and disseminating the history and culture of ethnic minorities in Spain, thus promoting knowledge about them and reducing the use of stereotypes (41st additional provision).

Although the law establishes the general principle of non-discrimination, it could be considered that there has been a violation of the Directive, given that until 2022, the law did not provide for any sanctions and was therefore not 'real and effective.' The change in this situation has come about with the adoption of Law 15/2022, which does establish a regime of anti-discrimination offences and sanctions in the areas it covers, including education.

Organic Law 6/2001 on Universities[88] provides that students are entitled to 'Equal opportunities and non-discrimination on the grounds of sex, race, religion or disability or any other personal or social condition or circumstance[89] in access to the university, admission to centres, permanence in the university and exercise of their academic rights' (Article 46(2)). This Law does not regulate sanctions in the event of non-compliance with this students' right.

[88] Organic Law 6/2001 of 21 December 2001 on Universities (*Ley Orgánica 6/2001, de 21 de diciembre, de Universidades*), *BOE*, 24 December 2001, https://www.boe.es/buscar/pdf/2001/BOE-A-2001-24515-consolidado.pdf.

[89] The Constitutional Court ruled that age (Decision 31/1984, 7 March 1984), disability (Decision 269/1994, October 1994) and sexual orientation (Decision 41/2006, February 2006) are included in the generic phrase 'any other personal or social circumstance' in Article 14 of the Spanish Constitution. See Section 1 (General legal framework) of this report.

The debate on school 'segregation' has become high profile in Spain, with a large rise in the number of immigrants and foreigners of school age over the past years. Foreign children are mostly concentrated in state schools (as opposed to private schools). There is a consensus in Spanish social research that this concentration cannot be described as 'segregation' (there is no legal coercion because the parents can choose the school), although the concentration is high due to the fact that most of the parents choose schools close to their home and, therefore, in each school there are people of the same social condition. Public schools are of good quality compared with private schools, and according to several scholars the fact that the school performance of immigrant and Roma pupils is somewhat lower than the rest of the general population is due mainly to the socioeconomic and cultural characteristics of families, rather than the schools (see Garreta 2003; Cebolla 2015).

The OLE provides that 'in no event shall there be discrimination on the grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance' (Article 84(3) (this article of the OLE guarantees the non-discrimination of migrants in Spain in the field of education.) The same protection and equality among Spanish nationals are established by Organic Law 4/2000, which establishes the rights and freedoms of foreigners in Spain. Article 8 of OL 4/2000 establishes a right to education for foreigners (both legal and undocumented) in Spain under the same conditions as for Spanish nationals.

The OLE also provides that the various tiers of government must develop compensatory measures in relation to persons, groups and regions in adverse situations and provide the necessary economic resources and support. 'Groups' refers in particular to Roma people and immigrants. As discussed earlier, the 2020 Education Act has established that the basic education syllabus – i.e. the set of objectives, competencies, contents, pedagogical methods and assessment criteria – take into consideration cultural aspects of the Roma people and other groups and collectives.

Law 15/2022 on the principle of equal treatment and non-discrimination also makes a reference to these groups, especially in relation to the Roma population. Article 13 refers to the fact that the educational administrations shall pay special attention to the right to equal treatment and non-discrimination in the curriculum at all educational stages. Likewise, the inclusion, in appropriate curricula, of teachings on equal treatment and non-discrimination, tolerance and human rights will be promoted, deepening knowledge and respect for other cultures, particularly that of the Roma people and other groups and collectives, contributing to the appreciation of cultural differences, as well as the recognition and dissemination of the history and culture of the ethnic minorities present in Spain, in order to promote knowledge of them and reduce stereotyping.

The Spanish Committee of Representatives of Persons with Disabilities (CERMI) promoted a series of proposals to make up for or mitigate shortcomings that became apparent during the state of alarm resulting from the COVID-19 health crisis. Above all, it called for guaranteeing the use of accessible technological devices, including through the creation of lending banks; ensuring access to assessment channels, materials and methods; promoting online leisure activities that favour the interaction of students with disabilities with other students; and combating loneliness and isolation aggravated by physical distance. It also called for the creation of a team of locum teachers to provide face-to-face support to students with disabilities in their homes, and to strengthen coordination between teachers, support staff, students and families. The adoption of these measures or mechanisms would be covered by the OLE. Under this legislation, the education authorities are assigned the task of encouraging students with special educational needs to continue their schooling in an appropriate manner at all compulsory and post-compulsory levels of education. They are also responsible for adapting the conditions for sitting examinations, as set out by law, for persons with disabilities who require this. Also specified is the responsibility of the education authorities to provide the necessary complementary

resources, support and provision for special-needs education relating to disability (regulated in Title 2 of the Act).

a) Trends and patterns regarding Roma pupils

In Spain, there are no specific trends and/or patterns (whether legal or societal) in education regarding Roma pupils (including immigrant Roma pupils), such as segregation.

The OLE provides (under Article 74) that schooling for pupils with special educational needs 'shall be governed by the principles of standardisation and integration and shall guarantee non-discrimination and effective equality in access to and continuance in the [mainstream] education system'. The law also provides that the various tiers of government shall develop compensatory actions in relation to persons, groups and regions in adverse situations and shall provide the necessary economic resources and support. 'Groups' refers in particular to Roma people (and immigrants). With regard to immigrants, it should also be recalled that Law 15/2022 recognises the right of all persons to equal treatment and non-discrimination regardless of their nationality or whether or not they have a legal residence permit, although in any case this provision is subject to the provisions of Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain.

As previously stated, Law 3/2020, adopted in 2020, amending the OLE, establishes in its 41st additional provision that the study of and respect for other cultures, particularly the Roma and other groups, will be taken into consideration in the basic education 'curriculum'. In other words, the basic education syllabus (i.e. the set of objectives, competencies, contents, pedagogical methods and assessment criteria) will take into consideration cultural aspects of the Roma people and other groups and collectives. The aim is to contribute to appreciating cultural differences and recognising and disseminating the history and culture of ethnic minorities in Spain, thus promoting knowledge about them and reducing the prevalence of stereotypes. Also addressed is knowledge of historical events and conflicts that have seriously violated human rights, such as the Holocaust and the history of the fight for women's rights.

For the academic year 2021-2022 (according to the latest data released by the Ministry of Education), the number of students assessed as having specific educational needs, and who receive support, amounts to a total of 800 409 in the 2021-2022 academic year, of which 245 983 (30.7 %) correspond to students with special educational needs, where the support is associated with some type of disability or serious disorder, and the remaining 554 426 (69.3 %) to other specific educational support needs. Males are in the vast majority, representing 63.1 % of this group of students, a percentage that rises in students with special educational needs to 70.0 %, and is somewhat reduced in the rest of the categories of specific needs, at 60.1 %. The most frequent disabilities among students with special educational needs are pervasive developmental disorders/autism spectrum disorders (28.1 %), intellectual disabilities (26.9 %) and severe behavioural disorders (21.7 %). Considering the type of disability, the highest percentages of integration correspond to severe behavioural disorders (98.3 %), visual impairment (95.5 %) and hearing impairment (95.4 %)[90]

No specific legislation has been adopted on the access of Roma children to the education system. Nonetheless, the Government (specifically, the Ministry of Social Rights) has adopted a technical paper of recommendations for action in the health crisis caused by COVID-19, to be used by the social services in segregated settlements and high-risk neighbourhoods. The competent authorities (autonomous communities and city councils) have been asked in this paper to strengthen the role of social and education services, both in the schools themselves and in other support facilities, in order to minimise the impact

[90] Source: Ministry of Education (2021), *Estadística de las enseñanzas no universitarias. Alumnado con necesidad específica de apoyo educativo. Curso 2021-2022:* https://www.educacionyfp.gob.es/servicios-al-ciudadano/estadisticas/no-universitaria/alumnado/apoyo/2021-2022.html.

of the pandemic and the digital divide on children and adolescents. In any case, in 2021, the Fundación Secretariado Gitano (FSG) reported that the pandemic has been a pretext for an increase in anti-Roma discourse; in some cases, discourse that linked the transmission of the virus with the Roma people, and with their supposed non-compliance with health measures, which increased discrimination. In this sense, the report recommends that police forces open dialogue processes to avoid discriminatory controls.[91]

3.2.8 Access to and supply of goods and services that are available to the public (Article 3(1)(h) Directive 2000/43)

In Spain, national legislation prohibits discrimination in access to and supply of goods and services, as formulated in the Racial Equality Directive.

Article 29(1) of Law 62/2003 recognises the principle of non-discrimination on the ground of racial or ethnic origin in access to and supply of goods and services that are available to the public, in line with Directive 2000/43. However, this law does not provide any measures to make the principle of equal treatment 'real and effective', because it does not establish sanctions.

In addition, Law 15/2022, adopted in 2022, which comprehensively addresses equal treatment and non-discrimination (and complements Law 62/2003), has established a specific regulation in the field of the offer of goods and services to the public. To begin with, one must remember that under Law 15/2022, in the field of access to and supply of goods and services that are available to the public, any kind of discrimination is prohibited (Law 15/2022 prohibits discrimination on the grounds of birth, racial or ethnic origin, sex, religion, belief or opinion, age, disability, sexual orientation or identity,[92] gender expression, disease or health condition, serological status and/or genetic predisposition to pathologies and disorders, language, socio-economic status, or any other personal or social condition or circumstance) On this background, Law 15/2022 applies to the area of 'Access, supply and provision of goods and services available to the public, including housing, which are offered outside the sphere of private and family life'.

Law 15/2022 provides in Article 17 that public administrations, entities, companies or individuals offering goods and services to the public, in the framework of a commercial or professional activity, such as finance, transport, training, leisure or similar services, may not discriminate in providing access to these goods and services on the grounds mentioned in Article 2 of the law (racial or ethnic origin, religion, age, sex, sexual orientation or identity and gender expression, etc.). The Law also states that access to the contracting of insurance or related financial services shall not be denied, nor may differences of treatment be established in the conditions thereof on the grounds of any of the causes of discrimination set out in the Law, except those that are proportionate to the purpose of the insurance or service and to the objective conditions of the applicants under the terms set out in the insurance regulations. Finally, websites and computer applications must comply with accessibility requirements to ensure equal and non-discriminatory access for users, in particular for people with disabilities and the elderly.

RLD 1/2013 establishes that the goods or services available to the public, public or private, must avoid discrimination, direct or indirect, on the ground of disability (Articles 5 and 29) and establishes a system of sanctions that mean that the prohibition can be said to be real and effective (Articles 80-88). A failure to adapt goods or a service to meet the needs of a person with a disability is a form of discrimination (RLD 1/2013, Article 29(1)). Article 29(3) establishes that differences of treatment in access to goods and services 'will

[91] See: Fundación Secretariado Gitano (2021), *Discriminación y comunidad gitana 2021. Informe anual FSG* (*Discrimination and the Roma community 2021: FSG Annual Report*), Madrid.

[92] These references are taken literally from the Law, whereas the expressions 'gender identity' and 'sex characteristics' are not explicitly included in this Article of the Law. The inclusion of these notions should be subject to judicial interpretation.

be admissible when justified by a legitimate purpose and the means to achieve it are adequate, proportionate and necessary.'

For its part, Article 511 of the Criminal Code (Organic Law 10/1995) establishes jail sentences, fines and disqualification from holding public office 'to individuals in charge of a public service who refuse a person a benefit (*una prestación*) to which he is entitled due to his … religion or belief … belonging to an ethnic group or race … sexual preference … or handicap.' Public benefits (*prestaciones públicas*) can take the form of financial benefits (such as pensions or unemployment benefits) or the provision of different services such as education, health care or various social services. When these benefits are in the form of services, they can be implemented directly by public administrations or, in some cases, by private companies. It can be considered that this provision introduces measures that make the prohibition of discrimination in access to public services 'real and effective'. But this provision does not cover private services open to the public. Although Article 29(1) of Law 62/2003 recognises the principle of non-discrimination on the ground of racial or ethnic origin also in the private services open to the public, neither Law 62/2003 nor the Criminal Code have established measures to make the principle of equal treatment 'real and effective' in private sector services open to the public (except in the field of disability where sanctions have been established). That can be considered a potential breach of the Directive 2000/73.

In access to goods, although Law 62/2003 establishes the general principle of non-discrimination in access to and supply of goods, it could be considered that there has been a violation of the directive, because the prohibition was not 'real and effective', given that it did not provide for any sanctions (except in relation to disability). As we know, the change in this situation has come about with the adoption of Law 15/2022, which does establish a regime of anti-discrimination offences and sanctions in the areas it covers, including 'access, supply and provision of goods and services available to the public, including housing, which are offered outside the sphere of private and family life'.

In any case, the courts have already recognised the application of the principle of discrimination (direct and indirect) in relation to goods and services.[93]

a) Distinction between goods and services available publicly or privately

Law 62/2003 does not distinguish between goods and services that are available to the public (e.g. in shops, restaurants and banks) and those that are only available privately (e.g. those restricted to members of a private association).

Law 62/2003 continues to apply. However, in addition to Law 62/2003, Law 15/2022 prohibits discrimination in respect of 'Access to, supply and provision of goods and services available to the public, including housing, which are offered outside the sphere of private and family life' (the situation of non-imposition of sanctions may arise, in this respect, with regard to access to goods and services that are not available to the public).

3.2.9 Housing (Article 3(1)(h) Directive 2000/43)

In Spain, national legislation prohibits discrimination in the area of housing, as formulated in the Racial Equality Directive.

Law 62/2003 recognises the principle of non-discrimination on the grounds of racial or ethnic origin in housing (Article 29(1)), in line with Directive 2000/43. However, this law does not provide any measures to make the principle of equal treatment 'real and effective'. However, judges must consider whether Article 512 of the Criminal Code (Organic Law 10/1995) could be applied and must decide whether 'housing' should be

[93] See, for instance, Madrid Provincial Court, judgment No. 211/2009 of 6 May 2009.

included under the concept of 'a benefit' (*una prestación*) as mentioned in the Criminal Code.

In addition, Law 15/2022, adopted in 2022, which comprehensively addresses equal treatment and non-discrimination (and complements Law 62/2003), has established a specific regulation in the field of housing. Article 20 states that public administrations, within the scope of their competences, shall ensure that urban planning and housing policies respect the right to equal treatment and prevent discrimination, including residential segregation, and any form of exclusion on any of the grounds of discrimination (racial and ethnic origin, religion, etc.), provided for by law. Specifically, the Law states that the needs of homeless people and those who are most vulnerable or most susceptible to any form of discrimination must be considered. Law 15/2022 adds that the needs of groups with greater difficulties in accessing and remaining in housing due to the aforementioned causes must also be taken into consideration in policymaking, promoting policies that guarantee the autonomy and independent living of the elderly and people with disabilities, as well as the necessary support for people who suffer or are at greater risk or predisposition to suffer serious or disabling health conditions and disorders.

Law 15/2022 also lays down certain prohibitions on providers of services of sale, rental, real estate brokerage, advertising portals or any other natural or legal person who makes an offer available to the public. The Law states that they are obliged to respect the right to equal treatment and non-discrimination in their business operations, and specifically prohibits them from the following:

- To refuse an offer to purchase or rent, or to refuse to commence negotiations or in any other way to prevent or refuse the purchase or rental of a dwelling, on the grounds of any of the grounds for discrimination provided for by law, when a public offer to sell or rent has been made.
- To discriminate against a person regarding the terms or conditions of the sale or rental of a dwelling on the basis of the aforementioned grounds of discrimination. According to the law, the obligation of non-discrimination shall continue throughout the subsequent period of use of the dwelling, for leases or other similar situations.

The General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) establishes that housing must avoid discrimination, direct or indirect, on the ground of disability (Articles 48-52) and establishes a system of sanctions that mean that the prohibition can be said to be real and effective (Articles 80-88).

Furthermore, Article 32 of RLD 1/2013 establishes a housing stock for persons with disabilities and establishes that at least 4 % of homes built in public programmes (*viviendas protegidas*) will be built with a design suitable for persons with disabilities.

Although the law establishes the general principle of non-discrimination, it could be considered that there has been a violation of the directive, given that the law does not provide for any sanctions (except in relation to disability) and is therefore not 'real and effective.'

Article 13 of Organic Law 4/2000, which establishes the rights and freedoms of foreigners in Spain, establishes 'housing rights' for immigrants in Spain: 'Resident foreigners have the right to access public aid systems in the matter of housing ... In any case, long-term resident aliens are entitled to such aid under the same conditions as Spanish nationals.' In other words, all legal immigrants can access social housing and long-term legal immigrants can access public housing aid under the same conditions as the Spanish.

Legal migrants are treated in the same way as Spaniards and nationals of other Member States under anti-discrimination legislation, and they benefit from anti-discrimination law enforcement and implementation in the field of housing on an equal basis with nationals.

However, the practical application of the relevant legal provisions could be improved. Immigrants of certain national origins and the Roma tend to congregate in certain districts, which leads to a significant concentration of the population. This situation becomes a problem when it is compounded by poor living conditions, sometimes involving illegal construction or the growth of slum districts. Undocumented migrants do not have the same access to social housing as legal migrants.

a) Trends and patterns regarding housing segregation for Roma

In Spain, there are no patterns of housing segregation and discrimination against the Roma (although the reality is that many Roma live in very concentrated conditions in certain urban and rural areas). Policies that aim to facilitate the accommodation of the Roma are general policies, and integration is now favoured, especially in mixed working-class neighbourhoods. At the end of the Franco dictatorship, most Spanish Roma lived in substandard housing, much of it illegal and self-constructed (*chabolas*) in the slum suburbs of cities or towns (Cortés, 1995). In the democratic period, numerous actions of relocation (national, regional and local) have radically changed this residential situation, and most of the Roma now live in homes in working-class neighbourhoods of cities and towns, some in areas with high concentrations of Roma and others in more diverse neighbourhoods (Rio 2014). However, due to the economic crisis of 2008 and the social policies that have been implemented, many Roma (like other parts of the population that have suffered the consequences of the crisis more seriously), face eviction and have had to leave their homes because they cannot pay their mortgages. As a result, there has been an increase in substandard housing among the Roma, not because they are Roma, but because, as summarised by the Fundación Secretariado Gitano (FSG, 2013), 'the crisis affects earlier, harder, during more time and with more harmful and lasting effects the people and groups that were already in situations of vulnerability, poverty or social exclusion, as is the case with more than two thirds of the Roma community'. Despite the social gravity of these evictions, for the population in general and for the Roma in particular, there is no violation of the right to respect for private and family life nor a problem of discrimination.

Many Spanish local authorities have carried out generally successful relocation programmes for Roma in towns (moving from the marginal and segregated dwellings that previously occupied new areas to better housing conditions that are more integrated and socially diverse). In some cases, these relocation programmes have encountered opposition from other residents, but in general the administrations succeed in carrying out such rehousing.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Spain, national legislation provides for an exception for genuine and determining occupational requirements.

Law 62/2003 (Article 34(2)) reproduces the occupational requirement exception of Article 4(1) of the Directive, which provides that: 'Differences based on a characteristic related to any of the causes referred to in the previous paragraph [all the grounds of Directives 2000/43 and 2000/78] do not amount to discrimination when, owing to the nature of the specific professional activity concerned or the context in which it is carried out, such a characteristic constitutes an essential and determinant professional requirement, provided that the objective is legitimate and the requirement is proportionate'.

Prior to the transposition of the directives into domestic Spanish law, Article 17(2) of the Workers' Statute stated that 'exclusions, reservations and preferences in respect of unrestricted employment may be established by law'.

4.2 Employers with an ethos based on religion or belief (Article 4(2) Directive 2000/78)

In Spain, national law provides for an exception for employers with an ethos based on religion or belief.

Article 34 of Law 62/2003 provides for non-discrimination in employment on the ground of religion or belief and amends other laws, such as the Workers' Statute, in this respect, but makes no reference to organisations with an ethos based on religion or belief. Law 15/2022 maintains the regulation of Law 62/2003 on this point, but is silent on this issue.

For organisations with a specific ethos, Article 6 of the Organic Law on Religious Freedom states: 'Registered churches, faiths and religious communities shall be fully independent and may lay down their own organisational rules, internal and staff byelaws. Such rules, as well as those governing the institutions that they create to accomplish their purposes, may include clauses safeguarding their religious identity and own personality as well as due respect for their beliefs, without prejudice to the rights and freedoms recognised by the Constitution and in particular those of freedom, equality and non-discrimination'. The third additional provision of Organic Law 2/2006 on Education regulates the situation of teachers of religion at private (religious) centres. In the opinion of the author of this report, taking into consideration CJEU C-414/16 and C-68/17, these provisions are in keeping with Article 4(2) of Directive 2000/78.

As Puente (2004) points out, the scope of these clauses is the regulation of employment relationships in institutions with a specific ethos. In practice, the exemptions operate at three stages of the employment relationship: first, access to employment; secondly, during the performance of an activity within the organisation; and thirdly, dismissal from that activity. At the first stage, before the signature of the labour contract, the general rule is that religious reasons cannot be claimed for preventing anyone from exercising their right to work. Moreover, according to Article 16(2) of the Constitution, nobody may be compelled to make statements regarding his/her religion, belief or ideology, which means that there is a prohibition against asking about the ideology or beliefs of the worker. However, in these organisations, questions about religion and belief, and the requirement that workers accommodate their private lives to the ethos of the enterprise, seem genuine and legitimate if the activity to be performed is linked to the ideological orientation pursued by the organisation. This relates to the situation of religious education teachers in state schools. At the second stage, during the employment relationship, the employees have to

show respect for the ideology of the enterprise. This respect for the ideology also includes out-of-work activities, if they affect this ethos. At the third stage, although the general rule says that a discriminatory dismissal is void, in those organisations with a specific ethos it will not be discriminatory if there has been behaviour hostile to that ethos, taking into account the criteria laid down by the CJEU (e.g. judgment of 17 April 2008, *Vera Egenberger*). In any case, in a changing world, it is important to carefully assess each of the circumstances of a particular employment relationship in order to maintain the balance between the individual aspect of each individual's fundamental right and the postulates of the State's constitutional coherence.[94]

– Conflicts between rights of organisations with an ethos based on religion or belief and other rights to non-discrimination

In Spain, there are specific provisions and case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination in the context of employment.

According to general constitutional doctrine, since the principle of good faith should govern employment relationships (Article 5(a) of the Workers' Statue, RLD 2/2015), employees in ideological or ethos-based organisations can be asked to conform to a minimal extent with the organisation's ethos.[95]

Both doctrine and the courts have made it explicit that, even within ideological institutions, one has to distinguish between ideological and neutral employment positions. Only the former are about transmitting the ideology of the institution and thus those in which ideological affinity can be expected.[96] This brings up interesting issues given Catholicism's longstanding rejection of homosexuality, for example. In this respect, especially in relation to private religious schools, the Constitutional Court has considered that, once again, the most relevant factor to be taken into consideration is what the job itself consists of. If the job is strictly linked to spreading the school's ethos, constraints will be more justifiable than if the job consists of developing purely technical expertise or is restricted to the pure transmission of knowledge.[97] According to some academic doctrine, this would allow employers in this kind of institution to inquire about the worker's sexual orientation if the occupational activity is linked to spreading the school's ethos (Vicente 1998). On the other hand, some scholars have pointed out that it is a worker's conduct and not his sexual preferences *per se* that could be seen as violating the institution's ethos, so that it is only when the conduct is notorious and has the capacity to discredit the institution's ethos that measures can be taken (Fernández, 1985).[98] In general terms, this doctrine has been maintained in recent years. In the case of companies with their own ideology (known in Spain as '*empresas de tendencia*'; for example, a religious school), the doctrine and the judges maintain that the workers' performance that is hostile or contrary to the company's ideology can be a cause for dismissal of the worker, but the workers' simple disagreement with the company's ideology is not a valid cause for dismissal if this disagreement has not been made manifest in the teacher's work or in the labour activity.[99]

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[94] See: Arastey, L. 'Jurisprudencia laboral en materia de libertad religiosa' (Labour jurisprudence in matters of religious freedom), in Camas Roda, F. (ed.) (2016), *El ejercicio del derecho de libertad religiosa en el marco laboral* (*The exercise of the right to religious freedom in the workplace*) Editorial Bomarzo.

[95] Constitutional Court, Decision 47/1985, 27 March 1985, http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/427.

[96] Constitutional Court, Decision 106/1996, 12 June 1996, http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/3158.

[97] Constitutional Court, Decision 5/1981, 13 February 1981, http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/5.

[98] A general analysis of jurisprudence in Spain can be seen in Salas (2014).

[99] Camós Victoria, I., 'La gestión de la diversidad religiosa en el ámbito del empleo y las empresas de tendencia' ('The management of religious diversity in the field of employment and 'empresas de tendencia''), in Camas Roda, F. (ed.) (2016), *El ejercicio del derecho de libertad religiosa en el marco laboral* (*The exercise of the right to religious freedom in the workplace*) Editorial Bomarzo.

4.3 Armed forces and other specific occupations (Article 3(4) and Recitals 18 and 19 Directive 2000/78)

In Spain, national legislation does not provide for an explicit exception for the armed forces in this regard. However, both Law 8/2006 (for army troops and sailors in the navy) and Law 39/2007 and Royal Decree 35/2010 (for career military) make numerous references to age limits.

For army troops and sailors in the navy (*militares de tropa y marineria*), Law 8/2006 on Troops and Sailors[100] establishes that, in order to participate in the selection processes for the training courses that require to be followed to join the ranks of the army and navy, applicants must be at least 18 years old but no older than 29 (Article 3(1)(e)). This upper age limit of 29 was challenged before the Supreme Court. However, in a landmark judgment,[101] the Supreme Court considered that the maximum age limitation established by law did not generate discrimination because the difference in treatment was justified and covered the proportionality criterion.

The situation is different regarding the rules governing access to career military personnel (*militares de carrera*). The law regulating access to a professional military career in the armed forces (Law 39/2007 of 19 November 2007 on Military Careers)[102] states in Article 56, on 'General requirements for admission to educational training centres' that: 'Entry into military training centres shall be by public competition, [guaranteeing] the constitutional principles of equality, merit and ability ... Applicants must (among other conditions) ... be 18 or older, and not have passed the age limits provided for in the regulations'. Therefore, the law does not establish any upper age limit, although it foresees that such age limits will be established by regulations.

Article 16 of the Regulation on Entry into the Armed Forces, approved by Royal Decree 35/2010[103] (partially modified by Royal Decree 378/2014 of 30 May 2014 and also in 2020 by Royal Decree 556/2020 of 9 June 2020), sets 'Age specific requirements', both for troops and sailors (following the provisions of Law 8/2006) and for career military (which were not established in Law 39/2007). The age limits are different for the various corps and ranks in the army (ranging between 21 and 40). At no point does the royal decree offer any justification for the upper age limits.

Three parts of Article 16 of the royal decree were repealed by a landmark Judgement where the Supreme Court considered that for the career military of the Intendancy, the Military Legal Corps and Military Intervention, the age limits established in Royal Decree 35/2010 were not adequately justified and had only been established by the royal decree and not in a law. Therefore, the Supreme Court declared 'the nullity of the maximum age limit to participate in the selection processes for admission to military training centres in order to be incorporated, by direct entry, at the official scales' of these three bodies of the Armed Forces[104].

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[100] Law 8/2006 of 24 April 2006 on Troops and Sailors (*Ley 8/2006, de 24 de abril, de Tropa y Marinería*), *BOE*, 25 April 2006, https://www.boe.es/buscar/pdf/2006/BOE-A-2006-7319-consolidado.pdf.

[101] Judgment of the Supreme Court (Contentious-Administrative Chamber) 3842/2012, 30 May 2012, http://www.poderjudicial.es/search/index.jsp.

[102] Law 39/2007 of 19 November 2007, the Military Career Law (*Ley 39/2007, de 19 de noviembre, de la carrera militar*), *BOE*, 20 November 2007, https://www.boe.es/buscar/pdf/2007/BOE-A-2007-19880-consolidado.pdf.

[103] Royal Decree 35/2010 of 15 January 2010, approving the Regulation of entry and promotion and the organisation of training in the Armed Forces (*Real Decreto 35/2010, de 15 de enero, por el que se aprueba el Reglamento de ingreso y promoción y de ordenación de la enseñanza de formación en las Fuerzas Armadas*), *BOE*, 16 January 2010, https://www.boe.es/buscar/pdf/2010/BOE-A-2010-653-consolidado.pdf.

[104] Supreme Court, Third Chamber, judgment of 9 May 2014, which annuls Article 16 of the Regulation of entry and promotion and the organisation of training in the Armed Forces, as approved by Royal Decree 35/2010 (*Sentencia de 9 de mayo de 2014, de la Sala Tercera del Tribunal Supremo, por la que se anula el artículo 16 del Reglamento de ingreso y promoción y de ordenación de la enseñanza de formación en la Fuerzas*

Therefore, at present, there is an age limit of 29 for troops and sailors entering the army and navy (established in Law 8/2006), with a different age limit for career military (established in RD 35/2010). However, there is no legal limit in force for entering a military career in three bodies: the Intendancy, the Military Legal Corps and Military Intervention (Supreme Court Judgment of 9 May 2014).

In Spain, national legislation does not provide for an explicit exception for the armed forces in relation to disability discrimination.

On a separate issue, both Law 8/2006 (for army troops and navy sailors) and Law 39/2007 (the Military Career Law) make numerous references to the psychophysical skills that armed forces personnel must have. Law 39/2007, for example, addresses changes in professional destination, retiring from military service and resolving one's commitment with the armed forces. Under this law, proceedings can be begun for military personnel with insufficient psychophysical skills. The law ensures that if, via these proceedings, incapacity is established that entails a limitation on travelling to certain destinations (or taking up postings), equal treatment will be guaranteed in any destination to which the respondent may have access. If permanent disability is declared, the affected person will not continue in his/her destination. Law 8/2016 also sets out that the long-term commitment agreed between military personnel with more than five years of service and the Armed Forces shall end in the event of a lack of psychophysical skills of the former.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Spain, national law includes exceptions relating to difference of treatment based on nationality.

The seventh additional provision of Law 62/2003, entitled 'Non-applicability to immigration law', states that the articles transposing the directives do not affect the regulations provided 'in respect of the entry, stay, work and establishment of aliens in Spain in Organic Law 4/2000'. In Spain, nationality (as in citizenship) is not explicitly mentioned as a protected ground in Law 62/2003. Nonetheless, in relation to foreigners, Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration does establish a prohibition of discrimination on grounds of nationality against foreigners in the case of acts of a public authority; or which involve resistance to providing a foreigner with goods or services offered to the public; or which restrict or limit access to work, housing, education, vocational training and social and socio-assistance services to a foreigner who is regularly present in Spain; or acts which impede the exercise of an economic activity legitimately undertaken by a foreigner who is legally resident in Spain.

On the other hand, Law 15/2022 contains an interesting regulation as, in Article 2, it recognises the right of all persons to equal treatment and non-discrimination regardless of their nationality or whether or not they enjoy legal residence (therefore, it seems that in general, undocumented foreigners also have the right to non-discrimination). However, the Seventh Additional Provision of Law 15/2022 warns that the regulation it establishes does not affect Law 4/2000 and therefore it must be understood that the regulation of the latter prevails.

b) Relationship between nationality and 'racial or ethnic origin'

The Organic Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration (OL 4/2000) (Article 23(2)) treats 'nationality' and 'racial or ethnic origin' as

Armadas, aprobado por Real Decreto 35/2010), *BOE*, 15 July 2014, https://www.boe.es/boe/dias/2014/07/15/pdfs/BOE-A-2014-7473.pdf.

equivalent when prohibiting discriminatory acts 'against a foreign citizen merely because of his condition as such or because he belongs to a particular race, religion, ethnic group or nationality.'

In 2009, the UN Human Rights Committee (UNHRC) published its views, in which it considered that there had been a violation of the International Covenant on Civil and Political Rights by Spain in the case of Rosalind Williams.[105] The committee recalled its jurisprudence that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant, but in this case 'the criteria of reasonableness and objectivity were not met'. Accordingly, the UNHRC declared that Article 2 of the Convention had been violated.

The UNHRC's views are very significant because they call into question the doctrine established by the Spanish Constitutional Court in 2001, legitimising the use of the racial criterion as a valid indicator of nationality and as reason to assume that a foreigner's presence in Spain is more likely to be irregular. This decision from the Spanish Constitutional Court had also been strongly criticised by human rights organisations and prominent jurists in Spain.

4.5 Health and safety at work (Article 7(2) Directive 2000/78)

In Spain, there are exceptions in relation to disability and health and safety, as provided for under Article 7(2) of the Employment Equality Directive.

Law 31/1995 on the Prevention of Occupational Risks provides regulations for the protection of workers such as workers with disabilities, who are at particular risk from certain hazards. Article 25 of the law states: 'Employers shall specially guarantee the protection of workers who, owing to their personal characteristics or known biological condition, including those with a recognised physical, mental or sensorial disability (i.e. people who have been officially recognised as persons with disabilities, with 33 % disability or more), are especially at risk from the hazards involved in their work. To this end, employers must take these aspects into account in hazard assessments and, pursuant thereto, shall take the necessary preventive and protective measures'. The law further states: 'Workers shall not be employed in posts in which, in view of their personal characteristics or known biological condition, or duly recognised physical, mental or sensorial disability, they may put themselves, other workers or other persons connected to the company in a dangerous situation, or, generally, where they are patently in a temporary condition unsuited to the psychophysical requirements of their respective posts of employment'.

Article 25 of Law 31/1995 on the Prevention of Occupational Risks was the basis of the question presented by Social Court No. 3 of Barcelona before the CJEU about whether the concept of 'workers particularly susceptible to certain risks' as contained in that article was equivalent to the concept of 'disability' within the meaning of Directive 2000/78. In its judgment on Case C-397/18,[106] the CJEU ruled that 'Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that the state of health of a worker categorised as being particularly susceptible to occupational risks, within the meaning of national law, which prevents that worker from carrying out certain jobs on the ground that such jobs would entail a risk to his or her own health or to other persons, only falls within the concept of 'disability', within the meaning of that directive, where that state leads to a

[105] UNHRC Communication No. 1493/2009, *Mrs Rosalind Williams Lecraf v. Spain*, 27 July 2009: https://www.opensocietyfoundations.org/sites/default/files/decision-en_20090812.pdf.

[106] Judgment of 11 September 2019, *D.W. v. Nobel Plastiques Ibérica SA*, 11 September 2019, C-397/18: http://curia.europa.eu/juris/document/document.jsf?text=&docid=217624&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=501000.

limitation of capacity arising from, *inter alia*, long-term physical, mental or psychological impairments which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in their professional life on an equal basis with other workers. It is for the national court to determine whether those conditions are satisfied in the main proceedings.'

4.6 Exceptions related to discrimination on the ground of age (Article 6 Directive 2000/78)

4.6.1 Direct discrimination

a) Exceptions to the prohibition of direct discrimination on grounds of age

In Spain, national law provides for specific exceptions for direct discrimination on the ground of age. Spanish legislation does not permit general direct discrimination on the ground of age, but the legislation permits differences of treatment based on age for some activities within the material scope of Directive 2000/78. These exceptions must be 'objectively and reasonably justified by a legitimate aim'. To this effect, each difference of treatment on the ground of age must be expressly stated in a law and must be justified by 'a legitimate aim'.

b) Justification of direct discrimination on the ground of age

In Spain, national law provides for justifications for direct discrimination on the ground of age. As developed in point 4.6.4d, consideration should be given to the Tenth Additional Provision of the Workers' Statute Law, entitled 'Clauses in collective agreements referring to reaching the ordinary retirement age', which broadly establishes that collective agreements agreed between employers and workers' representatives may include clauses that enable the termination of the employment contract when the worker reaches an age of 68 years or over with the aim of promoting the extension of working life.

The Spanish courts have had to rule on several occasions regarding the adequate justification or otherwise of certain exceptions in equal treatment on the ground of age, especially in cases related to public employment. The results are disparate, as the courts accept the exceptions in some cases and not in others, and this results in similar situations having different age requirements. In addition to the different situations within the armed forces (see Paragraph 4.3), there are different situations within the police forces. For example, the National Police do not have an actual upper age limit, while the regional police in the Basque Country has an incorporation age limit of 35 years (Ballester, 2010; Solà, 2016).

Above all, three judgments of the Constitutional Court should be highlighted: one could consider as a landmark judgment 75/1983,[107] because it is cited in all subsequent judgments and sets out guidelines for the possible justification of direct discrimination based on age. Moreover, there was a highly relevant dissenting vote in the case. The question before the Court concerned a legal regulation governing a special local regime that the municipalities of Barcelona and Madrid had at that time, and that required officials seeking promotion as local controllers (*interventores*) to be under 60 years old. In this highly contested judgment, the majority of the judges considered that, as long as age was itself a differentiating element, 'a legislative decision that, taking into account that differentiating element and the characteristics of the post in question, objectively sets age limits will be legitimate. This assumes, for those who have passed it, the impossibility of accessing these positions.' With this argument, the majority of the court considered that the rule was constitutional and non-discriminatory because the post of controller in

[107] Constitutional Court, Decision 75/1983, 3 August 1983: https://hj.tribunalconstitucional.es/docs/BOE/BOE-T-1983-22275.pdf.

municipalities of the complexity of Barcelona and Madrid required a minimum period of permanence in office to 'impose oneself on the important tasks that the law forces them to develop.' On the other hand, the (progressive) minority of the Constitutional Court's judges, in their dissenting vote, showed that the regulations establishing a maximum age of 60 years in order to apply to be a municipal controller seemed unconstitutional to them, because such a rule 'is not adequate (for the various reasons indicated) nor proportional for the purpose it pursues', and neither did it respond to a 'justified exceptionality'.

Decision 37/2004 of the Constitutional Court is a landmark judgment:[108] the Court declared the last subsection of Article 135(b) of Royal Legislative Decree 781/1986, which approved the consolidated text on the local regime, to be unconstitutional. This precept established that one of the requirements to compete for positions in the local public service was 'not to exceed the age of less than ten years for forced retirement due to age, determined by the basic legislation on public service matters' (that is, not being over 55 years old). The Court unanimously considered that the legislation establishing that age limit was discriminatory and unconstitutional. The Court considered that it was unreasonable to claim that the employment relationship had a certain minimum duration; and furthermore, among other reasons, it highlighted that the Government should have offered arguments to justify a different legal treatment by age, in so far as the only criteria established by the Constitution for joining the public service were based on the principles of 'merit and ability'.

Other case law has been interesting with regard to the recognition of age discrimination through setting a certain age for employment or economic activity (opening a new pharmacy, or working for the national police or emergency services; the latter was ended by a judgment of the CJEU.[109]

In the field of social security and employment, there are issues that need to be examined from the perspective of possible discrimination on the ground of age. For some social benefits, age is integral to the benefit itself. For others, age is a factor limiting protection and, as such, benefits cannot be granted fully to all citizens. This second situation may give rise to discrimination. In any event, enough justification is required. The justification cited by the law is normally the difficulty experienced by older workers in re-entering the labour market[110] (Blázquez, 2005).

c) Permitted differences of treatment based on age

In Spain, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78.

These exceptions must be 'objectively and reasonably justified by a legitimate aim'.

Some of the differences of treatment based on age are linked to the protection against child labour: children under 18 cannot work at night or work overtime, and they are subject to special regulations regarding weekly rest periods (Workers' Statute, Articles 6 and 37).

[108] Constitutional Court, Decision 37/2004, 11 March 2004: https://hj.tribunalconstitucional.es/docs/BOE/BOE-T-2004-6131.pdf.

[109] Regarding pharmacy: Constitutional Court, Decision 78/2012, 16 April 2012: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/22845 & Constitutional Court, Decision 41/2015: 2 March 2015: https://hj.tribunalconstitucional.es/docs/BOE/BOE-A-2015-3819.pdf; Regarding police and emergency services, see Supreme Court, Decision 2185/2011, 21 March 2011: http://www.boe.es/boe/dias/2011/06/06/pdfs/BOE-A-2011-9788.pdf and Judgment of 16 November 2016, *Salaberría Sorondo v. Academia Vasca de Policía y Emergencias*, C-258/15: http://curia.europa.eu/juris/liste.jsf?language=es&td=ALL&num=C-258/15.

[110] For example, Royal Decree-Law 5/2013 of 15 March 2013 on measures to favour the continuity of working life and promote active ageing: https://www.boe.es/buscar/pdf/2013/BOE-A-2013-2874-consolidado.pdf.

Other age differences arise regarding access to some benefits, such as unemployment benefit (to which workers over the age of 55, among others, have access in some circumstances) (General Social Security Act, Article 274).

d) Fixing of ages for admission to occupational pension schemes

In Spain, national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by Article 6(2) of Directive 2000/78).

Private occupational pensions are covered by Royal Legislative Decree 1/2002 of 29 November 2002, which approves the revised text of the Law on the Regulation of Pension Plans and Funds. Regarding the retirement of workers, the law establishes that financial retirement benefits are acquired when the worker retires in the public system; if this cannot be established, it is understood to have occurred at 65 years of age. However, the receipt of the corresponding benefit can be anticipated from the age of 60.

Royal Legislative Decree 1/2002 has been further developed by Royal Decree 304/2004 of 20 February 2004, which approves the Regulation on Pension Schemes and Funds. Neither of the two pieces of legislation (Royal Legislative Decree 1/2002 and the Regulation) establishes specific ages for joining the scheme (or pension plan). As this report has noted previously (see 3.2.2, paragraph 2), both of them recognise the principle of discrimination in each pension plan that is implemented. In this sense, Royal Legislative Decree 1/2002 sets out that a scheme or occupational pension plan will be non-discriminatory when all the staff employed by the employer/promoter are allowed to join the pension plan. In any case, Royal Legislative Decree 1/2002 (Article 5) states that, when it comes to joining the pension plan, the plan may specify that the worker must have a seniority in the company of less than two years to access it. In summary, any plan may set out that all workers are able to join the plan without any seniority at the company; it may also take some kind of seniority into consideration, but never more than two years from being hired by the employer. This legal provision is fully applicable. In addition, the Constitutional Court has resolved that the enforcement of this law by the company cannot distinguish between workers with indefinite contracts, those with permanent contracts and those with fixed-term-contracts.[111]

4.6.2 Special conditions for younger and older workers

In Spain, there are special conditions set by law for older or younger workers in order to promote their vocational integration.

There are many employment policies and programmes, detailed in the national employment plans and on occasion funded by the European Social Fund, with participant age limits, normally designed to favour young people under 25 and older workers. For both groups, there are measures to support training and employment in the form of partially subsidised contracts. In the case of young people, the employment measures are work experience contracts, job-training contracts and subsidised contracts of indefinite duration (Royal Decree-Law 6/2016).[112]

On the other hand, Spain has adopted the National Youth Guarantee Plan, according to which young people must receive a job or training offer within four months of becoming unemployed or leaving formal education. Young people have to be 16 to 30 years old to be included in this plan under Law 18/2014 of 15 October 2014, approving urgent

[111] Constitutional Court, Judgment 104/2004 of 28 June 2004: See Constitutional Court website: http://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/5109.

[112] Royal Decree-Law 6/2016 of 23 December 2016 on urgent measures to boost the National Youth Guarantee System (*Real Decreto-ley 6/2016, de 23 de diciembre, de medidas urgentes para el impulso del Sistema Nacional de Garantía Juvenil*): https://www.boe.es/boe/dias/2016/12/24/pdfs/BOE-A-2016-12266.pdf.

measures for growth, competitiveness and efficiency. This Law establishes certain measures that facilitate registration in the plan and access to training programmes for young people who are persons with disabilities or are at risk of social exclusion.

Following its reform in 2020, Law 2/2006 on Education basically encourages education administrations to organise professional training courses aimed at students with special educational needs aged up to 21. The administrations may also organise vocational training programmes for people over 17 who left the education system without any qualifications, in order to enable them to obtain a formal qualification.

In the case of older workers, there are subsidised contracts of indefinite duration for people aged 45 to 55 in some cases, and for those aged over 52 in others. There is also a jobseeker's allowance programme for older workers who are at a particular disadvantage in the labour market (Royal Decree-Law 8/2015).[113]

The unemployment benefit system also makes age distinctions. For example, those aged over 52 who have used up their contributory unemployment benefit are entitled to an unemployment allowance until they reach retirement age, and those aged over 45 with family responsibilities (caring responsibilities) who have used up their contributory unemployment benefit are entitled to a variable allowance depending on certain circumstances. 'Active job-seeking income' is granted to those aged over 45 who satisfy certain conditions (Royal Decree-Law 8/2015).

4.6.3 Minimum and maximum age requirements

In Spain, there are exceptions permitting minimum and/or maximum age requirements in relation to access to employment and training.

The Workers' Statute (Article 6) sets the minimum age for access to employment at 16. This is also the minimum age for access to vocational training.

There is no general rule establishing a maximum working age, since the provision of the Workers' Statute in 1980, setting a maximum age of 69, was declared unconstitutional by the Constitutional Court in 1981.[114] There is also no maximum age for taking part in vocational training.

4.6.4 Retirement

a) State pension age

In Spain, there is a state pension age, at which individuals may begin to collect their state pensions.

Workers may begin to receive a public contributory pension at the age of 67, provided that the other requirements set out by the law are met. Article 205 of the General Social Security Act (RLD 8/2015) establishes that employed workers who have reached the age of 67, or those who are 65 but have contributed for 38 years and 6 months, are entitled to a retirement pension. A minimum 15-year contribution period is also required, of which the last two years must fall within the 15 years immediately prior to the pension request. However, Article 205 of the General Social Security Act will be implemented gradually (the full implementation of this article will be from 2027): there is 'a transitional period' from a pensionable age of 65, which applied until 2013, to the age of 67 (or those who are 65 but

[113] RLD 8/2015 of 30 October 2015, approving the revised text of the General Social Security Act (*Real Decreto Legislativo 8/2015, de 30 de octubre, Ley General de la Seguridad Social*): https://www.boe.es/buscar/pdf/2015/BOE-A-2015-11724-consolidado.pdf.

[114] Constitutional Court, Decision 22/1981, 2 July 1981: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/22.

have contributed for 38 years and 6 months), which will apply from 2027. In 2022, the pensionable age was 65 (if the worker had contributed for at least 37 years) or 65 years and 10 months (if the worker had contributed for less than that period) (General Social Security Act, Seventh Transitional Provision). For non-contributory pensions, the retirement age is 65, and other requirements require to be fulfilled (General Social Security Act, Article 369).

The use of age criteria or actuarial standards is not provided for by the law. The so-called 'sustainability factor' has been adopted under the Social Security Law to calculate retirement pensions, although this instrument has been suspended until 2023. However, the General Social Security Act provides for the regulation of this factor. It is aimed at linking the amount of the retirement pension to the evolution of life expectancy among the retirement-age population. The underlying idea is to adjust the amounts received by people who retire in similar conditions but at different times. The sustainability factor will be applied only once when the initial pension amount is determined by the Social Security Institute, taking as a reference the age of 67 years and the mortality rate of the retirement-age population within the Social Security system. The interannual variation of life expectancy needed to calculate the sustainability factor will be reviewed every five years (Article 211 of the General Social Security Act).

The pensionable age may be lowered by the Government for those groups or professional activities where the work is of an exceptionally strenuous, toxic, dangerous or unhealthy nature, and where there are high levels of disease or mortality, or in the case of 'persons with disabilities with a degree of disability equal to or greater than 65 per cent' (General Social Security Act, Article 206). Furthermore, early retirement may be taken from the age of 61, provided that certain requirements specified in the General Social Security Act (Article 207) are met. Pensionable age is set at 65 for the civil service, but civil servants can request an extension to 70 years (RLD 5/2015 of 30 October 2015, on the Civil Service Basic Statute, Article 67[115] and Law 55/2003 (Article 26) for the personnel of the health services of the public system).[116] Some public professions, such as judges, prosecutors, bailiffs, notaries or university professors, have special regulations, with compulsory retirement at 70 (For example, Organic Law 6/1985 on the Judiciary of 1 July 1985, Article 492).

If an individual wishes to work beyond the state pension age, retirement can be deferred. In this case, the economic value of the worker's pension may be increased up to a maximum of 4 % (General Social Security Act, Article 210).

It is also possible to begin collecting one's pension voluntarily before pensionable age. People must be at least two years short of pensionable age and meet certain requirements established by the General Social Security Act (Article 208). Early retirement leads to a reduction in the economic value of the pension.

An individual can collect a pension and still work. It is possible for someone to have a retirement pension and to keep working part-time or on a self-employed basis if their income is below the official minimum wage (14 payments of EUR 1 000 in 2022)[117] (General Social Security Act, Articles 213, 214 and 215).

[115] RLD 5/2015 of 30 October 2015, approving the revised text of the Basic Statute of Public Employees (*Real Decreto Legislativo 5/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto Básico del Empleado Público*), *BOE*, 31 October 2015: http://www.boe.es/boe/dias/2015/10/31/pdfs/BOE-A-2015-11719.pdf.

[116] Law 55/2003 of 16 December 2003, on the Framework Statute of statutory staff of health services (*Ley 55/2003, de 16 de diciembre, del Estatuto Marco del personal estatutario de los servicios de salud*) https://www.boe.es/buscar/pdf/2003/BOE-A-2003-23101-consolidado.pdf.

[117] Royal Decree 152/2022 of February 22, which sets the minimum interprofessional salary for 2022 (*Real Decreto 152/2022, de 22 de febrero, por el que se fija el salario mínimo interprofesional para 2022*), *BOE*, 23 February 2022.

The conditions are the same for women and men.

b) Occupational pension schemes

In Spain, there is a standard age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. In 2022 this was 65 (if the worker had contributed for at least 37 years and six months, or 66 years and two months if the worker had contributed for less than 37 years and six months) (General Social Security Act, Seventh Transitional Provision).

If an individual wishes to work longer, payments from such occupational pension schemes can be deferred.

An individual can collect a pension and still work.

The conditions are the same for women and men.

c) State-imposed mandatory retirement ages

In Spain, there are state-imposed mandatory retirement ages for the public sector, but not for the private sector.

Without prejudice to what will be said later (paragraph d), the retirement age is voluntary in the private sector. The state rule requiring people to retire no later than 69 was declared unconstitutional on the ground of age.[118]

According to Law 49/2015 of 1 October 2015 on the Legal Regime of the Public Sector, the public sector is made up of the public administrations of the states, the regions and the Local Administration, as well as the institutional public sector (public bodies and public law entities). There is also the public business sector, made up of public business entities, dependent on the Public Administration, or any other public bodies linked to or dependent on it.

As a general rule, civil servants must retire at the age of 65 (except for certain types of civil servants, such as judges, university professors or property registrars, who must retire at the age of 70). In any case, civil servants who must retire at 65 can request an extension of their retirement until the age of 70 (RLD 5/2015 of 30 October 2015, on the Civil Service Basic Statute, Article 67(3)). This rule also applies to the personnel of the health services of the public system (Law 55/2003, Article 26(2)). Some public professions, such as judges, prosecutors, notaries, bailiffs or university professors, have special regulations, with compulsory retirement at 70. Some public civil servants are included in the General System of Social Security. For them, the retirement age is the same as the age of access to the social security retirement pension (RLD 5/2015, Article 67(4)).

The mandatory retirement age and the possibility of extending working life to 70 years of staff working in public administrations and public health services has given rise to disputes in court. The aforementioned state regulations (RDL 5/2015, Article 67(3) and Law 55/2003, Article 26(2)) can be developed in their areas of competence by the autonomous communities to regulate the regime of staff working in public administrations or in public health services. Many of the cases that go to court have to do with the latter. A good summary of the consolidated doctrine of the Supreme Court is established in judgment 2708/2018.[119] The content of this sentence can be synthesised in four aspects

[118] Constitutional Court, Decision 22/1981, 2 July 1981: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/22.

[119] Supreme Court, Decision 2708/2018, 17 July 2018: http://www.poderjudicial.es/search/AN/openDocument/7f60c64dbfa6aac2/20180720.

in relation to the right to request the extension of active life up to 70 years of age among health services personnel:

1. The general rule is the absence of a perfect subjective right to remain active beyond the compulsory retirement age. This was stated by the Constitutional Court in its Court Order 85/2013.[120]
2. On this basis, the Supreme Court considers that Article 26(2) of Law 55/2003 regulates the possibility of requesting the extension of the retirement age, which has been called a 'weakened right' (*derecho debilitado*), which is conditioned to what the Administration decides in the exercise of its power of self-organisation and attending to its needs.
3. This capacity for self-organisation of health administrations must be reflected in the 'human resources management plans' (hereinafter, HRMP) which are the 'basic instrument for their global planning' (according to Article 13(1) of Law 55/2003). They must specify the human resources needs of the health service in a reasoned manner. Based on these HRMP, administrations can deny the request to extend working life up to 70 years or limit it to a shorter period.
4. However, if the HRMP does not exist or has been declared null, the worker has the right to extend his active life until he/she is 70 years old, because the administration's argument to deny that worker's right can only be justified based on the HRMP. The reasons for denying the request to extend the working life must be based on the reasons provided by the HRMP; therefore, the refusal cannot be based on the mere administrative will, but on the HRMP, which is the instrument to which the law entrusts such concretion of that right (even if it is a weakened right) of the worker.

In summary, the right to prolong active life (established in Article 26(2) of Law 55/2003) is not a perfect right that can be understood as a right acquired by the worker, but a 'weakened right' but worthy unless there is a provision to the contrary in the HRMP. Without that HRMP, the right becomes a right that must be recognised.

For these reasons, some judgments of higher justice courts have ruled in favour of the administrations when they have denied a request to extend the active life of a worker based on the provisions of the HRMP.[121]

d) Retirement ages imposed by employers

In Spain, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible).

Historically, and in particular from 2015 onwards with the Workers' Statute law (RLD 2/2015), the 10th additional provision has entered into force. It had stated that 'clauses in collective agreements providing for the termination of the employment contract when the worker reaches the normal retirement age specified in the rules of social security are deemed null and void, whatever the extent and scope of these terms'. Subsequently, this rule was amended so that as of 2022, collective agreements may establish clauses that enable the termination of the employment contract due to the worker reaching the legal pensionable age established in the Social Security regulations, provided that the following requirements are met: a) the worker affected by the termination of the

[120] Constitution Court Order 85/2013, 23 May 2013: https://hj.tribunalconstitucional.es/docs/BOE/BOE-A-2013-5449.pdf.

[121] For example, judgment 2544/2018 of the Superior Court of Justice of the Basque Country[121] in the case of a worker in the Basque Health Service – Osakidetza – who requested to continue working but did not comply with some conditions formally established in the HRMP of Osakidetza. In other cases, the courts have found in favour of the workers because there is no HRMP or because the HRMP has been declared null. This is the case in the Supreme Court Decision 2328/2019,[121] which concerned a worker of the health service of the Autonomous Community of Aragon, whose HRMP has been declared null by the courts. Directive 2000/78 is not cited in any of these judgments nor are specific references made to age discrimination. The conditions are the same for women and men.

employment contract must meet the requirements laid down in the Social Security regulations for entitlement to 100 % of the ordinary retirement pension in its contributory form; b) the measure must be linked to coherent employment policy objectives expressed in the collective bargaining agreement, such as improving employment stability by transforming temporary contracts into permanent contracts, hiring new workers, generational replacement or any others aimed at favouring the quality of employment.

Finally, in 2021, Law 21/2021, of 28 December, on guaranteeing the purchasing power of pensions and other measures to reinforce the financial and social sustainability of the public pension system, amended Additional Provision 10 of RLD 2/2015.

In accordance with this new regulation, with the aim of favouring the extension of working life, collective agreements may establish clauses that make it possible to terminate the employment contract when the worker reaches an age of 68 years or over. The forced retirement of the worker may take place if the following requirements are met:

- That the worker affected by the termination of the employment contract is entitled to 100 % of the ordinary retirement pension in its contributory form.

- That the measure of termination of the contract is connected with the objective of generational replacement through the indefinite-term, full-time hiring of at least one new male or female employee.

In addition to the above, the new legislation provides that, 'exceptionally', with the aim of achieving real and effective equality between women and men by helping to overcome occupational segregation by gender, 'the limit in the previous section [Law 21/2021 establishes that collective agreements can establish forced retirement clauses but only from 68 years of age or over] may be lowered to the ordinary retirement age[122] set by the Social Security regulations when the employment rate of employed women affiliated to the Social Security in any of the economic activities corresponding to the functional scope of the agreement is less than 20 % of the people employed in those activities.'

Consequently, the regulation develops this provision on the economic activities to which the precept refers, as well as the criteria to be met by the person whose employment contract is terminated due to reaching the age set by the agreement in accordance with this second paragraph. In any case, the regulation reminds us that 'each termination of a contract in application of this provision must be accompanied by the simultaneous indefinite-term, full-time employment of at least one woman in the aforementioned activity.'

e) Employment rights applicable to all workers irrespective of age

The law on protection against dismissal and other laws protecting employment rights apply to all workers, irrespective of age, even if they remain in employment after attaining pensionable age or any another age (RLD 2/2015, Workers' Statute). This Law, which regulates dismissal proceedings, applies equally to all workers without distinction by age.

f) Compliance of national law with CJEU case law

In Spain, national legislation is in line with the CJEU case law on age regarding mandatory retirement.

[122] In the author's view, this should be understood as the ordinary pensionable age as established by law: in 2022, the pensionable age was 65 (if the worker had contributed for at least 37 years) or 65 years and 10 months (if the worker had contributed for less than that period) (General Social Security Act, Seventh Transitional Provision).

The CJEU judgment in *Palacios de la Villa v. Cortefiel*,[123] for example, explicitly accepted that Spanish legislation in this field is in compliance with Directive 2000/78/EC (López 2013).

4.6.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Spain, national law does not generally permit age to be taken into account in selecting workers for redundancy (RLD 2/2015, Workers' Statute, Article 4(2)). However, in the case of collective dismissals, the Workers' Statute allows for differences between groups of workers, if this is agreed between the social partners. Article 51(5) establishes that 'Through a collective agreement or agreement reached during the consultation period (which are mandatory and prior to collective dismissal), permanence priorities may be established in favour of groups, such as workers with family responsibilities, older than a certain age or persons with disabilities'.[124] These exceptions are reasonable and are justified by the objective characteristics of these groups.

In Spain, national law permits seniority to be considered in selecting workers for redundancy. Collective bargaining agreements may include clauses (agreed between the social partners) that recognise seniority for different issues within the company: salary bonus for seniority or in promotions or dismissals, for example.[125] Although not expressly included in Article 51(5) of the Workers' Statute, seniority can be taken into consideration because the list is not exhaustive.

b) Age taken into account for redundancy compensation

In Spain, national law provides compensation for redundancy (Workers' Statute, Articles 49-56). Theoretically, such compensation payments are not affected by the age of the worker, but in practice they are, because their level is linked to the length of time that the worker has worked for the company. For example, in case of dismissal for objective reasons, the worker is entitled to a 'compensation of twenty days per year of service' (Workers' Statute, Article 53(1). Years of service must be understood, following the consolidated doctrine of the Social Chamber of the Supreme Court,[126] to mean 'the entire duration of the contractual employment relationship' even in different types of labour contracts.

The current regulations on this matter are in line with Directive 2000/78. Actual practice in companies may also be said generally to conform to the directive, but in some cases indirect discrimination on the ground of age does occur, and should, where appropriate, be dealt with by the courts.

[123] Judgment of 16 October 2007, *Palacios de la Villa v. Cortefiel Servicios*, C-411/05: http://curia.europa.eu/juris/liste.jsf?language=en&num=C-411/05.

[124] These legal provisions do not guarantee that these groups are protected from dismissal, since they need to be included in the agreements between the social partners.

[125] See, for example, the collective agreement of Liberty Seguros, Compañía de Seguros y Reaseguros, SA, published in the *BOE* on 23 January 2019: https://www.boe.es/boe/dias/2019/01/23/pdfs/BOE-A-2019-777.pdf.

[126] Supreme Court, Social Chamber, Sentence No. 494/2018, 10 May 2018: https://www.iberley.es/jurisprudencia/sentencia-social-n-494-2018-ts-sala-social-sec-1-rec-2005-2016-10-05-2018-47818776.

4.7 Further exceptions necessary in a democratic society: Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5) Directive 2000/78)

In Spain, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive:

- Public Security
- Public Order
- Criminal Offences
- Protection of Health
- Protection of the rights and freedoms of others

4.8 Any other exceptions

In Spain, there are no other exceptions to the prohibition of discrimination (on any ground) provided in national law.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

a) Scope for positive action measures

In Spain, positive action is permitted in national law in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

The principle of 'positive action' is rooted in the Spanish Constitution: Article 14 formally recognises equality before the law without discrimination on any of the grounds listed in the Constitution, while Article 9(2) requires the public authorities to promote 'the conditions to ensure that the freedom and equality of individuals and of the groups that they form are real and effective'. The positive action required by Article 9(2) should not be regarded only as a 'legitimate exception', but as a guarantee that the principle of equality is to be made effective. In this respect, the Constitutional Court has repeatedly held that affirmative action is not to be seen as discriminatory. Rather, the court has interpreted that actions by public authorities to remedy the employment disadvantage of certain socially marginalised groups are required by a properly understood commitment to equality.

Positive action has been present in labour, educational and other provisions since the passing of the Spanish Constitution in 1978 (Cachón, 2004).

In Law 62/2003, which transposes the directives, Articles 30, 35 and 42 regulate positive action. Article 35 deals with discrimination in employment and in relation to occupation, and provides that, 'with a view to ensuring full equality on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation, the principle of equality shall not prevent maintaining or adopting specific measures in favour of certain groups in order to prevent or compensate for disadvantages that they may encounter'. Article 42 provides that 'collective agreements may include measures intended to fight against every form of employment discrimination, to encourage equality of opportunity and to prevent harassment on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation'.

Article 30 of the same Law, referring to the various spheres of employment included in Directive 2000/43 on the grounds of racial or ethnic origin, states: 'In order to guarantee full equality irrespective of racial or ethnic origin, the principle of equal treatment shall not prevent the maintenance or adoption of special measures benefiting certain groups, designed to prevent or to offset any disadvantages that they suffer as a result of their racial or ethnic origin'.

Mention should also be made of Law 15/2022, which complements Law 62/2003. Law 15/2022 also defines what positive action measures are: 'positive actions are considered to be differences in treatment aimed at preventing, eliminating and, where appropriate, compensating for any form of discrimination or disadvantage in its collective or social dimension. Such measures shall apply for as long as the discriminatory situations or the disadvantages that justify them persist, and shall be reasonable and proportionate in relation to the means of implementation and the objectives they pursue' (Article 6).

Based on this definition, Article 30 of Law 15/2022 promotes equal treatment and non-discrimination by requiring public authorities to adopt positive action measures on the grounds of discrimination provided for in the law and to promote policies to foster real and effective equal treatment and non-discrimination in relations between private individuals.

The Law adds that companies may undertake social responsibility actions consisting of economic, commercial, labour, welfare or other measures aimed at promoting conditions of equal treatment and non-discrimination within companies or in their social environment.

Still on business and employment, the Workers' Statute (Article 17(2)) stipulates that the Parliament may specify 'exclusions, reservations and preference' in employment for certain groups who are at a disadvantage in the labour market. Article 17(3) states that the Government 'may specify measures of reservation, duration or preference in employment'.

It should also be noted that collective bargaining may establish affirmative action measures to prevent, eliminate and correct all forms of discrimination in the field of employment and working conditions on the grounds set out in this Law. As part of the measures that, where appropriate, may be agreed within the framework of collective bargaining, Law 15/2022 states that objectives and mechanisms for information and periodic evaluation may be established jointly by companies and the legal representation of workers.

In the educational field, the Organic Law on Education of 2006 stipulates two regulations of interest in terms of 'principles'. On the one hand, Article 1 establishes that the Spanish education system is inspired by 'the principle of quality education' for all students, without any discrimination on grounds of birth, sex, racial, ethnic or geographical origin, disability, age, illness, religion or beliefs, sexual orientation or sexual identity or any other personal or social condition or circumstance (Article 1). On the other hand, Article 80 establishes 'the principle of equality in the exercise of the right to education' (which gives rise to the possibility of establishing positive action measures), and establishes in this sense that 'in order to render effective the principle of equality in the exercise of the right to education, the authorities shall develop compensatory actions aimed at persons, groups and territorial regions in unfavourable situations, and provide the necessary economic resources' (Article 80).

In the field of disability, there has been a wide range of positive measures since the implementation, in 1982, of Law 13/1982 on the Social Integration of Persons with Disabilities (now replaced by Law RLD 1/2013). The General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) includes such positive action measures in Articles 67 and 68. The aim of positive action is to grant the necessary assistance and protection to persons with disabilities who are more vulnerable,[127] to provide a quota system and other actions in favour of promoting the integration of persons with disabilities into employment, and to promote equality in order to allow the complete personal fulfilment of persons with disabilities and their total social integration (Article 42 of Law RLD 1/2013).

The General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) provides a series of positive measures to combat the discrimination suffered by persons with disabilities. The law defines positive action measures as: 'those specific measures oriented to prevent or compensate for disadvantages caused by disability and to accelerate or achieve de facto equality of persons with disabilities and their full participation in the areas of political, economic, social, educational, and cultural work, in response to different types and degrees of disability' (Article 2(g)).

Article 67 establishes that:

> '1) The public authorities shall take positive action measures to benefit persons with disabilities where there is likely to be a greater degree of discrimination, including multiple discrimination, or shall take positive action measures to benefit people who suffer a lesser degree of equal opportunity, such as for women, for children who require more support for the exercise of autonomy or decision making and who suffer

[127] Persons with disabilities who are more vulnerable are defined in RLD 1/2013 (Article 67(1)): 'persons with disabilities susceptible to being subjected to a greater degree of discrimination, including multiple discrimination, or to a lesser degree of equal opportunities, such as women [and] children, who need more support for the exercise of their autonomy or for free decision-making and those who suffer from a greater social exclusion, as well as persons with disabilities who habitually live in a rural environment.'

more acute social exclusion, and for persons with disabilities who usually live in rural areas.

2) Also, as part of the official policy of family protection, public authorities shall take positive action measures with respect to families when one of their members is a person with disabilities.'

Article 68 of RLD 1/2013 specifies the content of measures for positive action on the ground of disability; these measures may consist of additional support (economic support, technical support, personal assistance, specialised services, special support and services for communication) or rules, criteria or more favourable practices.

Furthermore, as mentioned above, a Draft Bill for the real and effective equality of trans people and for the guarantee of the rights of LGTBI people[128] is also being prepared: a state strategy for the social inclusion of trans people is to be adopted as part of this Draft Bill. Priority will be given to positive action measures in the fields of employment, education and health.

b) Quotas in employment for persons with disabilities

In Spain, national law provides quotas for the employment of persons with disabilities.

The General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) lays out different systems for workplace integration for persons with disabilities. One of them is integration into the ordinary work system by a quota system: at least 2 % of the workforces of public and private companies with 50 or more employees must be persons with disabilities (who have been officially recognised as having at least a 33 % impairment) (Article 42). For the public administration, RLD 5/2015 of 30 October 2015 establishes that 'In offers of public employment a quota will be applied of not less than 7 % of vacancies to be filled by persons with a disability ... by which 2 % of the staff employed by the state administration will be reached progressively, provided that they pass selection' (Article 59).

Companies have the possibility of avoiding the requirement to reserve quotas for workers with disabilities (by performing various actions specifically provided for in Law RLD 1/2013, Article 42, and Royal Decree 364/2005 of 8 April 2005, which regulates the alternative exceptional compliance of the reserve quota in favour of workers with disabilities - these measures do not include paying a fee per unfilled quota place) but, if they violate the legal obligation, they can be sanctioned by the Labour Inspectorate with fines of up to EUR 6 250 in total (RLD 5/2000 on Offences and Penalties in Social Matters, Articles 15 and 40). The annual report of the Inspectorate of Labour and Social Security does not provide inspection results in this area. There is no publicly available information regarding the enforcement of the quota in practice.

The Constitutional Court has recognised the legality of establishing a quota for persons with disabilities when selecting employees.[129]

[128] See: Preliminary Bill for the real and effective equality of trans people and for the guarantee of the rights of LGTBI people (*Anteproyecto de Ley para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI*), available at: https://www.newtral.es/wp-content/uploads/2021/07/APL-Igualdad-Trans-LGTBI-v4-def.pdf?x32658

[129] Constitutional Court, Decision 269/1994, 3 October 1994, http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/2786.

6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

a) Available procedures for enforcing the principle of equal treatment

In Spain, the following procedures exist for enforcing the principle of equal treatment: judicial, administrative and alternative dispute resolution such as mediation.

Judicial procedure

The Spanish Constitution provides that all fundamental rights are protected by the ordinary courts of law (Article 53). This protection will be made effective, in the first place, by a special preferential and summary procedure that is regulated by the main procedural laws for all types of jurisdiction: civil (Law 1/2000 of 7 January 2000 on Civil Procedure),[130] criminal (Criminal Procedure Law of 14 September 1882, modified by Law 8/2002 of 24 October 2002), labour (Law 36/2011 of 10 October 2011 regulating Social Jurisdiction) or administrative (Law 29/1998 of 13 July 1998 regulating the administrative courts).[131] Moreover, appeals for protection in respect of such rights may be lodged at the Constitutional Court once ordinary proceedings have been exhausted (Organic Law 2/1979 of 3 October 1979 on the Constitutional Court, modified by Organic Law 6/2007 of 24 May 2007). The Organic Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration (OL 4/2000) stipulates that foreigners are entitled to legal aid on the same conditions as Spaniards.

Conflicts regarding either private sector employment or the hired personnel of public entities (who are subject to labour law) are resolved by the social jurisdictional branch, composed of the specialised single-instance social and labour courts (*juzgados de lo social de única instancia)*, the first instance and appeal chambers specialising in social and labour law (*las salas de lo social de los Tribunales de primera y segunda instancia*), the regional high courts (*Tribunales Superiores de Justicia*), the National Court (Audiencia Nacional) and the social and labour chamber of the Supreme Court (Sala de lo social del Tribunal Supremo).

When the conflicts are due to an action by the administration that is subject to administrative and not labour law, the jurisdictional branch that is competent is the administrative jurisdiction (*jurisdicción contencioso-administrativa*), which requires the prior exhaustion of whatever administrative procedures there may be, and which is formed by the first-instance and appellate administrative courts (*juzgados y tribunales contenciosos administrativos, en primera y segunda instancia*), and by the administrative chamber of the Supreme Court (sala de lo contencioso-administrativo del Tribunal Supremo).

The Supreme Court (Tribunal Supremo), the highest instance within the ordinary judiciary, is responsible for judging appeals in order to reconcile contradictory decisions by lower courts. Its decisions are binding and thus constitute a source of law; therefore, its judgments should be followed by the lower courts.

All the cited judicial procedures are binding but are subject to possible appeals to higher courts.

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[130] Law 1/2000 of 7 January 2000 on Civil Procedure (*Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil*), *BOE*, 8 January 2000: http://www.boe.es/boe/dias/2000/01/08/pdfs/A00575-00728.pdf.

[131] Law 29/1998 of 13 July 1998 regulating the administrative courts (*Ley 29/1998, de 13 de julio, reguladora de la Jurisdicción Contencioso administrativa*), *BOE*, 14 July 1998: http://www.boe.es/boe/dias/1998/07/14/pdfs/A23516-23551.pdf.

Administrative procedure

There are administrative procedures for civil and social matters that can be used by all victims of discrimination, irrespective of the ground concerned. Victims of discrimination may also appeal to the ombudsmen, at both national and regional level, when the issue concerns acts by public bodies.

In matters of employment and social security, victims of discrimination may appeal to the Employment Inspectorate (Law 42/1997 of 14 November 1997 on the Inspectorate of Labour and Social Security) and in matters of education to the Education Inspectorate (Organic Law 2/2006 of 3 May 2006 on Education). This applies to both employment and education with regard to both the private and public sectors.

The administrative procedures are binding but can be appealed to the courts.

Conciliation procedure

There are also conciliation procedures for civil and social matters.

As regards employment, Articles 63 to 68 of Law 36/2011 of 10 October 2011 regulating Social Jurisdiction provide a compulsory conciliation procedure, which is to be followed before any judicial appeal is lodged.

The General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) establishes a voluntary system of arbitration to solve conflicts that may arise in matters of equal opportunities and discrimination (Article 74).

Conciliation procedures are not binding.

b) Barriers and other deterrents faced by litigants seeking redress

There are costs and other barriers that may act as deterrents to litigants seeking redress.

In Spain, it is mandatory in a lawsuit (although not in conciliation procedure) to use a lawyer (who defends the individual claimant or defendant) and a solicitor (who represents them and is responsible for all formal issues in court), which significantly complicates the process. Indeed, court proceedings are often long and complex. If the litigants win the action, the judge, following the guidelines established in Article 394 of Law 1/2000 on Civil Procedure, may require the respondent to pay their lawyer's costs.

If the litigants cannot afford a lawyer, they may request a duty lawyer free of charge, as the Spanish Constitution (Article 119) guarantees legal aid for those who 'have insufficient means to litigate.' Legal aid is governed by Law 1/1996 of 10 January 1996 on Free Legal Aid. However, Royal Decree-Law 3/2013 of 22 February 2013, amending the fees regime for the administration of justice and the legal aid system, amended Law 1/1996 and tightened the income and wealth conditions for entitlement to free legal assistance. In addition, this law raised fees significantly for appeals before the courts, which could pose difficulties in securing adequate access to justice, especially in the case of resources for the higher courts.

The costs of legal aid are assumed mainly by the regional Governments (not by the national Government).

In Spanish law, the time period for pursuing proceedings is equivalent to the time limit for submitting legal actions in the different jurisdictions. Therefore, personal actions in civil proceedings must be started within 15 years, unless there is a provision regarding a special time limit (Article 1964, Civil Code). No personal action may be started in civil proceedings

once the aforementioned time limit has expired. In proceedings relating to employment and occupations, time limits for legal actions expire within 20 days, one year or three years, depending on the type of action being taken (Articles 59 and 60 of the Worker's Statute). In administrative court proceedings, the appeal in front of the court must be lodged within two months in all cases, except in cases of implicit (agency) action (*silencio administrativo*) (i.e. when the public administration fails to take action) where the term is of six months, or in cases of irregular material intervention by the administration (*vía de hecho*), where the term expires within 10 or 20 days if there has not been a request from the administration. The day on which these terms start depends on the action in question (see Article 46 of Law 29/1998 Regulating the Administrative Courts). In administrative matters, the terms and conditions are provided by specific laws.

c) Number of discrimination cases brought to justice

In Spain, statistics are available on the number of cases related to discrimination that are brought to justice.

Following the recommendation made by the European Commission against Racism and Intolerance (ECRI) in 2011 on the collection and publication of data on discrimination in Spain, the Spanish Government approved its 'Comprehensive strategy against racism, discrimination, xenophobia and related intolerance' (November 2011), and the Ministry of the Interior approved a 'Protocol of action for the Security Forces for hate crimes and convicts that violate the legal norms of discrimination' (2014). The Ministry of the Interior publishes data on hate crimes and discrimination (the source of the data does not allow differentiation between hate crimes and discriminatory acts); these data cover complaints reported to the police and indicate whether they have been resolved by the police (when the police have been able to identify those responsible, that does not necessarily mean that the individuals were prosecuted and convicted of a hate crime). In 2016, 1 272 complaints were made to the police, with 1 419 complaints in 2017, 1 476 in 2018, 1 598 in 2019 and 1 401 in 2020 and 1 802 in 2021.

The grounds for the complaints were as follows:

Reason for making a complaint	Complaints						Complaints resolved by police					
	2016	2017	2018	2019	2020	2021	2016	2017	2018	2019	2020	2021
Religion	47	103	69	66	45	63	33	62	30	39	25	36
Disability	262	23	25	26	44	28	200	19	20	20	26	20
Sexual orientation	230	271	256	278	277	466	166	204	182	199	212	314
Racism/Xenophobia	416	524	531	534	485	639	254	323	334	395	386	465
Anti-Gypsyism	*	*	*	14	22	18	*	*	*	10	14	16
Ideology	*	*	*	596	326	326	*	*	*	259	161	169
Anti-Semitism	*	*	*	5	3	11	*	*	*	2	1	4
Others	317	498	714	79	132	173	164	251	319	717	102	109
Total	1 272	1 419	1 476	1 598	1401	1802	817	859	885	988	927	1133

Others: aporophobia; gender discrimination; generational discrimination; discrimination on grounds of illness

*These fields were included in 'Others'; in 2019, 2020 and 2021, they have been differentiated.

Source: Author's analysis of data in statistical yearbooks of the Ministry of the Interior (2016, 2017, 2018, 2019 and 2020, released in the year 2021).[132] Data for 2021 has been published in 2022[133].

In June 2010, the Council for the Elimination of Racial or Ethnic Discrimination launched the Network of Centres of Assistance for Victims of Racial or Ethnic Discrimination, involving seven NGOs. These entities are members of the Council for the Elimination of Racial and Ethnic Discrimination's Racial and Ethnic Discrimination Victim Assistance and Guidance Service. During 2021, this Assistance and Guidance Service registered a total of 860 (100 %) cases, of which 528 (61 %) were individual cases (307 in 2020), and 332 (39 %) were collective (262 in 2020)[134].

d) Registration of national court decisions on discrimination cases

In Spain, discrimination cases are not registered as such by national courts. Consequently, data are not available (apart from the data held by the Ministry of the Interior and by the Council: see previous paragraphs).

The courts' databases collect the judgments of the main courts without publishing them according to their subject matter (e.g. in discrimination cases). Each court judgment is accompanied by a summary. When accessing the databases, the reader must consult the summary to check whether the case involves discrimination. No option or application is available that allows direct access to summaries that incorporate cases dealing with discrimination. A search for summaries and judgments must be conducted beforehand.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

a) Engaging in proceedings on behalf of victims of discrimination (representing them)

In Spain, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination.

On racial or ethnic origin, Law 62/2003 (Article 31) provides that 'legal entities legally authorised to defend legitimate collective rights and interests may engage on behalf of the claimant, with his or her approval, in any judicial proceedings in order to make effective the principle of equal treatment based on racial or ethnic origin'. This article means, therefore, the legitimation of legal entities to engage in "civil proceedings" and in "administrative court proceedings", but not in labour proceedings or in pre-judicial administrative matters. This legitimation may be interpreted as widening the provisions regulating the procedural defence in Law 1/2000 of 7 January 2000 on Civil Procedure (Article 11 and 11-*bis*) and in Law 29/1998 of 13 June 1998 Regulating the Administrative Courts (Articles 18 and 19). The legitimation (in Law 62/2003) only applies, however, in cases of discrimination on the grounds of racial or ethnic origin and only in fields other than employment.

Nevertheless, in 2022 this regulation was strengthened through Law 15/2022, which comprehensively regulates the principle of equal treatment and non-discrimination. It should be remembered that this Law establishes as grounds for discrimination birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or

[132] See: https://oficinanacional-delitosdeodio.ses.mir.es/publico/ONDOD/publicaciones.html?type=pcaxis&path=/Datos6/&file=pcaxis.
[133] See: https://www.interior.gob.es/opencms/pdf/servicios-al-ciudadano/delitos-de-odio/estadisticas/INFORME-EVOLUCION-DELITOS-DE-ODIO-VDEF.pdf.
[134] See: https://igualdadynodiscriminacion.igualdad.gob.es/novedades/novedades/2022/pdf/22_07_Memoria_anual_de_resultados_2021.pdf.

identity, gender expression, illness or health condition, serological status and/or genetic predisposition to suffer pathologies and disorders, language, socio-economic situation, or any other personal or social condition or circumstance. On this basis, Article 29 of Law 15/2022 states that 'political parties, trade unions, professional associations of self-employed workers, consumer and user organisations and legally constituted associations and organisations whose aims include the defence and promotion of human rights shall be entitled to defend the rights and interests of their affiliated or associated persons or users of their services in civil and contentious-administrative legal proceedings and also in social proceedings, provided they have their express authorisation'. Consequently, the entities described above can defend a person who is a victim of discrimination in civil, contentious-administrative and social proceedings, if he/she is a member, associate or 'user' of their services and gives his/her express authorisation to do so.

Thus, the aforementioned entities may be considered as 'interested parties' in administrative procedures in which the administration has to pronounce itself in relation to a situation of discrimination provided for in this Law, as long as they have the authorisation of the person or persons affected (Article 31.2 of Law 15/2022).

Exceptionally, such authorisation shall not be necessary where the persons concerned are an indeterminate number or are difficult to identify, notwithstanding the fact that those who consider themselves affected may also participate in the procedure. Consequently, the aforementioned entities (professional associations, trade unions, etc.) will have legal standing to defend non-discrimination interests when indeterminate groups of people have been affected.

On disability, the General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013), which applies to access to and the supply of goods and services (telecommunications and the information society, urbanised public spaces, infrastructure and construction, transport, goods and services to the public, relations with public administrations, the administration of justice, cultural heritage) and to employment, provides, in Article 76, that legal entities that are legally authorised to defend legitimate collective rights and interests may engage on behalf of and in the interests of the person who authorises them to do so in proceedings in order to make effective the principle of equal treatment, defending the individual rights of those persons to whom the effects of this engagement will apply. This engagement does not affect the individual standing of victims of discrimination and may be interpreted with respect to its inclusion in pre-judicial administrative proceedings.

Articles 22 and 64 of RLD 1/2013 provide that the law's provisions regarding the safeguard and effectiveness of the measures contained within it have a supplementary character in respect of the provisions that are contained in other specific laws regarding equal treatment in the field of employment and occupation.

In the field of employment, the provisions of the Law on Social Jurisdiction remain in force for the defence of victims of discrimination on all the grounds contained in the directives. Article 20 of Law 36/2011 of 10 October 2011, the Law on Social Jurisdiction, in its regulation of representation and procedural defence, stipulates that trade unions may appear in court on behalf of and in the interests of member workers who authorise them to do so in order to defend their individual rights. However, this Law provides only that the law shall apply to trade unions only, although the aforementioned in relation to Law 15/2022 and the legitimisation of associations and entities to intervene in social processes must be taken into consideration. Workers who are not members of any trade union may be parties to proceedings by themselves or may confer their representation to the solicitor's agent, to a social worker member of a professional organisation or to any person who is fully able to exercise his/her civil rights – or, if they wish, to a solicitor. The assistance of a lawyer is not mandatory during the pre-judicial proceedings (Article 21(1) of Law 15/2022).

Legal entities may also act on behalf of victims of discrimination in criminal proceedings. The Criminal Code of 1995 (modified by Organic Law 1/2015), under Articles 314, 510, 511 and 512, provides that crimes of discrimination are punishable by imprisonment and fines (Articles 314 and 510) or by special disqualification from the exercise of public service, a profession etc. (Articles 511 and 512). Article 510 also punishes hate crimes (in 2022, Organic Law 6/2022, of 12 July, complementary to Law 15/2022, modified the Criminal Code in its Article 510) (For further information, see Section 6.5).

Claims in respect of discrimination are normally processed on behalf of and with the authorisation of the victim by an organisation, such as NGOs working with Roma or immigrants, in cases of discrimination on the grounds of racial or ethnic origin, or by organisations (for instance, human rights organisations, or entities or associations that fight against racism, etc.) working with other groups that may have been discriminated against on the grounds of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, gender expression, illness or health condition, serological status and/or genetic predisposition to suffer pathologies and disorders, language, socio-economic situation, or any other personal or social condition or circumstance.

Under national law, the terms and conditions that are required in order for associations to engage in proceedings on behalf of claimants are regular ones. That means that there are no special terms and conditions that must be met for associations to engage in these proceedings.

In order to acquire legal status, trade unions must, according to Article 4 of Organic Law 11/1985 of 2 August 1985 on Trade Union Freedom, be registered with the corresponding public office. According to Article 35 of the Civil Code, public legal entities of public interest and private legal entities do not need to be registered to be considered as constituted legally or in a valid way. With regard to private legal entities, Chapter II of Organic Law 1/2002 of 22 March 2002, which regulates the rights of associations, contains the conditions that such associations must meet in order to be legally constituted. Associations that have been legally constituted have legal status and have the right to register, but they are not obligated to register in the register of associations.

Law 62/2003, RLD 1/2013 and Law 15/2022, as mentioned above, provide only that legal entities must be legally authorised to defend legitimate collective rights and interests in order to be able to engage in proceedings on behalf of the claimant(s) with his/her/their approval. The proof of the authorisation is in their valid constitution according to OL 1/2002. The legitimate interest relates to the victim on whose behalf the association may engage in any judicial procedure (see section d, below, regarding class actions to understand the difference between the legitimisation of associations under Law 62/2003 and Law RLD 1/2013 in order to act on behalf of victims of discrimination and the provisions relating to consumers and users associations under Article 11 of the Law on Civil Procedure).

According to the jurisprudence of the Constitutional Court and the Supreme Court, a legitimate interest may be held by those who find themselves in an individualised legal situation that is different from the legal situation of other citizens with respect to the same matter. 'Legitimate interest' means the capacity of being a party in the proceedings, and it focuses on the existence of a qualified and specific interest that relates to obtaining an advantage or avoiding or eliminating potential harm if the lawsuit filed by the party is upheld by a judgment.[135] Therefore, the upholding of the lawsuit must have legal utility for the claimant.[136] The legitimate interest may be individual or collective, direct or indirect,

[135] Supreme Court, Decision 2733/2003, 4 March 2003.
[136] Constitutional Court, Decisions 60/1982 of 11 October 1982 and 7/2001 of 7 January 2001, among others: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/102; http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/4303.

present or future (if the harm to be avoided or eliminated, and against which the lawsuit has been filed, is imminent), but it must be concrete and true (real). This means that the legitimate interest of a party in the proceedings presupposes that the judgment has had or may have a direct or indirect impact on their legal situation. This impact must be real and not just hypothetical.[137]

Law 62/2003, Law RLD 1/2013 and Law 15/2022 say only that the entities would need the authorisation of the victims to act on their behalf, but they do not specify the form of the authorisation.

The same happens in Article 20 of Law 36/2011 on Social Jurisdiction. It appears that the general regulations for all jurisdictions regarding the authorisation of the solicitor's agent and the solicitor to engage in proceedings on behalf of the victim of discrimination may apply to the authorisation of the entities acting to this end, given that such an entity engages in proceedings through a solicitor member of the association, who will act only with the approval of the claimant (see Articles 24 and 25 of Law 1/2000 on Civil Procedure). However, Article 20(2) of the Law on Social Jurisdiction provides that, in the lawsuit, the trade union must prove the membership of the worker and must prove that it has communicated to the member worker its intention to open the proceedings. The authorisation of the worker member will then be presumed, except when there is a statement by the worker denying it.

In cases where obtaining formal authorisation is problematic because the victim lacks the capacity to sue – for example, in the case of minors or persons under guardianship - the general regulations settled in Articles 7 and 8 of Law 1/2000 on Civil Procedure may apply in all jurisdictions (Article 16(4) of the Law on Social Jurisdiction, Article 18(1) of Law 29/1998 Regulating the Administrative Courts). Article 7 of Law 1/2000 on Civil Procedure provides that natural persons who lack capacity to sue must appear at the trial by means of a representative or with the assistance, authorisation or defence required by law. If nobody represents or assists the natural person in appearing at the trial, the court, by judicial order, will designate a defence lawyer to assume representation and defence until there is another person who can assume representation or assistance (Article 8 of Law 1/2000 on Civil Procedure). The authorisation to engage in proceedings on behalf of a victim who lacks capacity to sue will be given by his/her representative or by the person who must assist, authorise or defend him/her in compliance with the law. Only individuals holding a law degree can defend a person in court.

Some civil society organisations are active in this field, are visible and stimulate public discourse on equality, but the number of litigations on discrimination cases is small.

b) Engaging in proceedings in support of victims of discrimination (joining existing proceedings)

In Spain, associations, organisations and trade unions are not entitled to act 'in support' of victims of discrimination.

Article 31 of Law 62/2003 includes the words 'on behalf' ('on behalf of the claimant, with his or her approval'), but not 'or in support', as stated in Article 7(2) of Directive 2000/43. Neither may associations intervene in support of the claimant in civil cases (Law 1/2000, Articles 11 and 11-*bis*).

Law 15/2022 provides for similar regulation. As previously mentioned, political parties, trade unions, professional associations of self-employed workers, consumer and user organisations and legally constituted associations and organisations whose aims include the defence and promotion of human rights 'shall be entitled to defend' the rights and

[137] Supreme Court, Decision 873/2003, 11 February 2003.

interests of their affiliated or associated persons or users of their services in civil and contentious administrative legal proceedings and also in social proceedings, provided they have their express authorisation (Article 29). This provision says nothing about acting in support of the victim, only in relation to the defence of their rights and interests, if the relevant organisation is authorised to do so. That is to say they can defend the interests of individuals who are members of the associations, but only if they are authorised to do so by those individuals.

c) *Actio popularis*

In Spain, national law allows associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (*actio popularis*).

Under Spanish law, *actio popularis* is a constitutional right – not a fundamental right - that must be developed by a law that may limit it. Under Spanish law, *actio popularis* is only possible in criminal proceedings. Nevertheless, there are already many voices in this area who defend the thesis of the exercise of *actio popularis* in administrative court proceedings, and also constitutional jurisprudence, in which this possibility has been recognised. At the moment, outside the criminal law, *actio popularis* in administrative court matters has only been recognised in the case of the Zoning Act of 20 June 2008. However, for the purpose of this report, we shall concentrate only on *actio popularis* in criminal law.

Actio popularis in criminal proceedings is provided for under Article 101 of the Law regulating Criminal Procedure. *Actio popularis* may only be exercised against public crimes and, under Spanish law, most crimes, including discrimination crimes, are public. The Constitutional Court has stated[138] that not only private but also public legal entities may be considered as citizens in order to interpret the possibility of exercising *actio popularis*. Legal entities may therefore exercise *actio popularis* in cases in which discrimination or a hate crime (see above) has been committed.

d) Class action

In Spain, national law does not allow associations, organisations and trade unions to act in the interest of more than one individual victim (class action) for claims arising from the same event.

It is not possible for associations to act through a class action in the interest of more than one individual victim of discrimination for claims arising from the same event. Apart from under the provision in Article 11 of Law 1/2000 on Civil Procedure, which allows consumers' and users' associations to take action in the form of a quasi-class action to protect the rights and interests of consumers and users who are members of these associations, as well as to protect the general interests of consumers and users, class actions or other forms of lawsuit similar to them are not allowed in civil proceedings under Spanish law (Carrasco and González 2001).

Although the texts of Article 76 of RLD 1/2013 and Article 31 of Law 62/2003 deal with the defence of legitimate collective rights and interests, and Article 17 of the Law on Social Jurisdiction mentions the possibility of trade unions and employers being authorised to defend their own financial and social interests, this should not be misinterpreted as allowing for the possibility of class actions in civil proceedings as, in all these cases, the wording is very different from the provisions of Article 11 of the Law on Civil Procedure.

[138] Constitutional Court, Decision 175/2001, 26 July 2001, http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/4471.

Finally, not before the courts of law, but in proceedings before the public administration (e.g. when a public administration is investigating a case of discrimination), Law 15/2022 establishes that trade unions, professional associations of self-employed workers, consumer and user organisations and legally constituted associations and organisations whose purposes include the defence and promotion of human rights may be considered as 'interested parties in administrative proceedings' (as interested parties, those entities may receive all the information arising from the procedure) in which the administration has to pronounce itself in relation to a situation of discrimination, provided they have the authorisation of the person or persons concerned. However, the legal precept also states that this authorisation will not be necessary when the persons affected are an undetermined or difficult to determine plurality, without prejudice to the fact that those who consider themselves affected may also participate in the procedure (Article 31, Law 15/2022).

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

In Spain, national law requires a shift of the burden of proof from the complainant to the respondent.

The basic law of reference in this field is the Law on Civil Procedure (Law 1/2000). This law regulates the burden of proof in court and provides, as a general rule, that the burden of proof is for the claimant (Article 217(2)) but sets the shift in the burden of proof in certain cases (Articles 217(3), 217(4) and 217(5)). The law also establishes that 'the court shall consider the availability and ease of proof corresponding to each of the parties to the dispute' (Article 217(6)). The reversal of the burden of proof under Law 1/2000 has been qualified by the court, which has stated that this fails to be a real reversal of the burden of proof, as both parties have obligations. That is, once the claimant proves 'the existence of discrimination-founded indications' (i.e. the probability), it is for the defendant to prove 'the justification of the measures adopted and their proportionality'.[139]

In the field of anti-discrimination law, the most important provisions are contained in Law 62/2003, RLD 1/2013 and Law 15/2022:

- General burden of proof on ground of discrimination by racial or ethnic origin: Law 62/2003, which transposes EU Directives 2000/43 and 2000/78 in Spain: 'In those civil and administrative proceedings in which from the facts alleged by the claimant one may conclude the existence of well-founded evidence of discrimination on the ground of racial or ethnic origin, it shall be for the respondent to give an objective and reasonable and sufficiently proven justification of the measures adopted and their proportionality' (Article 32).
- Law 15/2022 provides that when the claimant in a judicial or administrative proceeding alleges discrimination and provides well-founded evidence of its existence, it is up to the defendant or the party to whom the discriminatory situation is imputed to provide an objective and reasonable justification, sufficiently proven, of the measures adopted and their proportionality. To this end, the judicial or administrative body may, of its own motion or at the request of a party, request a report from the public bodies competent in matters of equality.
- Burden of proof in the field of employment on ground of discrimination by racial or ethnic origin, religion or belief, disability, age or sexual orientation: Law 62/2003 provides that: 'In those civil and administrative proceedings in which from the facts alleged by the claimant one may conclude the existence of well-founded evidence of discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation (in the employment field), it shall be for the respondent to give an objective and reasonable and sufficiently proven justification of the measures adopted and their proportionality' (Article 36).

[139] See, for example, the judgment of the Superior Court of Justice of Galicia of 23 November 2012.

- General burden of proof on ground of discrimination by disability: the General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) establishes a shift in the burden of proof when there is evidence of discrimination based on disability: 'In those proceedings in which from the facts alleged by the claimant one may conclude the existence of well-founded evidence of discrimination on the ground of disability, it shall be for the respondent to give an objective and reasonable and sufficiently proven justification of the conduct and the measures adopted and their proportionality' (Article 77).
- National law does not provide clearly for a shift in the burden of proof for claims relating to reasonable accommodation. However, Article 77 of Law RLD 1/2013 could allow a judge to shift the burden of proof if a person with disabilities is demanding the right to reasonable accommodation.

Article 40 of Law 62/2003 amended the existing labour standard procedure at the time, and the current law on social litigation procedure (Law 36/2011) also established a shift in the burden of proof. Article 96 of Law 36/2011 states that: 'In those proceedings in which allegations exist, on the part of the claimant, of indications which are founded in discrimination for reason of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, it shall rest with the respondent to provide sufficient proof of the objective and reasonable justification of the measures taken and of their proportional nature'. This article is applied increasingly widely in employment cases. For example, it began being applied in cases of sexual harassment and bullying when bullying was related to gender; but it now also applies in cases of bullying in general.

There is an important difference in the rules on the burden of proof on different grounds. In the case of discrimination on the grounds of sex, in order for a shift in the burden of proof to be produced, the standard requires only that the claimant's claims are based on discriminatory actions (or omissions/the failure to act, that can be considered discriminatory 'actions') based on sex: 'In proceedings in which the plaintiff's claims are based on discriminatory actions based on sex, it is for the defendant to prove the absence of discrimination in the measures adopted and their proportionality' (Article 13 of Organic Law 3/2007 and Article 217(5) of Law 1/2000). However, for all other grounds, anti-discrimination laws require that one may conclude from the facts alleged by the claimant that well-founded evidence of discrimination exists. That is, in cases of discrimination on grounds other than sex, there is a requirement for the claimant to present facts, whereas in the case of discrimination on the ground of sex, it appears from the literality of the law that the courts should always apply a shift in the burden of proof.

The Constitutional Court has established case law on the burden of proof, which should avoid this potential difference between discrimination based on sex and other grounds of discrimination. The most recent judgment on this matter by the Court (STC 31/2014)[140] recalled its consistent doctrine in relation to a case of sex discrimination (after the coming into force of OL 3/2007). The Court noted that, in order for a reversal of the burden of proof to occur, it 'is not enough simply for the actor to qualify the measure as a discriminatory measure'; it is also necessary 'to establish the existence of evidence that generates reasonable suspicion, an appearance or a presumption in favour of its claim'. Only then, when the latter happens, the defendant assumes 'the burden of proving the existence of sufficient real and serious reasons to qualify the decision as reasonable' (STC 98/2003).[141]

[140] Constitutional Court, Decision 31/2014, 24 February 2014: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/23819.
[141] Constitutional Court, Decision 98/2003, 2 June 2003: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/4873.

We should briefly recall what the Constitutional Court stated in STC 144/2006[142] (and repeated in STC 31/2014): 'Any facts that are clearly indicative of the likelihood of injury of a substantive right, and those that have sufficient entity to reasonably open the hypothesis of an infringement of a fundamental right, will have probative aptitude ... But they must unavoidably exceed the minimum threshold of that necessary connection, because the claim cannot be based on purely rhetorical arguments or lack of accreditation of core elements for the connection itself with the claim'.

Therefore, a literal interpretation of the rules in Spain gives a greater facility for a shift in the burden of proof in sex discrimination cases (Article 13 of Law 3/2007 and Article 217(5) of Law 1/2000). However, the Constitutional Court (and the Supreme Court) have established a common doctrine as to the rules that should govern the shift in the burden of proof in cases of discrimination on any grounds, and if there has been a violation of fundamental rights.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

In Spain, there are legal measures of protection against victimisation (Law 62/2003 provides for this protection in the field of employment). In 2022, Law 15/2022 extended this protection against retaliation to all the areas it covers, beyond employment. For the purposes of this Law, victimisation means any adverse treatment or adverse consequence that a person or group of which he or she is a member may suffer for intervening, participating or collaborating in an administrative proceeding or judicial process aimed at preventing or bringing to an end a discriminatory situation, or for having filed a complaint, claim, denunciation, lawsuit or appeal of any kind with the same object.

Before the transposition was carried out, the Workers' Statute (Article 55(5)) declared those dismissals that were related to any of the grounds of discrimination that are covered by the Constitution or by the legal system, or which entailed the violation of workers' fundamental rights and freedoms, to be invalid.

Law 62/2003 (Article 37) introduced changes to the Workers' Statute and to Law 5/2000 on Offences and Penalties in Social Matters. The version of Article 17(1) of the Workers' Statute stipulates the nullity of administrative regulatory provisions, clauses in collective agreements or contracts, agreements or unilateral decisions of an employer that has discriminated on all the grounds of the directives. Furthermore, a paragraph was added to Article 17(1), which states that 'the decisions of an employer that amount to adverse treatment of workers as a reaction to a complaint within the enterprise or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment and non-discrimination shall likewise be void of effect.'

Similarly, Law 62/2003 (Article 41) introduced modifications to Law 5/2000 on Offences and Penalties in Social Matters. Article 8 of Law 5/2000 contains a list of very serious infractions in the area of employment. With the revision introduced by Law 62/2003, the amended Article 8(12) covers – in addition to discriminatory decisions – decisions that 'amount to adverse treatment of workers as a reaction to a complaint within the enterprise or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment and non-discrimination.'

There are no legal provisions concerning the victimisation of persons other than the claimant, as might be the case for witnesses, but judges should also apply victim protection to them.

[142] Constitutional Court, Decision 144/2006, 8 May 2006: http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/5746.

There is a full reversal of the burden of proof when victimisation is directed towards a trade union representative if the worker claims 'anti-union conduct' by the employer (STC 2/2009).[143]

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) Applicable sanctions in cases of discrimination – in law and in practice

Prior to 2022, the sanctions regime was only applicable in Spain in the field of employment for all the grounds (RLD 5/2000) and for the ground of disability in all fields (RLD 1/2013), but not in the other fields covered by Directive 2000/43 on grounds of racial or ethnic origin, except in the Criminal Code (Organic Law 10/1995, Article 512, that judges must consider whether can be applied in some cases of discrimination).[144] As a result, Spanish legislation only partially complied with the obligation to establish sanctions against discriminatory acts, because it established sanctions for all grounds only in the area of employment.

Since 2022, this situation has been modified in accordance with Law 15/2022. The regulation set out in Title IV (Articles 46 to 52), which establishes a specific regime of infringements and sanctions in matters of equal treatment and non-discrimination, must be considered a new development, thus making up for an insufficiency detected in the prohibition of discrimination in certain sectoral areas covered by Law 62/2003, which, in the opinion of the author of this report, made it ineffective.

With regard to the infringement and sanctioning regime, it must be said that, first, Law 15/2022 attributes to itself a supplementary role by providing for preference in the application of the sanctioning regime that is established in those Autonomous Communities that have legislated on equal treatment and non-discrimination. However, it also leaves aside the infringing and punishable provisions established in two sectoral legislations that until now included this regime; namely, discrimination of persons with disabilities and the field of employment. This means that in two fields, that of persons with disabilities, and in the field of employment, the sanctions to be imposed and the procedure to be followed are those set out in their specific regulations (those on disability and employment), and not those provided for in Law 15/2022. In the opinion of the author of this report, Law 15/2022 would apply to sanctions where specific employment or disability laws do not regulate an issue that is regulated in Law 15/2022, for example multiple discrimination. Thus, the law provides that in the first case, the provisions of the Consolidated Text of the General Law on the Rights of Persons with Disabilities and their Social Inclusion, approved by Royal Legislative Decree 1/2013 of 29 November, shall apply. In the second case, regarding the employment sphere, the applicable regime will be that regulated by the Law on Offences and Penalties in the Social Order, with revised text approved by Royal Legislative Decree 5/2000 of 4 August 2000.

Law 15/2022 classifies offences as minor, serious and very serious, with the former having a residual impact depending on the type of offence but certainly intense in terms of the penalty imposed. Thus, in relation to minor infringements, which may entail an administrative fine of between EUR 300 and EUR 10 000, it is envisaged that these are those which involve 'formal' irregularities that do not comply with the provisions of the

[143] Constitutional Court, Decision 2/2009, 12 January 2009: http://hj.tribunalconstitucional.es/HJ/docs/BOE/BOE-A-2009-2491.pdf. The shift in the burden of proof is not applied in all types of victimisation cases.

[144] Law 62/2003, which transposed the directives, modified Law 5/2000 and the disability law in force at the time (Law 13/1982; replaced by RLD 1/2013) to better comply with the directives, mostly by making it more evident that discrimination on the grounds specified by the directives, including harassment and victimisation, is a very serious infraction.

Law, on the cumulative condition that they do not generate or contain a discriminatory effect or are not motivated by a discriminatory reason in the terms envisaged in the Law.

For their part, serious infringements include several cases, the most general of which considers as such acts or omissions that constitute direct or indirect discrimination, by association, by mistake, as well as those that constitute an inducement, order or instruction to discriminate against a person on the grounds or motivations set out in Article 2.1 of Law 15/2022, in relation to another person in an analogous or comparable situation. In addition, they cover any retaliatory conduct within the meaning set out in Article 6 of the Law.

The penalty attached to serious infringements is between EUR 10 001 and EUR 40 000. It should be noted, however, that in cases of minor or serious offences, the financial penalty may be replaced by the provision of unpaid personal cooperation in activities of public utility, with social interest and educational value, or in work to repair the damage caused or to support or assist the victims of acts of discrimination; by attending training courses or individualised sessions, or by any other alternative measure aimed at raising the offender's awareness of equal treatment and non-discrimination, and at repairing the moral damage of the victims and the groups affected (Article 50).

Finally, Article 47.4 of the Comprehensive Law provides that acts or omissions that constitute multiple discrimination are considered very serious, as well as the harassment behaviours foreseen in Article 6. This will result in a fine of between EUR 40 001 and EUR 500 000.

As mentioned above, in the field of sanctions, the law does not mention any specific sanctions for intersectional discrimination, i.e. the law regulates intersectional discrimination, but does not provide for sanctions in case it occurs.

Field of employment in all grounds

The Law on Offences and Penalties in Social Matters (RLD 5/2000 of 4 August 2000) establishes financial sanctions for offences in employment and social matters by natural or legal persons or by private and public sector employers (when these infractions affect employees in the service of the various tiers of public administration), for employment relations (Articles 5-10) and for employment (Articles 14-17), and it also establishes responsibilities and further sanctions (Articles 39-41). In view of the duty regarding those whose rights are infringed or affected, the RLD sets out three types of seriousness of an offence: 'minor', 'serious' or 'very serious'. The penalties for these three types of seriousness of an offence can be imposed to three different degrees: minimum, average and maximum. The amounts of the sanctions range from a minimum of EUR 60 to a maximum of EUR 187 515. The level of the fine is set in consideration of factors such as negligence and the intention of the offender, fraud or collusion, failure to abide by previous warnings and requests by the inspectorate, business turnover, the number of workers or other persons concerned, harm caused, and quantity defrauded. Additionally, some very serious sanctions are made public. In addition, the Labour and Social Security Inspectorate is empowered to ensure respect for the right to equal treatment and non-discrimination in access to employment and working conditions, for which purpose it will have to carry out specific plans to monitor this right. The Labour and Social Security Inspectorate shall include in its annual integrated action plan, as a general objective, 'the development of specific plans' on equal treatment and non-discrimination in access to employment and working conditions (Article 9).

RLD 5/2000 includes discrimination under all grounds of the directives in employment relations among the 'very serious' infringements: 'unilateral decisions of the employer leading to unfavourable direct or indirect discrimination on the ground of age or disability, or unfavourable or adverse treatment relating to remuneration, working time, training, promotion, and other working conditions, on the grounds of sex, origin, including racial or

ethnic origin, marital status, social condition, religion or belief, political ideas, sexual orientation, membership or non-membership of a trade union, adherence to trade union agreements, family ties with other employees, or language of the Spanish State, as well as decisions of the employer leading to unfavourable treatment of the workers as a reaction to a complaint within the enterprise or to any legal proceeding aimed at enforcing compliance with the principle of equal treatment and non-discrimination' (Article 8(12)).

RLD 5/2000 includes discrimination in employment among the 'very serious' infringements: 'to establish employment conditions, be it through advertisements, broadcasting or in any other way, that amount to unfavourable or adverse discrimination in access to employment on the grounds of sex, origin, including racial or ethnic origin, age, marital status, disability, religion or belief, political ideas, sexual orientation, trade union membership, social condition or language of the Spanish State' (Article 16(2)).

RLD 5/2000 also includes sanctions for harassment as a very serious infringement in the context of employment relations: 'harassment on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation when it takes place within the scope of management authority, whoever the agent may be, provided that, when the employer is aware of it, the latter does not undertake the necessary measures to prevent such infractions.' (Article 8(13-*bis*)).

The sanctions for all these 'very serious' discrimination infringements are fines ranging from EUR 6 251 to EUR 187 515, as qualified in the minimum, average or maximum grade.

In the field of employment, the Law on Social Jurisdiction (Law 36/2011) sets out a special procedure for violations of the fundamental rights and civil liberties that are enshrined in the Constitution (Title II, Chapter XI). This procedure covers the acts of discrimination or harassment that are specified in the directives. If the court judgment rules in favour of the claimant in respect of an act of discrimination or discriminatory harassment, the court will declare that act void, will require the previous state of affairs to be restored and will provide for 'reparation of the consequences of the act, including any appropriate compensation' (Article 183). That is, the law requires compensation (reparation and monetary damages) for victims of discriminatory acts, the amount of which is to be set by the court. If the court finds a breach of the reasonable accommodation duty, the court will require the employer to comply with reasonable accommodation and will impose a penalty within the limits set by law.

Moreover, the Criminal Code is applicable. Article 314 provides for 'imprisonment from six months to two years or a fine of 12 to 24 months' (with a daily fee that can range from EUR 2 to EUR 400) for those 'that do not restore a situation of equality in accordance with the law when required to do so or following an administrative penalty, making good any corresponding financial loss' when employers have been convicted for 'serious discrimination in a public or private workplace, against a person for reason of their ideology, religion, belief, ethnicity, race or nationality, gender, sexual orientation, family situation, illness or disability, maintenance of legal or workers' union representation, relationship with other company workers, or for use of any official languages of the state of Spain'.

Disability

In addition to the sanctions established on the ground of disability in the field of employment by RLD 5/2000, Articles 83-88 of the General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013) establish a system of sanctions for discrimination on the ground of disability in other fields. RLD 1/2013 establishes that 'the right to equal opportunities of persons with disabilities is violated ... when, due to disability, there are direct or indirect discrimination, discrimination by association, harassment, non-compliance with the requirements of accessibility and of making

reasonable adjustments, as well as non-compliance with positive action measures legally established' (Article 63). Consequently, the law defines any infringements of the rights of persons with disabilities as 'administrative offences'. These offences may be 'minor', 'serious' or 'very serious'. The penalties for these three types of offence can be imposed to three different degrees: minimum, average and maximum. Offences are punished with fines ranging from a minimum of EUR 301 to a maximum of EUR 1 million. The criteria taken into account when setting the level of fine are the offender's intention, negligence, fraud, non-compliance with prior warnings, business turnover and the number of people affected.

RLD 1/2013 states, in general terms, that 'discriminatory acts or omissions that directly or indirectly involve less favourable treatment of the person with a disability in relation to another person who is in a similar or comparable situation' are serious offences (Article 81(3)(a)), and that 'all conduct of harassment related to the disability' is a very serious offence (Article 81(4)(a)).

Failure to comply with quotas or alternative measures for promoting the employment of persons with disabilities is sanctioned with a fine of EUR 626 to EUR 6 250. For any employer that fails to observe the quota of places for workers with disabilities, the fine increases in line with the number of workers for whom the quota is not met; it can be increased by up to 50 % in cases where five or more workers with disabilities are affected (RLD 5/2000, Articles 15 and 40). Unlike other labour sanctions, the sanction for breach of the quota for persons with disabilities is not graded, although it can be aggravated by repeated non-compliance.

Since 2015, penalties included in the Criminal Code for various offences are now more serious when they are committed against persons with disabilities: illegal detention (Article 166 of the Criminal Code), prostitution (Article 188), child pornography (Article 189) and abandonment of a child (Article 619).

Criminal Code

Criminal Code (Organic Law 10/1995, 23 November 1995) specifies, as a general aggravating circumstance, the commission of any offence 'motivated by racism, anti-Semitism or any other kind of discrimination relating to the victim's ideology, religion or belief, the ethnic group, race or nation to which he belongs, his gender or sexual orientation, or any illness or disability from which he suffers' (Article 22).

The Criminal Code expressly punishes offences against fundamental rights and civil liberties. To accommodate (and transpose) Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OL 1/2015[145] has amended the Criminal Code, in particular Articles 510, 511 and 512, which provide for imprisonment for racist crimes and xenophobia. On the other hand, in 2022, the Organic Law 6/2022, of 12 July, complementary to Law 15/2022, modified the Penal Code in its Article 510.

In line with the Council framework decision, Law 10/1995 on the Criminal Code defines two different groups of conduct (see Articles 510-512):

- Actions of incitement to hatred or violence against certain groups or individuals because of their membership of a group on racist, anti-Semitic or other grounds related to ideology, religion or belief, family status, membership of an ethnic group, race or nation, national origin ; family status, ethnicity, race or nation, national origin,

[145] Organic Law 1/2015 of 30 March 2015 amending Organic Law 10/1995 of 23 November on the Criminal Code (*Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*), *BOE*, 31 March 2015: http://www.boe.es/buscar/pdf/2015/BOE-A-2015-3439-consolidado.pdf.

gender, sexual orientation or identity, gender identity, aporophobia, illness or disability; this also includes the development or production of writings that incite racism or discrimination; and acts of denial or glorification of crimes of genocide.

- Acts of humiliation or contempt against such groups or individuals and glorification or justification of crimes committed against them or their members with a discriminatory motivation.

Article 510 of the Criminal Code (as amended by Organic Law 6/2022) provides for prison sentences of one to four years and a fine (the fine is calculated as a number of days, which can range from six to 12 months, with a daily fee ranging from EUR 2 to EUR 400) for any person who publicly encourages, promotes or incites, directly or indirectly, hatred, hostility, discrimination or violence against a group or part of it or against a person because of their membership in it on racist, anti-Semitic or other grounds relating to religion or belief, family status, ethnicity, race or nation, national origin, gender, sexual orientation or identity, gender identity, aporophobia, illness or disability, or for any person 'disseminating defamatory information' about groups with these same characteristics. A person who injures the dignity of people through actions involving the humiliation of, contempt for or the discrediting of any such groups will be punished with imprisonment from six months to two years and a fine of 6 to 12 months. Article 511 provides prison sentences of six months to two years, a daily fine of 12 to 24 months (with a daily fee that can range from EUR 2 to EUR 400) and disqualification from public office or employment for a period of one to three years for 'any individual responsible for a public service who denies the provision of a service to a person entitled thereto on the grounds of his ideology, religion or belief, national origin, gender, sexual orientation or family situation or any illness or disability from which he suffers', or where these acts are committed on the same grounds against an association or the members thereof.

If any of these acts are committed by a public servant, they will be disqualified from public office or employment for a period of two to four years. Article 512 stipulates disqualification from the exercise of a profession, trade, industry or business, for a period of one to four years, for 'those who, in the exercise of their professional or business activity, deny the provision of a service to a person entitled thereto on the grounds of his ideology, religion or belief, his forming part of an ethnic group, race or nation, his gender, sexual orientation or family situation or any illness or disability from which he suffers'.

b) Compensation – maximum and average amounts

Legislation establishes a maximum amount for the fines (EUR 187 515 in the field of employment and EUR 1 million in the field of disability) but does not establish any ceiling for compensation. RLD 1/2013 expressly states that 'compensation or reparation which may give rise to the corresponding claim shall not be limited by a ceiling set a priori' (Article 75(2)).

There is no information available regarding the average amount of compensation awarded to victims of discrimination.

c) Assessment of the sanctions

Prior to Law 15/2022, the legislation was not in line with the Directives because it regulated sanctions only in the field of employment; with Law 15/2002, the sanctions regime covers all sectors covered by Directive 2000/43.

In any case, the amounts of fines relating to sanctions may vary between sectors: in the field of employment, the carrying out by the company of acts of discrimination is a very serious infringement, and in this sense fines may range from a minimum of EUR 7 501 to EUR 30 000 to a maximum of EUR 225 018. In the sectors covered by Law 15/2022,

discrimination offences can be minor, serious and very serious. In any case, the minimum fine is EUR 300 and the maximum fine is EUR 500 000.

There is no information concerning the extent to which the available sanctions have been shown to be effective, proportionate and dissuasive, as is required by the directives. In the author's opinion, time must be allotted, following the approval of Law 15/2022, to ensure its effectiveness. It must also be said that in the field of employment, it is the Labour Inspectorate that has the power to establish an infringement and propose a sanction. Following the passage of Law 15/2022, the number of proposed infringements and sanctions related to cases of discrimination has not been published in 2022.

7 BODY FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

7.1 Body designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

Spain is going through a period of transition in relation to equality institutions. The reason is that in 2022, Law 15/2022 was passed to create a new entity, the 'Independent Authority for Equal Treatment and Non-Discrimination' (the 'Authority'), which under Law 15/2022 will be the competent body in Spain for the purposes of Article 13 of Directive 2000/43/EC. However, as of the end of 2022, this Authority had not yet been created, and therefore, until it is established, the Spanish body designated for the promotion of equal treatment irrespective of racial or ethnic origin, the Council for the Elimination of Racial or Ethnic Discrimination, continues to be in force.

The Spanish body designated for the promotion of equal treatment irrespective of racial or ethnic origin is the Council for the Elimination of Racial or Ethnic Discrimination (Consejo para la eliminacion de la discriminación racial o étnica) ('the Council').

Law 62/2003 of 30 December 2003 on Fiscal, Administrative and Social Measures[146] (Article 33) (as amended by Article 18 of Law 15/2014 of 16 September 2014)[147] established the Council. Royal Decree 1262/2007 of 21 September 2007[148] (modified by Royal Decree 1044/2009 of 29 June 2009)[149] regulates its composition, competencies and regulations.

The Council is the only body that corresponds to the requirements of Article 13 of Directive 2000/43 (as is explicitly recognised in Law 15/2014). Although it was formally created by Law 62/2003, which came into force on 1 January 2004, it was set up on 28 October 2009 and became operational on that date. One of the Council's main functions is to provide independent assistance to victims of discrimination in dealing with their complaints. To this end, the Council has a number of care centres where people who believe they have been victims of discrimination on grounds of racial or ethnic origin can consult an equal treatment professional and receive advice on their case. Its facilities cover the whole of Spain. The Council's service offices are distributed throughout Spain, in all its regions and autonomous communities. The services of the equality body are accessible on an equal basis for all, without cost. These services can in any case be accessed in a variety of ways that are advertised on their website: free telephone, email and WhatsApp, thus facilitating access for people with disabilities.

One aspect that should be crucial in the implementation of Law 15/2022 is the establishment of the Independent Authority for Equal Treatment and Non-Discrimination (Articles 40 to 45). According to the Law, this Independent Authority is created within the scope of the General State Administration, and is tasked with protecting and promoting equal treatment and non-discrimination of persons on the grounds of the causes and in the areas of competence of the state provided for in this Law, in both the public sector and the private sector.

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146 Law 62/2003 of 30 December 2003 on Fiscal, Administrative and Social Measures (*Ley 62/2003, de 30 de diciembre, de medidas fiscales, administrativas y de orden social*), *BOE*, 31 December 2003, http://www.boe.es/boe/dias/1978/12/29/pdfs/A29313-29424.pdf.

147 Law 15/2014 on the rationalisation of the public sector and other measures of administrative reform.

148 Royal Decree 1262/2007 of 21 September 2007, which regulates the composition, competencies and regulations of the Council for the Elimination of Racial or Ethnic Discrimination (*Real Decreto 1262/2007, de 21 de septiembre, por el que se regula la composición, competencias y régimen de funcionamiento del Consejo para la Promoción de la Igualdad de Trato y no Discriminación de las Personas por el Origen Racial o Étnico*), *BOE*, 3 October 2007, http://www.boe.es/boe/dias/2007/10/03/pdfs/A40190-40195.pdf.

149 Royal Decree 1044/2009 of 29 June 2009 (*Real Decreto 1044/2009, de 29 de junio, por el que se modifica el Real Decreto 1262/2007, de 21 de septiembre*), *BOE*, 23 July 2009, http://www.boe.es/boe/dias/2009/07/23/pdfs/BOE-A-2009-12210.pdf.

Until the Authority is established, the Council is still in force. In addition to the Council (and the Institute for Women and Equal Opportunities, which is recognised as the equality body for matters of gender discrimination), there are three other bodies worth noting:

Regarding Roma people, Royal Decree 891/2005[150] set up the National Roma Council (Consejo Estatal del Pueblo Gitano) 'as a collegiate participatory and advisory body on general and specific public policy affecting the integral development of the Roma population in Spain' (Article 1). Its overriding purpose is 'to promote participation and cooperation by Roma associations in the development of general policy and the promotion of equal opportunities and treatment for the Roma population' (Article 2). Its functions therefore include 'drawing up opinions and reports on draft legislation and other initiatives related to the Council's purposes ... and that affect the Roma population, and, in particular, the development of regulations on equal opportunities and equal treatment' (Article 3). Of the 40 members forming this council, half are from central Government and the other half are representatives of Roma associations. The council was set up and has been running since 2006. It has no specific budget, as it is an official advisory body. The measures it recommends are to be implemented by other bodies.

The Forum for the Social Integration of Immigrants (Foro para la Integración Social de los Inmigrantes), created by Law 4/2000,[151] is a collegiate consultative, informative and advisory body concerned with the integration of immigrants. It consists of 10 representatives of the public administration, 10 representatives from immigrants' associations and 10 representatives of social support organisations, including trade unions and employers' organisations with an interest and involvement in the field of immigration.[152] The Spanish Secretary of State for Migration's Resolution of 7 September 2021 lists the entities that form part of the members of the Forum for the Social Integration of Immigrants in representation of immigrant and refugee associations and social support organisations.[153]

After a new Government was sworn in at the beginning of 2020, the Council for the Participation of Lesbian, Gay, Trans, Bisexual and Intersex Persons (LGTBI) was created (see Order IGD/577/2020 of 24 June 2020). In 2021, this Order was modified by the new Order IGD/506/2021, of 20 May 2021,[154] with the aim of including LGTBI civil society organisations among the members eligible for Council membership; and also, to broaden the composition of the Council's Standing Committee so that both the diversity units of

[150] Royal Decree 891/2005 of 27 July 2005 setting up the National Roma Council (*Real Decreto 891/2005, de 22 de julio, por el que se crea y regula el Consejo Estatal del Pueblo Gitano*), *BOE*, 26 August 2005: http://www.boe.es/boe/dias/2005/08/26/pdfs/A29622-29625.pdf.

[151] Organic Law 4/2000 of 11 January 2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration (*Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social*), *BOE*, 12 January 2000: http://www.boe.es/buscar/pdf/2000/BOE-A-2000-544-consolidado.pdf.

[152] Royal Decree 3/2006 of 16 January 2006 on the make-up, competences and procedural rules of the Forum for the Social Integration of Immigrants (*Real Decreto 3/2006, de 16 de enero, por el que se regula la composición, competencias y régimen de funcionamiento del Foro para la integración social de los inmigrantes*), *BOE*, 17 January 2006: http://www.boe.es/buscar/pdf/2006/BOE-A-2006-625-consolidado.pdf.

[153] See: Resolution of September 7 2021 of the Secretary of State for Migration, which publishes the entities proposed and excluded to cover the Spokespersons of the Forum for the Social Integration of Immigrants on behalf of immigrant and refugee associations and of social support organisations (*Resolución de 7 de septiembre de 2021, de la Secretaría de Estado de Migraciones, por la que se publican las entidades propuestas y excluidas para cubrir las Vocalías del Foro para la Integración Social de los Inmigrantes en representación de las asociaciones de inmigrantes y refugiados y de las organizaciones sociales de apoyo*), *BOE*, 22 September 2021, available at: https://boe.es/diario_boe/txt.php?id=BOE-A-2021-15348.

[154] See: Order IGD/506/2021 of May 20 which modifies Order IGD/577/2020, of June 24, which creates the Participation Council for lesbian, gay, trans, bisexual and intersex (LGTBI) and regulates its functioning (*Orden IGD/506/2021, de 20 de mayo, por la que se modifica la Orden IGD/577/2020, de 24 de junio, por la que se crea el Consejo de Participación de las Personas lesbianas, gais, trans, bisexuales e intersexuales (LGTBI) y se regula su funcionamiento*), *BOE*, 27 May 2021, available at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-8813.

Spanish universities and business organisations and the LGTBI working groups or sections of trade union organisations have their own seat on the Committee.[155]

The purpose of this Council is to institutionalise collaboration and strengthen permanent dialogue between public administrations and civil society in matters related to equal treatment and non-discrimination on grounds of sexual orientation, gender identity or expression, and to ensure the participation of LGTBI people and their families in all areas of society. Since 2007, the Council's composition has been regulated, enabling it to draw up its action plan in 2013.

7.2 Political, economic and social context of the designated body

In 2022, the designated equality body to exercise its functions was the Council.

In any case, judging from the Council's website, it reduced its activities during 2022, as it has not been particularly active in exercising its information or event promotion functions. The creation of the Authority may be an incentive for the equality body to become a better-known institution and to boost the functions of promoting equal treatment and non-discrimination. The political and social context has encouraged the adoption of specific measures in this area, as evidenced by the adoption of the Law itself. In the field of employment and the economy, there has also been an improvement in the number of permanent contracts and in the stability of company workforces, which can be an incentive to fight discrimination in labour relations.

It should be recalled that the future Independent Authority for Equal Treatment and Non-Discrimination is to replace the Council (in any case, although it was created by Law 15/2022, as of the end of 2022 the Authority had not yet been established).

7.3 Institutional architecture

In Spain, the designated body ('the Council') does not form part of a body with multiple mandates. The Spanish Council has the sole mandate of combating discrimination on grounds of racial or ethnic origin. The future Independent Authority, which is to replace the Council under Law 15/2022, will assume the functions that have been held by the Council.

7.4 Status of the designated body – general independence and resources

It should be recalled that the Council exercised its powers during 2022.

a) Status of the body

Separate or other legal status or personality

As regards its legal status and personality, the Council has the following characteristics:

- it is a collegiate Spanish governmental body;
- the Council is attached to the Ministry of Equality, but is not part of the ministry's hierarchal structure;

[155] In accordance with this new regulation, the Council's Standing Committee now has one member representing the General State Administration (Ministry of Equality); one member representing the autonomous communities and the most representative association of local authorities at the national level; one member representing the diversity units of Spanish universities; one member representing business organisations; one member representing LGTBI working groups or sections of trade union organisations; and two members representing LGTBI foundations, organisations, associations, federations or confederations.

- its make-up is of a fundamentally governmental nature, as the law states that the Council is to be formed by all ministries with responsibilities in the areas referred to by Article 3(1) of Directive 2000/43, with the participation of autonomous regions, local authorities, employers' organisations and trade unions, and other organisations representing interests related to people's racial or ethnic origins. Royal Decree 1262/2007 (modified by Royal Decree 1044/2009) specifies its composition.

Finally, it should be recalled that Law 15/2022 provides for the creation of the Independent Authority for Equal Treatment and Non-Discrimination (which has not yet been established) as a public law entity, with its own legal personality and full public and private capacity, which acts for the fulfilment of its purposes with full independence and functional autonomy from the public administrations (see Article 41).

Selection of governing body

Currently, the Council consists of a chair and 28 members. The only person who is appointed specifically to the Council as such is the chair, who, as specified in Royal Decree 1044/2009 (Article 4), is appointed by the Ministry of Equality 'from among persons of widely recognised prestige in the field of promoting equal treatment and combating discrimination on the grounds of racial or ethnic origin. He/she shall be appointed for a term of three years.'

Of the 28 seats on the Council, 14 are members of the public administration and 14 are social partners and stakeholders. They are distributed as follows:

- Seven members representing central Government, all with the rank of director-general, from the following ministries:

  1) Directorate General for Equality of Treatment and Diversity (which is to hold the Council's second vice-chair);
  2) Ministry of Justice;
  3) Ministry of the Interior;
  4) Ministry of Education;
  5) Ministry of Labour, Migration and Social Security;
  6) Ministry of Health, Consumption and Social Welfare; and
  7) Ministry of Development (Secretary of Housing).

- Seven members from other tiers of government: four from the autonomous regions and three from local authorities;
- Four members from among the social partners: two representing employers' organisations and two representing trade unions;
- Ten members representing organisations and associations whose activities are linked to the promotion of equal treatment and non-discrimination on grounds of racial or ethnic origin.

These last two groups of members (social partners and stakeholders) elect the person holding the Council's first vice-chair.

The council chair and members' posts are unpaid positions: they receive no remuneration or compensation for the meetings that they take part in. Only travel expenses are paid.
Royal Decree 1267/2007 (Article 9) specifies the reasons for cessation of membership of the Council. This Article does not affect the chair. It is necessary to distinguish three positions: (1) the chair, (2) representatives of the administration and (3) representatives of organisations.

The chair is the only person appointed as such to the Council by the Ministry of Equality. The royal decree does not establish any causes for the removal of the chair of the Council. Therefore, the chair may be freely removed by the minister who appointed them with no requirement for any motivation. That is, the Government can dismiss the chair of the Council if he/she is not in line with its policies, in particular if he/she specifically expresses dissent over the Government's actions.

Representatives of the administration can be members of the Council, depending on the positions they hold in the public administration with the rank of director-general. The directors-general are appointed by royal decree by the Council of Ministers on the proposal of the minister of the department. They can be freely removed by the same procedure (Article 18 of Law 6/1997 of 14 April 1997, on the Organisation and Functioning of Central Government). This law does not establish any causes for the removal of a director-general: they may be freely removed by the Government with no requirement for any motivation. That is, the Government can dismiss members of the Council who are general directors if they are not in line with its policies.

Representatives of organisations can only be dismissed for the reasons expressly provided for in Article 9 of Royal Decree 1267/2007. They cannot be dismissed on the ground of dissent over the Government's actions.

The council cannot be said to have a board or commission, as it is a body in which decisions are taken by a plenary session with the participation of all its members. The council has a non-executive standing committee, which deals with formalities and prepares the Council's plenary sessions. It is made up of the chair, the two vice-chairs and a member from each of the four groups of members.

With this set-up, the Council cannot be said to be in line with the ECRI general recommendation 2, on specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level of 13 June 1997, and the European Commission Recommendation on Standards for Equality Bodies of 22 June 2018.

It should be recalled that Law 15/2022 regulated the creation of the Independent Authority for Equal Treatment and Non-discrimination, although the body has not yet been established. Its regime has to be approved through its own statutes. In any case, Law 15/2022 states that the Independent Authority for Equal Treatment and Non-Discrimination will be directed and represented by the person occupying its presidency, who will be appointed by the Government by Royal Decree, from among personalities of recognised prestige in the defence and promotion of equal treatment and the fight against discrimination (Article 41).

Sources of funding

The resources for the functioning of the Council come exclusively from the general budget of the Spanish public administration.

Regarding Law 15/2022, it should be noted that it creates the Independent Authority. Its economic and budgetary regime will be regulated in the Statute of the Independent Authority for Equal Treatment and Non-Discrimination, which will be approved by the Government of Spain.

Powers to recruit and manage staff

The Council has no capacity to recruit and manage personnel. The Council has a secretary's post for a civil servant, at the Directorate General for Equality of Treatment and Diversity (Ministry of the Equality). In addition, when necessary, other civil servants belonging to this directorate provide part-time services to the Council (secretariat, coordination of

working groups, management outsourcing, technical assistance, preparation of minutes, etc).

According to Law 15/2022, the staff of the Independent Authority shall be regulated by the future statute of this equality body. In any case, Law 15/2022 establishes that they must be civil servants.

Accountability

The Council is accountable before the Ministry of the Equality. It should be recalled that the Council for the Promotion of Equal Treatment and Non-Discrimination of Persons on the Grounds of Racial or Ethnic Origin is attached to the Ministry of Equality of the Spanish Government, although it is not part of the hierarchical structure of the Ministry. With regard to this Ministry, the Council must provide it with an annual report on the Council's activities.

On the other hand, Law 15/2022 has regulated the set-up of the Independent Authority for Equal Treatment and Non-Discrimination, although it has not yet been established. The Law establishes a regime of accountability for the president of the Authority, who may be dismissed by the Government, with the prior knowledge of the Spanish Parliament. It also establishes a system of accountability for the budget and for the economic and financial management of its activities. With regard to the reasons for removal of the president, art. 41.4 of Law 15/2022 establishes that the president may only be removed by resignation; also for being subject to any cause of incompatibility, for permanent incapacity to hold office, for conviction by a final judgment for a criminal offence or for serious breach of the duties of his office.

b) Independence of the body

The set-up provided by Law 62/2003 (Article 33) was very similar to that of some existing governmental consultative bodies. However, Law 15/2014 (Article 18) recognises that the Council exercises its functions 'with independence'. Therefore, it may be said that the Council can be regarded as independent de jure, because it is established as such by a Law (Law 15/2014 amending Law 62/2003).

The council cannot be regarded as independent de facto, among other reasons because of the presence of Government representatives among its members: half of its members are formally representatives of the public administration; the seven representing central Government are of the rank of director-general (appointed by the Council of Ministers); these Government representatives are full members of the Council with full speaking and voting rights in all areas.

In addition, the Council cannot be seen as an independent body in structural terms, for various reasons: it cannot choose its own staff (because the Council secretariat is a part of the public administration itself, being a department of the Ministry of Equality), and it has no infrastructure of its own. It cannot be said that the Council conforms to the provisions established in the UN Paris principles (Principles relating to the Status of National Institutions, adopted by General Assembly Resolution 48/134 of 20 December 1993), especially due to two requirements in the 'Composition and guarantees of independence and pluralism': its composition and its lack of infrastructure. Furthermore, the Council also does not conform to the European Commission Recommendation on Standards for Equality Bodies of 22 June 2018.

According to Law 15/2022, the Independent Authority does not establish its liability regime, which must be regulated by its by-laws and approved by a Government regulation. In any case, it does regulate in its Article that in the event of a serious breach of the duties of its director, he/she must be dismissed and the Parliament will be informed (Article 41).

c) Resources

The annual budget of the body

The Spanish Government extended the 2019 budget to 2020 and, in 2020, the Government approved Law 11/2020 of 30 December on the General State Budget Law for 2021. This Law created a special programme (No. 232D) on equal treatment and diversity, financing it with EU 1 800 020. Of this, EUR 500 000 was granted to the State Council for the Elimination of Racial Discrimination, and another EUR 500 000 to the LGBTI Council. At the time of publication of this report for 2022, the budget allocation to the Council for the Elimination of Racial Discrimination and the LGBTI Council had not yet been published.

According to Law 15/2022, the Independent Authority for Equal Treatment and Non-Discrimination shall annually prepare a preliminary draft budget, which shall include the statements of income and expenditure, with the structure determined by the Ministry of Finance and Public Administration, and shall submit this proposal to the said Government department for inclusion in the preliminary draft of the General State Budget Law.

The share of the annual budget dedicated to the equality body mandate (if applicable)

Non-applicable.

The total number of staff of the body

In its annual report published by the Council, it highlights that the Service has been reinforced in 2022 with the expansion of the central coordination team from five to nine people, including a new legal advice team and another to attend to the extended hours of the telephone helpline, which now runs from 9 a.m. to 9 p.m. 365 days a year. Likewise, the number of offices available in the Autonomous Regions has been increased to facilitate face-to-face assistance to victims[156].

Regarding the Independent Authority to be created in accordance with Law 15/2022, this Law states only that its personnel will be, in general, career civil servants of the public administrations or, as the case may be, labour personnel from national or international organizations with functions in the field of equal treatment and non-discrimination.

The number of staff dedicated to the equality body mandate (if applicable)

Non-applicable.

7.5 Grounds covered by the designated body

The council has competence only in relation to the ground of racial or ethnic origin. In practice this means that the equality body deals with discrimination against migrants. The council, however, does not treat migrants as a priority issue.

The areas covered by the Council are: education, health, benefits and social services, housing, the offer of and access to any goods and services—including access to employment, self-employment and professional practice—affiliation to union or business organisations, working conditions, and the promotion of professional and vocational training (Law 62/2003, Article 33).

However, it should be recalled that the Council has been replaced by the Independent Authority for Equality and Non-Discrimination, although the latter has not yet been set up.

[156] Released in June 2023: https://igualdadynodiscriminacion.igualdad.gob.es/novedades/novedades/2023/pdf/MEMORIA_ANUAL__2022_CEDRE.pdf.

When established, its functions will extend to all grounds of discrimination covered by Directives 2000/43 and 2000/78 and Law 15/2022.

7.6 Competences of the designated body – and their independent exercise

a. Independent assistance to victims

In Spain, the designated body (the Council) formally has the competence to provide independent assistance to victims on ground of racial or ethnic origin (Law 62/2003, Article 33, as modified by Law 15/2014, Article 18).

To fulfil this competence, the Council has the Network of Centres of Assistance for Victims of Racial or Ethnic Discrimination, under the coordination of the Fundación Secretariado Gitano (FSG) and involving seven NGOs (FSG, ACCEM, Cruz Roja Española, Fundación CEPAIM, Movimiento contra la Intolerancia, Movimiento por la Paz, el Desarme y la Libertad and Red Acoge). These NGOs work independently but follow a formal protocol established by the Council, handling cases for possible victims of discrimination on request or dealing with situations that have been identified by the NGOs themselves. The next step is assessment of whether there are any 'clear indications' of direct or indirect discrimination (when it has been found that a person or people have been effectively treated 'differently and worse' because of their racial or ethnic origin). If there are any such indications, the recommendations may include (1) negotiation, (2) mediation, (3) legal support, (4) psychological support, or (5) complaint. The performance of the NGOs is not subject to scrutiny by the Council in relation to matters of substance. The NGOs draw funding from the Council for these interventions.

In 2017, a two-year contract was signed with the Spanish public administration that allowed the Racial and Ethnic Discrimination Victim Assistance and Guidance Service to operate properly. It continued to do so until the signing of the corresponding contract with the public authority for the provision of its services in March 2020 until 2022[157].

The Council has a free helpline for victims (900 203 041), and a website is also available: www.asistenciavictimasdiscriminacion.org.

De jure, the Council has the competence to provide independent assistance to victims. The author of this report believes that the power of providing independent legal assistance to victims has been addressed via the Network of Centres of Assistance for Victims of Racial or Ethnic Discrimination; consequently, this is a guarantee of independence.

Regarding the effectiveness of the Council in relation to the 'independent assistance to victims', it is necessary to analyse the reports of the Annual Performance Report on the Victims of Discrimination Assistance and Guidance Service, which is released every year.

The 2022 *Annual Performance Report on the Victims of Discrimination Assistance and Guidance Service* has been published by the Council for the Elimination of Racial and Ethnic Discrimination.[158] The annual performance report contains the data and analysis collected by the registered entities in 2022. In this period, the Service attended or dealt with a total of 1 570 cases of alleged racial or ethnic discrimination, of which 1 084 were individual cases and 486 group cases.

[157] Council for the Elimination of Racial and Ethnic Discrimination, *Memoria anual de resultados del Servicio de asistencia y orientación a víctimas de discriminación 2020* (*2020 Annual Performance Report on the Victims of Discrimination Assistance and Counselling Service*), November 2021, available at: https://igualdadynodiscriminacion.igualdad.gob.es/novedades/novedades/2021/pdf/Memoria_anual_2020.pdf.

[158] Released in June 2023: https://igualdadynodiscriminacion.igualdad.gob.es/novedades/novedades/2023/pdf/MEMORIA_ANUAL__2022_CEDRE.pdf.

Three main conclusions of the report should be noted:

1. There has been an increase in the number of discrimination cases, which is due to the increase in the Council's resources as mentioned above, but also to the increased awareness of victims with regard to reporting discrimination. In any case, there is still a problem of under-reporting. The main reasons, according to the aforementioned studies, are: fear of further victimisation or reprisals by the perpetrators; feelings of humiliation or shame; insecurities about how and where to report or whether the report will succeed; distrust of the performance of institutions; lack of perception of discrimination by the victim; language barriers, etc. In particular in the case of foreign victims of discrimination in an irregular administrative situation, a major barrier is the fear that a complaint could expose their situation and lead to the opening of deportation proceedings.

2. Among the population groups that have reported the most incidents are the Roma population, the Latin American population, the Arab population, and the African or Afro-descendant population. This factor, together with the fact that discrimination issues are related to gender (42 % women and 32 % men) and to all age groups, the report states that it is necessary to apply an intersectional perspective in the analysis of these cases.

3. Widespread ignorance of antidiscrimination legislation persists.

Law 15/2022 expressly states that the future Independent Authority shall ensure the independent provision of specialised assistance and guidance services to persons who may have suffered discrimination. These services shall include the reception and processing of complaints or claims from victims and mediation and conciliation activities as well as the exercise of legal actions (Article 40).

b. Independent surveys and reports

In Spain, the designated body has the competence to conduct independent surveys and publish independent reports (Law 62/2003, Article 33 as modified by Law 15/2014, Article 18).

The most recently published study by the Council for the Elimination of Racial or Ethnic Discrimination is a report entitled *Potential victims' perception of discrimination based on racial or ethnic origin-2020*.[159]

As stated in the report itself, its main objective is to gain insight into how the perception of possible victims of discrimination due to racial or ethnic origin has evolved over time in Spain. This is a continuation of the studies conducted in 2010, 2011 and 2013. The uniqueness and added value of the study lies in the fact that ethnic and racial discrimination is addressed based on potential victims' subjective perception. This study aspires to be a unique tool to be used throughout Spain to measure how discrimination, a particularly complex phenomenon, is perceived.

Among other conclusions of interest, it may be highlighted that the Roma and Maghreb populations believe that they are seen in the worst light. The perceived image of the Maghreb group has worsened in comparison with the 2013 report; people who were born in Spain and/or have Spanish nationality perceive higher levels of racism, and this perceived level decreases as the number of years spent in the country increases; physical features and skin colour are the main motives for discriminatory behaviour, followed by

[159] See Council for the Elimination of Racial and Ethnic Discrimination, *Executive Summary: Potential Victims' perception of discrimination based on racial or ethnic origin*, available at: https://igualdadynodiscriminacion.igualdad.gob.es/destacados/pdf/05-PERCEPCION_DISCRIMINACION_RACIAL_RESUMEN-EN.pdf.

cultural elements and religious beliefs and practices at a considerable distance, but gaining relative importance; this means that the main grounds for racial discrimination are the victim's skin colour and physical features. Less numerous are allegations of racially motivated discrimination on the basis of the victim's culture or religious beliefs. The study shows that many people suffer from multiple discrimination and, in some cases, what has been called intersectional discrimination: when specific stereotypes about certain ethnic groups are compounded by personal characteristics such as one's gender, level of education and income. Examples include discourse that sexualises women from certain groups, or the difficulties certain subgroups have in finding employment because they are seen as unfit for certain jobs.

Finally, the report concludes that the work carried out by organisations and public institutions fighting discrimination is still not very well known. Important work is being carried out at national level and by NGOs and associations to disseminate and support human rights and support the complaints process. However, the report states that we should question the effectiveness of these initiatives judging by the fact that, in 2013, only 2 out of 10 people had heard of any of these institutions.

It is difficult to assess to what extent the Council is exercising this function independently. The council can produce analyses and reports with contributions from the various organisations involved. They may be proposed by NGOs or experts independently, but they must be formally approved by the Council (and half of whose members are Government representatives).

On the other hand, it cannot be said that there is any real popular, political or even academic debate in Spain on equality and diversity, or on the role of the Council in the fight against discrimination based on racial or ethnic origin. It has only been through the discussion of the Comprehensive Bill for Equal Treatment and Non-discrimination in the Parliament in 2018 that the role of the Council and the need to create an Authority for Equal Treatment and Non-Discrimination have become part of the political debate.

The Council has not adopted a strategic plan in 2022 but carries out its functions on the basis of Council plenary meetings. The information provided by the Council does not indicate that the plenary councils have carried out any type of strategic planning of the Council's activities.

According to Article 40 of Law 15/2022, the future Independent Authority must prepare periodic reports and statistics; promote studies on equal treatment and non-discrimination, as well as on the historical forms of structural discrimination of which the groups to be protected by this Law have been victims; design and maintain a barometer on equal treatment and non-discrimination based on a system of indicators; and disseminate the activities, studies and reports that it carries out; it must also approve the annual report on its activities, which it will send to the Congress of Deputies, the Government and the Ombudsman.

c. Recommendations

In Spain, the designated body has competence to issue recommendations on discrimination issues (Law 62/2003, Article 33 as modified by Law 15/2014, Article 18). In addition, Royal Decree 1262/2007 assigns other competences that can also be interpreted as the possibility of making recommendations:

- analyse the regulations in relation to equality of treatment and non-discrimination on ground of racial or ethnic origin, proposing initiatives for their adoption or modification;

- present initiatives and formulate recommendations in relation to plans or programmes to promote equality of treatment and non-discrimination by racial or ethnic origin.

In 2022, it is worth mentioning the adoption of recommendations by the Council for the Elimination of Racial or Ethnic Discrimination regarding events that have had a significant political and social impact – for example, the events of 24 June in the vicinity of the Melilla fence, which led to the death of dozens of people and hundreds of injured people, was approved by the plenary on 6 July. The Ministries of the Interior, Justice and Education and Vocational Training have submitted individual opinions on the recommendation in which they express a view 'disagreeing with the considerations contained in the Recommendation in relation to the tragic events in Nador.'[160] This means that there are specific limits to the implementation of the recommendation.

In accordance with Law 15/2022, the Independent Authority may carry out these actions and go further, for example by promoting the adoption of codes of good practice in the field of anti-discrimination (Article 40).

d. Prevention, promotion and awareness-raising

Among the Council's functions are to 'promote informative, awareness-raising and training activities and any others that may be required to promote equal treatment and non-discrimination'.

The Council's competences include promoting information, awareness-raising and training activities; establishing relations for the exchange of information and collaboration with similar bodies and institutions at international, national, regional and local level; establishing mechanisms for collaboration and cooperation with other bodies, entities and high-level institutions for the defence of human rights. In this sense, it can be understood to have powers to communicate with individuals and groups at risk of discrimination, provide training and guidance, and promote equality duties, equality mainstreaming and positive action among public and private entities. However, it does not have a specific competence to adopt a strategy defining how it will engage in public dialogue and other measures, although it could carry out an Action Plan of its competences or collaborative actions with other entities.

The author of this report believes that in 2022, the Council's collaboration with the Government on some campaigns (a Government initiative to raise awareness of non-discrimination) has borne fruit as the number of complaints from people who are victims of discrimination has increased.

The main function of the body replacing the Council, which is the Independent Authority for Equal Treatment and Non-Discrimination, is to protect and promote equal treatment and non-discrimination. These functions include measures that can be carried out by the Authority in the same way as the Council is currently undertaking them.

e. Other competences

In its definition of the Council's functions, Royal Decree 1262/2007 assigns other competences that are not included in the directive. It provides that the Council may:

- advise and report on indirect anti-discrimination practices in its various spheres of action;

[160] See: https://igualdadynodiscriminacion.igualdad.gob.es/novedades/novedades/2022/Recomendacion_sucesos_valla_Melilla_.htm.

- establish information exchange and cooperation relationships with similar international, national, regional or local bodies or institutions; and
- establish cooperation and partnership mechanisms with other bodies, entities and high-level institutions working to defend fundamental rights.

All these functions could be of great interest to the Council and could significantly enrich its sphere of action.

Although the launch of the Network of Centres of Assistance for Victims of Racial or Ethnic Discrimination in 2010 and the formal recognition of its independence by Law 15/2014 may have improved the public's understanding of its roles as well as boosting its effectiveness, it appears that the Council remains unknown by the general public. According to a report of 2017 of the FRA,[161] Spain's anti-discrimination body was the least well known in the entire EU; as such, its potential for anti-discrimination action is limited. One of the reasons is that the Council was without a chair from September 2015 until October 2018 and did not hold any meetings in 2016, 2017, and almost all of 2018. Following the appointment of its president in 2018, the Council has increased its visibility.

7.7 Legal standing of the designated body

In Spain, the designated body does not have legal standing to:

- bring discrimination complaints on behalf of identified victims to court;
- bring discrimination complaints on behalf of non-identified victims to court;
- bring discrimination complaints *ex officio* to court;
- intervene in legal cases concerning discrimination, for example as an *amicus curiae*.

Under Law 15/2022, the Independent Authority may take legal action in defence of the rights deriving from equal treatment and non-discrimination (Article 40), in accordance with the procedures provided for in the Law itself, as explained above. In this sense, it may bring legal action for the defence of rights arising from equal treatment and non-discrimination, in accordance with the procedural laws.

7.8 Dispute resolution

a) Quasi-judicial functions

The Council does not have quasi-judicial functions.

Nevertheless, following the creation in 2022 of the Independent Authority for Equal Treatment and Non-Discrimination, which is to replace the Council when it is established, Law 15/2022 regulating this Authority provides for the following functions of interest: to initiate investigations into the existence of possible situations of discrimination that are particularly serious; to bring to the attention of the Public Prosecutor's Office facts that may constitute a criminal offence; and to issue an opinion on the draft general provisions implementing this Law.

b) Amicable settlements

The Council is only competent to provide independent assistance to victims of direct or indirect discrimination on grounds of racial or ethnic origin in dealing with their complaints. The law does not give the Council the competence to offer the parties to a discrimination complaint the possibility to seek an amicable resolution to their dispute. In any case, the Council has created a Service for Assistance and Guidance to Victims of Racial or Ethnic Discrimination, which is implemented by several entities with proven experience in the field

[161] FRA (2017), *Second European Union Minorities and Discrimination Survey, Main results*.

of human rights and the fight against racial or ethnic discrimination. This network of services can offer conciliation and mediation services to victims of discrimination. The only available information on these conciliation and mediation actions of the network is that they account for 28 % of the total number of actions the network carries out (it must be considered that it also carries out functions such as counselling for the individual, filing complaints with institutions, denunciations, complaints to the media, etc.)[162].

Regarding Law 15/2022, the Independent Authority may constitute, with the express consent of the parties, a body for mediation or conciliation between them concerning violations of the right to equal treatment and non-discrimination, with the exception of those with criminal or labour law content. Decisions taken by the Independent Authority in mediation or conciliation proceedings shall be binding on the parties.

7.9 Procedural safeguards

There are no procedural safeguards in place with regard to the separation between different functions within the Council

7.10 Data collection by the designated body

a) Registration of complaints and decisions

In Spain, the body does not itself handle complaints or make decisions (by ground, field, type of discrimination, etc). However, the body does register the number of complaints relating to racial or ethnic origin that have been addressed by the network of assistance centres, which was created by the Council in 2010. These data concern 'inquiries received' by the network, both formal and informal (phone calls, emails with questions, items in the newspapers, etc). The data record complaints filed as a 'racist incident' as defined in Recommendation 11 from ECRI (Paragraph 14): 'any incident which is perceived to be racist by the victim or any other person'.

The data on complaints addressed by the network are available to the public because they are published in the network's annual reports. Cases may be individual (incidents in which a person has felt discriminated against) or collective (incidents in which a group or collective has felt discriminated against).

Complaints addressed by the network in 2022 by ethnic or racial origin of the victim and by field of discrimination.

	2016 (January - December)	2017 (January-December)	2018 (January-December)	2019 (Oct. 2018-Oct. 2019)	2020 (March 2020 – December 2020)	2021	2022
Total	*631*	*646*	*729*	*756*	*569*	*860*	*1570*
Individual	381	370	416	479	307	528	1084
Collective	250	276	313	277	262	332	471 (+15 pendinq qualificati on)

Source: Annual reports of the Network of Assistance Centres of the Spanish Council (this data was published in June 2023).[163]

[162] See information contained in the Annual Performance Report 2022 of the Council: https://igualdadynodiscriminacion.igualdad.gob.es/novedades/novedades/2023/pdf/MEMORIA_ANUAL__2022_CEDRE.pdf.

[163] See: https://igualdadynodiscriminacion.igualdad.gob.es/novedades/novedades/2023/pdf/MEMORIA_ANUAL__2022_CEDRE.pdf.

In its annual report, the network develops these data and affirms that among the most affected population groups or ethnic groups, the Roma population (54 %), the Latin-American population (14 %), the Maghrebi population (12 %) and the African or Afro-descendant population (8 %) stand out. There were higher numbers of discriminatory acts in the fields of employment and access to goods and services among individuals, with discriminatory acts via the internet and other social media highest among collective complaints (see following table).

	Individual	Collective
Total	1208	522
Field of discrimination-		
Access to goods/services	374	92
Employment	154	42
Housing	132	52
Health	132	11
Public spaces	135	65
Education	109	31
Internet and social media	15	182
Access to justice	34	11
Security	53	24
Others	110	32

* The results in this table are higher than the total number of registered cases because the same discriminatory incident can impact on one or more areas.

Source: *Annual Performance 2022 - Report on the Victims of Discrimination Assistance and Guidance Service*, published in June 2023

b) Equality data collection

Law 62/2003 regulating 'the Council' does not provide for any regulation on data collection on equality and non-discrimination.

However, when the Authority is created, Law 15/2022 states that the Independent Authority for Equal Treatment and Non-Discrimination must provide any collaboration required by the Spanish Parliament, the courts, the Public Prosecutor's Office, the Ombudsman and public administrations. This duty of cooperation and information should include 'the communication of information containing personal data of third parties without their consent when strictly necessary for the performance of the tasks of the Independent Authority for Equal Treatment and Non-Discrimination' in accordance with the legislation on the protection of personal data and with the directive on public statistics.

7.11 Roma and Travellers

The council may conduct formal general investigations into discrimination against the Roma, but this is not necessarily a priority issue. Among the members of the Council, there are two Spanish Roma organisations, the Fundación Secretariado Gitano and the Unión Romaní, which are very active associations in this field. It is noteworthy that the Fundación Secretariado Gitano coordinates the Victims of Discrimination Assistance and Counselling Service for the Council for the Elimination of Racial and Ethnic Discrimination.

In this regard, it should be noted that the Fundación Secretariado Gitano has published its 17th annual report on discrimination and the Roma Community, for 2021.[164] The report includes 364 cases of discrimination and anti-Gypsyism registered and handled by the FSG. The cases registered by the FSG are found in areas such as communication, with bad

[164] See the Fundación Secretariado Gitano website: https://www.gitanos.org/actualidad/archivo/134812.html.

practices in the media and internet – a total of 129 cases; in social networks –a total of 29 cases; in employment – 28 cases; in access to goods and services – 64 cases; in police services – 25 cases; in education – 27 cases; in housing – 31 cases; in health – 8 cases; and in others (including the most extreme cases of hate crimes) – 23 cases. With regard to the profile of the victims, it can be seen that discrimination affects mainly young Roma between the ages of 16 and 30, and women, who account for 148 of the 257 victims identified.

The report presents a series of recommendations such as the need to pass a comprehensive law on equal treatment and non-discrimination; the approval, during 2022, of a State Action Plan against Racism, in application of the EU Anti-Racism Action Plan for 2020-2025 and following the guidelines indicated by the European Commission; training in anti-discrimination law and the Victims' Statute for all key actors in this field: the judiciary, the prosecution, the legal profession, and law enforcement agencies; the provision of adequate resources to all institutions involved in combating racial or ethnic discrimination; and the establishment and adequate funding of specialised programmes providing comprehensive support to Roma women, especially the most vulnerable, with a view to empowering them to exercise their rights against intersectional discrimination and gender-based violence, improve their academic and vocational training, participate in the labour market, improve their self-esteem and self-confidence, as well as overcome traditional gender roles.

8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

Spain has undertaken some campaigns to disseminate anti-discrimination rules (see next paragraph 1). It cannot be said that there have been major campaigns to spread awareness of the anti-discrimination rules that have had significant effects. However, there has been a marked improvement in anti-discrimination awareness, especially in areas such as gender, disability and sexual orientation – a statement made by the author of this report on the basis of the increase in complaints to the Council's Racial or Ethnic Discrimination Victim Assistance and Guidance Service in the past two years.

On the other hand, the Spanish Government and the Council for the Elimination of Racial and Ethnic Discrimination have also carried out several publicity campaigns of interest in the field of non-discrimination on the grounds of racial and ethnic discrimination:

1) At the end of 2021, the Council for the Elimination of Racial and Ethnic Discrimination has carried out a publicity campaign to raise awareness of the Council's channels of assistance for victims of discrimination.[165] During 2022, it was the Ministry of Equality that launched the 'Yes It's Racism' campaign, with the aim of combating racism and racial discrimination and raising awareness of the Council's Racial or Ethnic Discrimination Victim Assistance and Guidance Service.[166]

2) The Spanish Ministry of Equality launched the Anti-Racism Week on 17 March 2021 to mark the International Day for the Elimination of Racial Discrimination.[167] Within the framework of this Anti-Racism Week, the Council of Ministers of the Spanish Government adopted an Institutional Declaration on the occasion of the International Day for the Elimination of Racial Discrimination.[168] In this Declaration, the Spanish Government recognises that there is a need for more detailed knowledge of the situation of racism in Spain. For this reason, it admits that a more precise diagnosis, more statistics, surveys and studies are needed in order to carry out a complete analysis of the degree of access of migrants, Roma, Africans and people of African descent, Asians, Arabs and other population and ethnic groups to economic and social rights, such as housing, education and training, employment and health care.

b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

In the field of disability, the National Disability Council (Consejo Nacional sobre la Discapacidad) was established by the General Law on the Rights of Persons with Disabilities

[165] See: 'Campaña #DENUNCIAELRACISMO del Consejo para la Eliminación de la Discriminación Racial o Étnica' (#DENUCIAELRACISMO campaign by the Council for the Elimination of Racial or Ethnic Discrimination), 20 December 2021, available at: https://igualdadynodiscriminacion.igualdad.gob.es/novedades/novedades/2021/Carteles_denuncia_el_racismo_Consejo.htm.

[166] See: https://www.igualdad.gob.es/index.php/comunicacion/campanas/campana-si-es-racismo/

[167] See: 'Igualdad celebra la Semana Antirracista con motivo del Día Internacional para la Eliminación de la Discriminación Racial' (Ministry of Equality celebrates Anti-Racist Week on the occasion of the International Day for the Elimination of Racial Discrimination), *lamoncloa.gob.es*, 17 March 2021, available at: https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/igualdad/paginas/2021/170321-discriminacion_racial.aspx.

[168] See: 'Declaración institucional con motivo del Día Internacional de la eliminación de la discriminación racial' (Institutional declaration on the occasion of the International Day for the Elimination of Racial Discrimination), *lamoncloa.gob.es*, 16 March 2021, available at: https://www.lamoncloa.gob.es/consejodeministros/Paginas/enlaces/160321-enlace-declaracion.aspx.

and their Social Inclusion (RLD 1/2013). The council has 15 members representing various bodies within national Government, 15 members representing associations of persons with disabilities of various kinds and four expert advisors. Its functions include the issuing of reports, of a mandatory, non-binding nature, on draft regulations affecting equal opportunities, non-discrimination and universal accessibility. It is therefore a body with powers in the field of equal treatment in employment and occupations in line with Directive 2000/78, implementing the provisions of the directive's Articles 13 and 14. Despite this council's major role in relation to disability in Spain, it does not meet the criterion of being an 'independent mechanism' as provided by Article 33 of the UN Convention on the Rights of Persons with Disabilities.

The Forum for the Social Integration of Immigrants, created by Law 4/2000, is a collegiate, consultative, informative and advisory body in the field of immigrant integration. It consists of 10 representatives of the public administration, 10 representatives of immigrants' associations and 10 representatives of social support organisations, including trade unions and employers' organisations with an interest and involvement in the field of immigration.[169]

The Advisory Commission on Religious Freedom was created by the Organic Law on Religious Freedom (OL 7/1980). It was subsequently regulated by Royal Decree 932/2013, of 29 November 2013, with the aim of reviewing, reporting on and presenting proposals on issues relating to the enforcement of the law, religious discrimination being one of these issues. Representatives of churches, denominations and religious communities or federations, appointed by the Ministry of Justice, participate in this body. In 2021, the Law was modified by Royal Decree 371/2021, of 25 May, in order to attach this body to the Ministry of the Presidency, Relations with Parliament and Democratic Memory. Historically, issues affecting the Catholic Church have been dealt with by the Ministry of Justice. The new legislation has changed this tradition and all religious issues have passed to the Ministry of the Presidency (which is also competent in matters of constitutional relevance, analysis of the quality of norms, historical and democratic memory, etc.). In any case, the change had been requested by some religious minorities. The idea was that, as these competences were located in a cross-cutting ministry (the Ministry of Presidency), it would be easier to coordinate policies related to the exercise of this fundamental right of religious freedom.[170]

c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice and workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

Collective agreements between representatives of employers' organisations and trade unions are used to implement the principles of the directives.

On 30 January 2003, representatives of the Spanish Confederation of Employers' Organisations (CEOE), the Spanish Confederation of Small and Medium-Sized Companies (CEPYME) and the trade unions, Comisiones Obreras (CCOO) and the Unión General de Trabajadores (UGT), signed the Multi-industry Agreement for Collective Bargaining 2003 (ANC 2003). This agreement set out the criteria to serve as guidelines at the various levels of collective bargaining in Spain in 2003, and it was renewed for subsequent years until the agreement for 2018-2020. Chapter V (entitled 'Criteria relating to employment, internal flexibility, professional qualification and equal treatment in employment') contains sections on 'Equal treatment in employment', as 'The situation in employment and unemployment is uneven. Certain groups of workers have greater difficulty in finding work,

[169] This body is regulated by Royal Decree 3/2006 of 16 January 2006 on the make-up, competences and procedural rules of the Forum for the Social Integration of Immigrants.

[170] See: Rossell, J. 'Organismos Administrativos para la Gestión de la Libertad Religiosa' ('Topic 11: Administrative bodies for the management of religious freedom'), available at: https://riucv.ucv.es/bitstream/handle/20.500.12466/1441/Tema%2011.pdf?sequence=1&isAllowed=y.

either because of socio-cultural factors or prejudices or because of labour market conditions.'

Collective bargaining should help to remedy any inequality through the application of the principle of equal treatment as expressly provided for in employment law, and through the promotion of specific actions aimed at eliminating direct or indirect discrimination. The general clauses on equal treatment in collective agreements are appropriate instruments for helping to combat possible discrimination.

General measures may be taken for some groups: in the case of women, through access to employment, vocational diversification and promotion; in the case of young people, through the promotion of stable employment for the young; in the case of immigrants, through the application of the same conditions that apply to other workers; and in the case of workers with disabilities, by promoting their integration into employment.

Although it would be necessary to analyse collective negotiations in various sectors and companies to see how the ANC is being implemented, the inclusion in the ANC of the anti-discrimination clause in line with Article 11(2) of Directive 2000/43 must be described as positive.

For the period 2018-2020, the social partners have signed the Fourth Agreement for Employment and Collective Bargaining.[171] The agreement includes among the objectives of collective agreements 'compliance with the principle of equal treatment and non-discrimination in employment and working conditions, as well as the promotion of equal opportunities between women and men'. Although the only explicit reference relates to discrimination on the ground of sex, the clause can be applied to other grounds of discrimination[172]. In any case, with regard to collective bargaining (Article 10), Law 15/2022 provides that the public authorities shall encourage dialogue with the social partners in order to promote the existence of codes of conduct and good practices. In addition, collective bargaining may establish affirmative action measures to prevent, eliminate and correct all forms of discrimination in the field of employment and working conditions on the grounds set out in this law. As part of the measures that, where appropriate, may be agreed within the framework of collective bargaining, Law 15/2022 states that objectives and mechanisms for information and periodic evaluation may be established jointly by companies and the legal representation of workers. In order to monitor these guidelines, the fifth additional provision of Law 15/2022 provides for the most representative employers' and trade union organisations to draw up an annual report on compliance with the provisions of Articles 9, 10 and 11 of Law 15/2022.

d) Addressing the situation of Roma and Travellers

The National Roma Council has been appointed at a national level specifically to address Roma issues (see section 7 of this report).

In 2021, several reports were produced by the Spanish Government (Ministry of Social Rights and 2030 Agenda) to assess the implementation of the *National Strategy for the Inclusion of the Roma population in Spain 2012-2020:*[173] The first was the *Progress Report 2018-2020 on the National Strategy for the Social Inclusion of the Roma Population 2012-*

[171] Resolution of 17 July 2018 on the Directorate General of Employment, for the recording and publishing of the IVth Agreement for Employment and Collective Negotiation (*Resolución de 17 de julio de 2018, de la Dirección General de Trabajo, por la que se registra y publica el IV Acuerdo para el Empleo y la Negociación Colectiva*, *BOE*, 20 June 2015, https://www.boe.es/eli/es/res/2018/07/17/(1).

[172] In 2023, the Fifth Agreement has been signed, with effect from 2023.

[173] See this Strategy in Section 7.

2020.[174] The second was the *Final Evaluation Report of the National Strategy 2012-2020.*[175] Both reports were published by the Spanish Government in October 2021.

The *Progress Report 2018-2020* acknowledges that the health situation resulting from COVID-19 has had an impact on all strategic areas (education, employment, culture, citizen participation, etc.). For example, the report found that the majority of the actors consulted for the report (53 %) considered that the effects of COVID-19 have greatly impeded the access of Roma children and young people to education; 52 % believe that the pandemic has created greater difficulties in accessing jobs; 49.6 % believe that COVID-19 has had a significant impact on loss of employment and 59.8 % believe that it has contributed to a high degree to the increase in poverty. Finally, 50.4 % of the actors consulted admit that the circumstances of the pandemic have significantly paralysed training actions. This *Progress Report 2018-2020 of the National Strategy for the Social Inclusion of the Roma Population 2012-2020* is also important with regard to a certain amount of information concerning budgetary aspects: the *Progress Report 2018-2020* points to a greater budgetary allocation by the state and the regions aimed at the Roma population; for example, the report notes that EUR 33.4 million has been allocated to measures specifically aimed at the Roma population, which represents an increase in state contributions of 7.7 % compared with 2019, and an increase of 8.2 % compared with 2018. The area with the greatest budgetary weight in measures specifically aimed at the Roma population is at state level: employment (51.2 % of the budget) and at regional level: social inclusion (38.2 % of the budget).

However, the second report, the *Final evaluation report of the National Strategy 2012-2020*, states that the strategy has been underfunded. It says that state resources have remained stable, but that they are insufficient to reduce the disadvantages of the Roma population and bring their living conditions closer to those of the Spanish population as a whole. The report notes that there has been a general improvement in the areas of education and housing, but not in the areas of employment and health outcomes. Finally, the report warns that many objectives that are relevant in the 2012-2020 Strategy must be maintained in the next strategy approved in 2021 (see section 10 of this report), especially the increase in the educational level of Roma youth (academic success in secondary education being fundamental), greater employment of the entire Roma population of working age and the activation of Roma women, guaranteeing the quality of housing in Roma households (both internally and in terms of the equipment of their environments), definitively eradicating shanty towns and tackling health problems, mainly among Roma men and women.

It should be noted that one of the main findings of both reports is that there has been a general improvement in the areas of education and housing, but not in the areas of employment and health outcomes. In any case, it should also be mentioned that a significant number of Roma from Romania have arrived in Spain.[176] This group of recent Roma immigrants has settled in Spain under the intra-EU human mobility framework. Even if they are included in the measures of the triannual Roma operative plan, in general, this recent group of Roma immigrants face worse living and working conditions than Spanish Roma. Although there have not been any significant social tensions associated with the

[174] See *Estrategia Nacional para la Inclusión Social de la Población Gitana 2012-2020: Informe de progreso 2018-2020* (*National Strategy for the Social Inclusion of the Roma Population 2012-2020: Progress report 2018-2020*), 4 October 2021, available at: https://www.mdsocialesa2030.gob.es/derechos-sociales/poblacion-gitana/docs/estrategia_nacional/po_18_20/Informe_de_progreso_18_20.pdf.

[175] See: *Estrategia Nacional para la Inclusión Social de la Población Gitana 2012-2020: Informe de evaluación final Estrategia* (*National Strategy for the Social Inclusion of the Roma Population 2012-2020: Final strategy evaluation report*) 4 October 2021, available at: https://www.mdsocialesa2030.gob.es/va/derechos-sociales/poblacion-gitana/docs/estrategia_nacional/evaluacion_final/Informe_final_strategia_Nacional_12-20_04.10.21.pdf.

[176] In 2022, 730 000 Romanian citizens resided in Spain (See information by Unión del Pueblo romaní in May 2022): https://unionromani.org/2022/05/03/poblacion-gitana-espanola/.

Roma of Romania in Spain, as has been the case in other EU countries, there have been some cases of discriminatory acts.

8.2 Measures to ensure compliance with the principle of equal treatment (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Compliance of national legislation (Articles 14(a) and 16(a))

In Spain, there has been explicit transposition of Article 14(a) of Directive 2000/43 and Article 16(a) of Directive 2000/78 following Law 15/2022, adopted in July 2022.

Prior to the passage of Law 15/2022, Law 62/2003, which first transposed the Directives into Spanish legislation in 2003, did not explicitly include the transposition of these two Articles. However, Article 14 of the Spanish Constitution and its sustained interpretation by the Constitutional Court are enough to guarantee the legal protection required by the two Directives.

Article 14 of the Spanish Constitution declares the general principle of equality and non-discrimination: 'Spaniards are equal before the law and may not in any way be discriminated against on the grounds of birth, race, sex, religion, opinion or any other condition or personal or social circumstance'. The doctrine of the Constitutional Court on equal treatment and non-discrimination has been forcefully reiterated (STC 41/2006; 144/2006; 31/2014). In addition, the Constitutional Court has reiterated that ordinary courts must take EU law into account when applying Spanish rules (STC 64/1991; 58/2004; 329/2005). Therefore, the courts must guarantee legal protection to persons demanding the implementation of the principle of non-discrimination by not applying any national legal provisions or regulations contrary to this principle. In the field of employment, the Workers' Statute establishes the principle of equal treatment and non-discrimination in relation to all grounds of Directive 2000/78 (as well as on the grounds of racial or ethnic origin). Article 4(2)(c) of the Workers' Statute provides that workers have the right

> 'not to be directly or indirectly discriminated against for employment, or once employed, for reasons of sex, marital status, age ... racial or ethnic origin, social status, religion or belief, political ideas, sexual orientation, affiliation or not to a union, as well as by reason of language, within the Spanish State. Nor can they be discriminated against because of disability, provided they are in a position to perform the job or employment in question.'

There are no laws, regulations or rules still in force that are contrary to the principle of equality on the grounds specified in the directives.

b) Compliance of other rules/clauses (Articles 14(b) and 16(b))

Article 14 of the Spanish Constitution and its sustained interpretation by the Constitutional Court are enough to ensure that contracts, collective agreements, internal rules of businesses and the rules governing independent occupations, professions, workers' associations or employers' associations that are contrary to the principle of equal treatment may be declared null and void.

Article 17(1) of the Workers' Statute declares the regulation precepts, clauses of collective agreements, individual pacts, and unilateral decisions of discriminatory employers to be 'null and void'. This article can be considered to comply with the requirements of Article 14(b) of Directive 2000/43 and Article 16(b) of Directive 2000/78 in relation to contractual clauses in employment. Article 26 of Law 15/2022 also establishes that provisions, acts or clauses of legal transactions that constitute or cause discrimination on any of the grounds provided for in Article 2(1) of this Law are null and void. In this sense, Article 26 of Law 15/2022 stipulates that provisions, acts or clauses of legal transactions

that constitute or cause discrimination on any of the grounds provided for in Article 2(1) of the Law (racial or ethnic origin, age, religion, etc.) are null and void. The provision adds that the natural or legal person who causes discrimination shall repair the damage caused by providing compensation and restoring the victim to the situation prior to the discriminatory incident, where possible. It also states that if discrimination is proven, the existence of 'moral damage' will be presumed, and will be assessed according to the circumstances of the case, the concurrence or interaction of several causes of discrimination provided for in the law and the seriousness of the injury actually caused, taking into account, where appropriate, the dissemination or audience of the media through which it occurred.

9 COORDINATION AT NATIONAL LEVEL

Although the transposition of European directives is the responsibility of the Ministry of Justice under the coordination of the Ministry of Foreign Affairs, the department that drew up the texts first transposing Directives 2000/43 and 2000/78 in 2003 was the Ministry of Labour and Social Affairs (Directorate General for Labour).

Since 2020, the department responsible for implementing anti-discrimination policies under Directive 2000/43 has been the Ministry of Equality. In fact, this Ministry has been the driving force behind the drafting of Law 15/2022. Amongst other functions, this ministry is responsible for proposing and implementing Government policies aimed at eliminating all forms of discrimination based on sex, racial or ethnic origin, religion or ideology, sexual orientation, gender identity, age, disability, or any other personal or social condition or circumstance. This ministry is structured around two state secretariats, one of which is the Secretariat for Equality and against Gender Violence. This secretariat is responsible for the 'proposal of policy measures' aimed at guaranteeing equal treatment and non-discrimination of persons regardless of their sex, racial or ethnic origin, religion or ideology, sexual orientation, gender identity, age, disability, or any other personal or social condition or circumstance. Two general directorates depend on the Secretariat of State for Equality and against Gender Violence: the Directorate-General for Equal Treatment and Ethnic and Racial Diversity, and the Directorate-General for Sexual Diversity and LGTBI Rights (see Royal Decree 455/2020 of 10 March 2020[177], by which the basic organic structure of the Ministry of Equality is set out). It should be noted that the Council for the Elimination of Racial or Ethnic Discrimination is attached to the Directorate-General for Equal Treatment and Ethnic and Racial Diversity.

To conclude, this department has a general duty to monitor the implementation of Directive 2000/43 (independently of the duties of other ministerial departments in their respective fields). The Directorate-General of Equal Treatment and Ethnic and Racial Diversity is also responsible for developing regulations applicable to the Council for the Elimination of Racial or Ethnic Discrimination.

With respect to the area covered by Directive 2000/78, which 'lays down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation', the ministry in charge of implementing anti-discrimination policies is the Ministry of Labour and Social Economy. This is established by Royal Decree 499/2020 of 28 April 2020, which sets out the basic organic structure of the Ministry of Labour and Social Economy. According to this law, the Ministry of Labour and Social Economy is the department responsible for proposing and executing the Government's employment policy. Several state secretariats report to the ministry, one of which is the State Secretariat of Labour and Social Economy, and the Directorate-General of Labour reports to this secretariat. Amongst other functions, this Directorate has the technical and legal support necessary to 'draft, approve, transpose and implement' directives and other Community or international legal instruments in the areas of competence of the Directorate-General of Labour. Thus, the Ministry is responsible for anti-discrimination policies in the workplace on the grounds of religion or beliefs, disability, age or sexual orientation covered by Directive 2000/78.

Finally, and aside from employment, the ministry responsible for implementing policies to support persons with disabilities is the Ministry of Social Affairs and the 2030 Agenda. Royal Decree 452/2020 of 10 March 2020, which sets out the ministry's basic organic structure, states that it is responsible for proposing and implementing government policies in social rights and social welfare, family, diversity, child protection, social cohesion, care for dependent or persons with disabilities, adolescents and youth, and animal protection.

[177] See: https://www.boe.es/buscar/act.php?id=BOE-A-2020-3515.

In this regard, the Directorate-General for Disability Support Policies is included in the Ministry's organisational structure.

The anti-discrimination policies covered by this report are under the implementation of the aforementioned ministries. However, we should note that there are other departments with responsibilities in matters of racial or ethnic discrimination, both in ministries and in other tiers of government, such as the autonomous communities and town councils.

However, Spain is a decentralised state, and its regions (autonomous communities), can pass laws on the subject of non-discrimination on the grounds of discrimination provided for in the Constitution or in state legislation in the areas where they have jurisdiction, respecting state law and in the framework of the functions or competences of the regions. The autonomous communities that have adopted laws on this subject are the Community of Madrid, the Valencian Community, Andalusia, Aragon and Cantabria.[178] Catalonia has adopted a general law on equal treatment and non-discrimination, which includes guarantees for the elimination of discrimination on the grounds of sex or gender, sexual orientation or identity, and any form of LGBTI-phobia or misogyny (Law 19/2020, of 30 December, on equal treatment and non-discrimination).[179]

On the basis of the above, reference should be made to the Anti-racism and anti-discrimination National Action Plan.

On 4 November 2011, the Spanish Government approved the 'Comprehensive strategy against racism, discrimination, xenophobia and related intolerance' (still in force in 2022).

The 'Comprehensive Strategy against Racism, Racial Discrimination, Xenophobia and Related Intolerance' adopted by the Spanish Government in 2011 was based on three chapters (also known as general challenges) of interest: firstly, the implementation of analysis and information systems to understand the evolution of racism, and on the subject of judicial or legal-penal action with regard to racism; secondly, the promotion of coordination and cooperation with institutions and with civil society; and thirdly, comprehensive protection for the victims of racism (see Cachón, 2012).

Each of these chapters or general challenges should focus on different areas of action: education, employment, health, housing, media, Internet, sports and raising awareness of racism. The Strategy stresses the need to establish mechanisms for evaluating and monitoring the policies that should be developed to meet these objectives. To monitor the

[178] See: 1. Comunidad de Madrid, Law 3/2016, of July 22, on Comprehensive Protection against LGTBI phobia and Discrimination for Reasons of Sexual Orientation and Identity in the Community of Madrid (*Ley 3/2016, de 22 de julio, de Protección Integral contra LGTBIfobia y la Discriminación por Razón de Orientación e Identidad Sexual en la Comunidad de Madrid*), *BOE*, No. 285, 25 November 2016, available at https://boe.es/buscar/act.php?id=BOE-A-2016-11096&p=20160810&tn=1; Comunidad Valenciana, Law 8/2017, of April 7, comprehensive recognition of the right to gender identity and expression in the Valencian Community (*Ley 8/2017, de 7 de abril, integral del reconocimiento del derecho a la identidad y a la expresión de género en la Comunitat Valenciana*), *BOE*, No. 112, 11 May 2017, available at: https://www.boe.es/buscar/act.php?lang=en&id=BOE-A-2017-5118&tn=1&p=.; 3. Andalucía, Law 8/2017, of December 28, to guarantee the rights, equal treatment and non-discrimination of LGTBI people and their families in Andalucia (*Ley 8/2017, de 28 de diciembre, para garantizar los derechos, la igualdad de trato y no discriminación de las personas LGTBI y sus familiares en Andalucía*), *BOE*, No. 33, 6 February 2018, available at: https://www.boe.es/buscar/act.php?id=BOE-A-2018-1549&p=20180115&tn=1; 4. Aragón, Law 18/2018, of December 20, on equality and comprehensive protection against discrimination based on sexual orientation, expression and gender identity in the Autonomous Community of Aragon (*Ley 18/2018, de 20 de diciembre, de igualdad y protección integral contra la discriminación por razón de orientación sexual, expresión e identidad de género en la Comunidad Autónoma de Aragón*), *BOE*, No. 50, 27 February 2019, available at: https://www.boe.es/buscar/act.php?id=BOE-A-2019-2712; 5. Cantabria, Law 8/2020, of November 11, Guaranteeing the Rights of Lesbian, Gay, Trans, Transgender, Bisexual and Intersex Persons and Non-Discrimination on the Ground of Sexual Orientation and Gender Identity (*Ley 8/2020, de 11 de noviembre, de Garantía de Derechos de las Personas Lesbianas, Gais, Trans, Transgénero, Bisexuales e Intersexuales y No Discriminación por Razón de Orientación Sexual e Identidad de Género*), *BOE*, No. 322, 10 December 2020, available at: https://www.boe.es/buscar/act.php?id=BOE-A-2020-15880.

[179] See: https://www.boe.es/buscar/act.php?id=BOE-A-2021-1663.

Strategy, the General Directorate for the Integration of Immigrants of the Spanish Government's Ministry of Labour and Immigration was entrusted with preparing follow-up reports containing statistical data on racial discrimination, as well as monographic reports on the Strategy's areas of intervention (the Strategy assigned the Spanish Observatory against Racism and Xenophobia the task of preparing these reports).

As a result of this strategy, the Institutional Cooperation Agreement to fight against racism, xenophobia, LGBTI-phobia and other forms of intolerance was adopted in 2015 and renewed in September 2018. The Agreement was signed by judicial bodies and various ministries of the Spanish Government. The Agreement's main objective is to support and collaborate with all institutions in strategies, plans and activities against racism, xenophobia, LGBTI-phobia and all forms of intolerance, placing the support and defence of the victims of hate crimes, discrimination and intolerance at the centre. Specifically, this Agreement provides for knowledge enhancement and research activities, as well as the systematic analysis of proceedings and the monitoring of complaints, investigative proceedings conducted by the Public Prosecutor's Office, court proceedings initiated, and sentences and reparations for victims. It also includes the joint organisation and implementation of training and awareness-raising activities in this field.

This Agreement was the result of the Strategy's first general challenge: an understanding of the evolution of racism. Under the Agreement, the signatory institutions pledge to cooperate inter-institutionally to carry out the following activities: training and awareness-raising activities against racism and xenophobia; collection of data on complaints and criminal offences; academic research and publications; exchange of publications and information between organisations.

In 2015, the Government published its *Report on the evaluation and monitoring of the comprehensive strategy against racism, racial discrimination, xenophobia and related intolerance*. There are no more recent evaluation reports of the plan.

Nevertheless, it is worth considering the Recommendation of the Council for the Elimination of Racial Discrimination (CEDRE) of December 2021. This CEDRE Recommendation is aimed at encouraging the reporting of situations of racism, racial discrimination, xenophobia, anti-Semitism, anti-Gypsyism, anti-black racism and related intolerance, and special protection for victims in vulnerable situations.[180]

This Recommendation is intended to make it easier for victims of racial discrimination to file complaints in the social and judicial sphere. It advocates increasing the training of law enforcement agencies, intensifying the promotion of awareness-raising campaigns by the competent authorities, and amending immigration legislation to better protect undocumented migrants from sanctioning procedures.

On the other hand, in July 2021, the Forum for the Social Integration of Immigrants published a Communiqué on the risk of normalising hate crime.[181]

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[180] Council for the Elimination of Racial or Ethnic Discrimination, 'Recomendación del CEDRE sobre fomento de la denuncia de situaciones de racismo, discriminación racial, xenofobia, antisemitismo, antigitanismo, racismo antiafro y otras formas conexas de intolerancia y especial protección de víctimas en situación de vulnerabilidad' (CEDRE Recommendation on promoting the reporting of situations of racism, racial discrimination, xenophobia, anti-Semitism, anti-Gypsyism, anti-African racism and other related forms of intolerance and special protection for victims in situations of vulnerability), 17 December 2021, available at: https://igualdadynodiscriminacion.igualdad.gob.es/novedades/novedades/2021/pdf/Recomendacion_del_CEDRE_sobre_fomento_de_la_denuncia_y_especial_proteccion_de_victimas_aprobada_en_el_Pleno_del_Consejo_del_17_de_diciembre.pdf.

[181] See: Forum for the Social Integration of Immigrants, 'Comunicado Del Foro Para La Integración Social De Los Inmigrantes Ante El Riesgo De Normalización Del Delito De Odio' (Communiqué of the Forum for the Social Integration of Immigrants in the Face of the Risk of Normalisation of Hate Crime), 30 July 2021: https://inclusion.seg-social.es/documents/1652165/1651175/comun_racismo_fisi_30_07_21.pdf/3b47de1b-b1bb-53a5-724f-41137f019f37?t=1660040067379

The Forum expressed its deep concern about the growing rise of hate speech and racist attitudes and also its concern about the risk of normalising acts and attitudes that have never been part of Spanish society or have been only very residual in the past. It noted that over the last few years, strategies have been insufficient to ensure inclusion and coexistence. It therefore proposed a number of measures, including: an update of the National Strategy against Racism, Xenophobia and Related Intolerance with concrete objectives, a financial budget, a timeframe for implementation and monitoring and evaluation mechanisms; awareness-raising and information campaigns with objective data, carried out by entities and public administrations, which demonstrate the benefits of a plural and diverse society based on nationality or origin; increased vigilance through existing independent bodies for assistance to victims of discrimination based on racial or ethnic origin; a commitment by public administrations to denounce and condemn hate crimes and to repudiate and eradicate them in official bodies, especially those that represent the will of the people.

In the author's opinion, the aforementioned strategies or agreements have not been effective. Proof of this is the recognition by organisations such as the Forum for the Social Integration of Immigrants of the growing increase in situations of racism and hate speech. In fact, the Forum notes that 'over the last few years, strategies have been insufficient to ensure inclusion and coexistence'. There are several reasons for this: the failure to plan specific objectives, or to set clear deadlines for achieving them, or lack of accountability in the failure to achieve the strategies' overall objectives (in the author's view, the same could be said of the Roma Strategy).

In 2022, the Spanish Government approved the Spanish Strategy on Disability 2022-2030: For access and enjoyment of the Human Rights of persons with disabilities (adopted on 3 May 2022).[182] The Strategy is conceived as a roadmap for the Spanish state, through its administrations and public authorities, to contribute to the implementation of the human rights of persons with disabilities and their families. The Strategy focuses mainly on the 'double discrimination' suffered by women and girls with disabilities. In this sense, among its main 'lines of action' for the coming years are two of great interest in terms of non-discrimination: first, ensuring that women and girls with disabilities have equal access to their rights and eradicating situations of violence and discrimination against them, with special emphasis on the effects of intersectional discrimination, in line with the Sustainable Development Goals aimed at achieving gender equality and empowering all women and girls; and in second place, incorporate the intersectional perspective to take into account other situations, discriminations and oppressions that may converge in all intersections with persons with disabilities (LGBTI, migrants, refugees, belonging to another population or ethnic group, etc.) in policies, procedures and support and response resources, so that their special disadvantage is corrected.

The Strategy aims to carry out public education campaigns and on-going training programmes to combat stigma and discrimination in all settings, including for professionals and officials in migrant shelters, women's shelters, in the administration of justice, in health and specifically mental health, law enforcement, social workers, education personnel, etc., as well as to collect data on violence and discrimination against migrant women and girls. In addition, it will collect data on violence and multiple discrimination, especially against women and particularly against women with intellectual or psychosocial disabilities, in both the public and private spheres, including in the workplace and in mental health institutions; and review legislation for full implementation, anti-discrimination policies and strategies, creating mechanisms for legal redress and compensation

[182] See: https://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2022/refc20220503_cr.aspx#discapacidad or in pdf file: https://www.mdsocialesa2030.gob.es/derechos-sociales/discapacidad/docs/estrategia-espanola-discapacidad-2022-2030-def.pdf.

Finally, it must be noted that in 2022, the Spanish Government adopted the Second Action Plan to Combat Hate Crimes.[183] It is assumed that by type of crime, three figures occupy, by far, the first places in the typology of hate crimes: those related to or derived from racist or xenophobic behaviour (678 in 2021, 37.6 % of the total), hate crimes against sexual orientation and gender identity (477 in 2021, 26.5 %) and, in third place, those derived from discrimination or attacks based on ideology (336 last year, 18.6 %). Faced with this situation, the Spanish Government has approved this Second Plan, which contains 86 specific measures to prevent, detect, investigate and tackle this type of crime.

The measures are organised around eight lines of action with the victim of hate crime as a priority. The strategic design seeks to improve the quality of care, assistance and support they receive, but also to enhance the prevention of any hate crimes and to articulate a correct police response to them. Among the measures promoted are the implementation of awareness-raising, sensitisation and support campaigns for victims of hate crimes in different areas, continuing with messages on websites and social networks, through the accounts of the Ministry of the Interior, the National Police and the Civil Guard; and also promoting the need for courses on hate crimes and discrimination to be mandatory for staff assigned to specialist investigation units in this area, as well as for staff in complaints and citizen services offices.

[183] See: https://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2022/refc20220412_corregida.aspx#odio or in pdf file: https://www.interior.gob.es/opencms/pdf/servicios-al-ciudadano/Delitos-de-odio/descargas/II-PLAN-DE-ACCION-DE-LUCHA-CONTRA-LOS-DELITOS-DE-ODIO.pdf.

10 CURRENT BEST PRACTICES

In 2022, the Spanish Government approved the Spanish Strategy on Disability 2022-2030: For access and enjoyment of the Human Rights of persons with disabilities (adopted on 3 May 2022).[184] The author of this report considers that it is best practice to collect data on violence and multiple discrimination, especially against women and especially against women with intellectual or psychosocial disabilities, in both the public and private spheres, including in the workplace and in mental health institutions; and to review legislation for full implementation, anti-discrimination policies and strategies, creating mechanisms for legal redress and compensation.

Finally, it must be noted that in 2022, the Spanish Government adopted the Second Action Plan to Combat Hate Crimes.[185] The author of this report considers to be best practice the goal of promoting the need for courses on hate crimes and discrimination to be mandatory for staff assigned to specialist investigation units in this area, as well as for staff in complaints and citizen services offices

Regarding the use of artificial intelligence (AI)[186] to improve the effective implementation of the national legislation transposing the directives, the following four actions taken by Spain in relation to artificial intelligence should be noted:Of particular interest is the creation of the Spanish Artificial Intelligence Advisory Council in 2020.[187] This Council is made up of Spanish and international experts of worldwide prestige and representatives from the fields of science, economics and the social sciences. Its scope of analysis and consultation ranges from developing and monitoring the National Artificial Intelligence Strategy to analysing the implications of climate change in the workplace, fundamental rights, the fight against discrimination, and equal access in the use of technologies. As of 2023, the Council has held several meetings but no results have been published.

In 2020, a Charter of Digital Rights was drawn up by the Spanish Government and was submitted to public consultation. The final text resulting from this process was subsequently published.[188] The first version of the Charter recognised the right to equality, non-discrimination and non-exclusion in digital environments.

In July 2021, the Spanish Government officially presented the Digital Rights Charter.[189]

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184 See: https://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2022/refc20220503_cr.aspx#discapacidad or in pdf file: https://www.mdsocialesa2030.gob.es/derechos-sociales/discapacidad/docs/estrategia-espanola-discapacidad-2022-2030-def.pdf.

185 See: https://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2022/refc20220412_corregida.aspx#odio or in pdf file: https://www.interior.gob.es/opencms/pdf/servicios-al-ciudadano/Delitos-de-odio/descargas/II-PLAN-DE-ACCION-DE-LUCHA-CONTRA-LOS-DELITOS-DE-ODIO.pdf.

186 'Artificial intelligence' refers to systems that display intelligent behaviour by analysing their environment and taking action – with some degree of autonomy – to achieve specific goals (see Commission Communication on artificial intelligence for Europe (COM(2018)237), at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A237%3AFIN). For a more detailed definition of AI, see EU High-Level Expert Group on Artificial Intelligence (AI HLEG), 'A Definition of AI. Main Capabilities and Disciplines', available at: https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=56341. See also *White Paper on Artificial Intelligence - A European approach to excellence and trust*, Brussels, 19 February 2020, COM(2020) 65 final.

187 Order ETD/670/2020 of 8 July 2020, creating and regulating the Artificial Intelligence Advisory Council.

188 See: https://portal.mineco.gob.es/RecursosArticulo/mineco/ministerio/participacion_publica/audiencia/ficheros/SEDIACartaDerechosDigitales.pdf

189 See: 'Sánchez presents the Digital Rights Charter with which "Spain is at the international forefront in protecting citizens' rights"' (Sánchez presenta la Carta de Derechos Digitales, con la que "España se sitúa a la vanguardia internacional en la protección de derechos de la ciudadanía"), *lamoncloa.gob.es*, 14 July 2021, available at: https://www.lamoncloa.gob.es/lang/en/presidente/news/Paginas/2021/20210714_digital-rights.aspx.

The Charter is not regulatory in nature, but aims to recognise the challenges in application and interpretation of adapting rights to the digital environment, as well as proposing principles and policies relating to rights in digital scenarios. It also proposes a reference framework for Government action so that navigating in the digital environment can be undertaken by exploiting and developing all of its possibilities and opportunities while minimising its risks. The Charter also seeks to contribute to ongoing reflection at European level and, in doing so, lead an essential process at the global level to guarantee humane digitalisation that puts people at the centre.

Particularly important in the Charter are the rights relating to artificial intelligence, also to algorithmic non-discrimination and the right of the individual to request human supervision or intervention.

The Charter includes six main categories of rights, covering all areas of uncertainty and risk: (1) rights of freedom; (2) rights of equality; (3) rights of participation and shaping the public space; (4) rights of the working and business environment; (5) digital rights in specific environments; (6) and rights of guarantees and efficiencies. In the area of equality rights, the Charter establishes several rights, including the right to equality and non-discrimination in the digital environment and the right of access to the internet. Regarding the former, the Charter states that the right and principle of equality inherent to all persons shall be applicable in digital environments, 'including non-discrimination and non-exclusion'. The Charter adds that, in particular, it will promote effective equality of women and men in digital environments; it will encourage digital transformation processes to apply a gender perspective by adopting, where appropriate, specific measures to ensure the absence of gender bias in the data and algorithms used.

A specific measure on artificial intelligence concerning the use of algorithms at work is proposed in the Framework of Workplace and Business Environment Rights. The Charter states that: 'The development and use of algorithms and any other equivalent procedures in the field of work shall in any case require a data protection impact assessment which shall include in its analysis the risks related to the ethical principles and rights relating to artificial intelligence contained in this Charter and in particular the gender perspective and the prohibition of any form of direct and indirect discrimination, with particular attention to reconciliation rights.'

The approval of Royal Decree-Law 9/2021, of 11 May, which amends the revised text of the Workers' Statute Law, approved by Royal Legislative Decree 2/2015, of 23 October, to guarantee the labour rights of people dedicated to delivery in the field of digital platforms, should be brought up in this area.

This Law recognises the right of workers' representatives in companies to be informed by the company of the parameters, rules and instructions on which algorithms or artificial intelligence systems that affect decision-making that may affect working conditions, access to and maintenance of employment, including profiling, are based.

Mention should also be made of the Artificial Intelligence Strategy promoted and adopted by the regional Government of Catalonia in 2020, with the aim of deploying a specific action programme to strengthen artificial intelligence system in Catalonia. In terms of non-discrimination, the Strategy indicates that universal access to AI systems must be guaranteed through inclusive designs and equal work. It adds that, whenever possible, identifiable and discriminatory bias should be eliminated at the information-gathering phase.[190]

[190] Rivas-Vallejo, P. (2021), 'Discriminación algorítmica: detección, prevención y tutela' (Versión provisional) ('Algorithmic discrimination: detection, prevention and protection' (interim version)), University of Barcelona, available at: http://www.iuslabor.org/wp-content/plugins/download-monitor/download.php?id=415.

In the labour field, reference should also be made to the Collective Bargaining Agreement for the banking sector. In this agreement between the banking employers' association and workers' unions, a chapter has been included on the digital rights of the workforce. One of these rights is the right of workers faced with 'artificial intelligence' and the use of algorithms. Specifically, Article 80.5 recognises the right of workers to non-discrimination in relation to decisions and processes, where these are based solely on algorithms.[191] No specific complaint mechanism is foreseen. The worker may go to court if this right is violated. The courts must protect this right as it is enshrined in a collective agreement (collective agreements have the force of law).

The Royal Decree 203/2021 of 30 March, approving the Regulations and Functioning of the Public Sector through Electronic Means has been approved. This Royal Decree establishes that the public sector must respect the principle of user accessibility, understood as the set of principles and techniques to be respected when designing, building, maintaining and updating electronic services to ensure equality and non-discrimination in access for users, in particular persons with disabilities and the elderly. On the other hand, the approval of Royal Decree-Law 9/2021, of 11 May, amends the revised text of the Workers' Statute Law, approved by Royal Legislative Decree 2/2015, of 23 October, to guarantee the labour rights of people dedicated to delivery in the field of digital platforms. This Law recognises the right of workers' representatives in companies to be informed by the company of the parameters, rules and instructions on which algorithms or artificial intelligence systems that affect decision-making that may affect working conditions, access to and maintenance of employment, including profiling, are based.

It is worth mentioning that in February 2022, the Council for the Elimination of Racial Discrimination (CEDRE) passed a Recommendation on measures to prevent racism, racial discrimination, xenophobia, anti-Semitism, anti-Gypsyism, anti-Afro racism and related intolerance and to promote understanding of the positive values of social and cultural diversity in Spain in the field of education.[192] Among other recommendations, CEDRE calls for measures to eliminate school segregation in the framework of an Educational Inclusion Plan. For the author of this report, a good practice included in this Recommendation is to promote specific teacher training in the knowledge of communities of diverse origins living in Spain and their contributions to the collective heritage.

Public support plans for Roma (racial or ethnic origin in all fields)

The National Roma Council passed in 2021 the *National Strategy for Roma Equality, Inclusion and Participation 2021-2030*, approved on 2 November 2021.[193]

In the fight against racism and discrimination against the Roma population, the *Roma Strategic Framework for Equality, Inclusion and Participation 2021-2030* contains two objectives which, in the author's opinion, will involve adopting positive action measures: to reduce and prevent anti-Roma discrimination and intolerance and anti-Gypsyism, including stigmatisation, intersectional and multiple discrimination, anti-Roma hate crimes and hate speech. In this respect, percentages are proposed to reduce rates of spontaneous discrimination (i.e. discrimination suffered directly by Roma people or witnessed by Roma people), and to reduce rates of documented discrimination (defined as discrimination of which the authorities are aware, occurring in different areas, such as employment, health, or in dealing with neighbours or local public administration); and to strengthen the empowerment of victims of discrimination, intolerance and anti-Gypsyism in the exercise

[191] Resolution of 17 March 2021, published in: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-500.
[192] See: https://igualdadynodiscriminacion.igualdad.gob.es/novedades/novedades/2022/pdf/Recomendacion_medidas_prevenir_el_racismo_ambito_educativo.pdf.
[193] Government of Spain, *National Strategy for Roma Equality, Inclusion and Participation 2021-2030*, https://www.mdsocialesa2030.gob.es/derechos-sociales/poblacion-gitana/docs/estrategia_nacional/Estrategia_nacional_21_30/Estrategia_aprob_cm_2_nov_ENGLISH.pdf.

of their rights, guaranteeing their assistance, guidance and specialised support. Targets are also set to achieve awareness among the Roma of their rights and of the organisations that can advise them.

Sign languages and speech aid systems

Law 27/2007 Recognising Sign Languages and Speech Aid Systems recognises Spanish Sign Language as the language of those deaf persons in Spain who freely decide to use it, along with the learning, knowledge and use thereof. It also provides and guarantees support for communication by deaf, hearing-impaired and deaf-blind persons. This law, apparently the first of its kind in Europe, responds to a long-standing demand from Spanish associations representing deaf, hearing-impaired and deaf-blind persons. Its aim is to facilitate access to information and communication by deaf persons, considering their heterogeneity and their specific needs (see mention in Executive Summary).

National Disability Council (for disability in all fields)

The National Disability Council was established by the General Law on the Rights of Persons with Disabilities and their Social Inclusion (RLD 1/2013). The council has 15 members representing various bodies within national Government, 15 members representing associations of persons with disabilities of various kinds and four expert advisors. Its functions include the issuing of reports, of a mandatory, non-binding nature, on draft regulations affecting equal opportunities, non-discrimination and universal accessibility[194]. The council has played an important role in the formulation of the Spanish legislation on disability (see section 8.1 above).

The Comprehensive Law on the rights of gay and lesbian persons (in some regions) (sexual orientation)

Five regions in Spain have very similar integral laws on the rights of LGTBI people in general: Andalusia, the Balearic Islands, Catalonia, the Valencian Community and Navarre. For example, Catalan Law 11/2014 for Guaranteeing the Rights of Lesbian, Gay, Bisexual, Transgender and Intersex People and Eradicating Homophobia, Biphobia and Transphobia establishes the conditions under which their rights are real and effective; it facilitates their participation in 'all areas of social life' (the law establishes specific intervention measures in relation to education,[195] culture, free time and sport, media, health, social activities, public order, deprivation of liberty, participation and solidarity, and the labour market); and it contributes to overcoming stereotypes that negatively affect the social perception of these persons. The law was designed as a comprehensive law, inspired by Directive 2000/78, but it has now gone further. The law has been prepared with significant collaboration and consensus between associations in this field, and it has contributed considerably to raising the level of awareness of rights within the LGBTI community in Spain.

[194] The work of the Council, through one of the Council's service providers, the Spanish Documentation Centre, produces interesting reports, such as, for example, the most recent ones on persons deprived of their liberty or mental health. See: https://www.cedid.es/.

[195] For example, in the field of education, it has been ruled that, in relation to the content of school materials, school sports activities, children and young people's free time, training resources and training for mothers and fathers, emotional and sexual diversity should be taken into account, any type of discrimination should be avoided, and measures should be made available for preventing and addressing bullying that LGBTI people may be subjected to in the school environment.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives at the national level

- The most important point where national law is in breach of the directives is the following: Law RLD 1/2013 (Article 4(2)) provides that 'Persons who have been recognised as having a degree of disability equal to or greater than 33 % shall be considered as persons with disabilities.' This state of affairs must be recognised by an official body, and it could be argued that this point is in breach of Directive 2000/78, which makes no such provisions. This restricted definition of 'persons with disabilities' applies to all common legislation, and applied for the purposes of recognising the right to reasonable accommodation. This is a potential breach of Article 5 of Directive 2000/78/EC.

11.2 Other issues of concern

- The directives were transposed into national law with no dialogue either with the social partners or with the NGOs. This led to a formal transposition with shortcomings and difficulties of application in some cases.

  This legislation based on the directives is not well known or understood by the main players in the legal system. This is one of the main reasons why there have been hardly any proceedings in Spain in which these provisions have been applied.

- The study by the Council for the Elimination of Racial or Ethnic Discrimination is a report entitled *Potential victims' perception of discrimination based on racial or ethnic origin-2020*, which concludes that the work carried out by organisations and public institutions fighting discrimination was still not very well known.

- As stated in the Victims of Discrimination Assistance and Counselling Service report, mentioned above, the lack of knowledge on the part of society of the anti-discrimination legislation in force persists. This has repercussions for the victims, who do not know the scope of their rights or the mechanisms for lodging complaints and receiving assistance, and who sometimes accept discrimination as an everyday occurrence.

- As stated in the report by the Fundación Secretariado Gitano and the report by the Victims of Discrimination Assistance and Counselling Service, it is necessary to promote training in anti-discrimination law and the Victims' Statute for all key actors in this field: the judiciary, the prosecution, the legal profession, and the law enforcement agencies. It is also necessary to provide sufficient resources to all institutions involved in the fight against racial or ethnic discrimination, with a special focus on support for Roma women and other women who suffer discrimination on ethnic grounds.

- Given the dispersion of the norms on (shifting) the burden of proof, the differences in their definitions and the jurisprudence of the Constitutional Court, it would be appropriate to merge the definitions into a single legal text.

- Notable progress has been made with significant legal innovations in the fields of disability (RLD 1/2013 to incorporate the International Convention on the Rights of Persons with Disabilities) and sexual orientation (the incorporation of homosexual, lesbian and bisexual people within the general laws of non-discrimination and the law on same-sex marriage have made these persons enjoy better rights of equality; in addition, some regions have approved specific standards of support for the population LGBTI). However, this legal progress has not been accompanied by actual changes in general behaviour in society or in discriminatory practices.

- The situation of teachers of religion in state schools. This issue is difficult to resolve because the international agreement between the Holy See and Spain signed in 1976, just before approval of the present Spanish Constitution, is still in force. In other words, teachers of religion are chosen for their suitability by the Catholic Church to teach in state (or public) schools and the Catholic Church can therefore asked to make demands in accordance with its faith or doctrine (however, a dismissal of a religion teacher for not fulfilling these requirements in his or her private life could be declared null and void).

12 LATEST DEVELOPMENTS IN 2022

12.1 Legislative amendments

During 2022, Law 15/2022 was passed: this Law has specifically affected the principle of non-discrimination as regulated by Directives 2000/78 and 2000/43.

Law 15/2022, which has completed the process of transposition of Directives 2000/78 and 2000/43, was passed in 2022. As stated in the Preamble to Law 15/2022: 'Among the purposes of this law is to transpose the objectives and aims of Directives 2000/43/EC and 2000/78/EC in a more appropriate manner, which was only partially done in Law 62/2003, of 30 December, on fiscal, administrative and social measures, without adequate public debate in an area that requires public awareness and visibility, social and political repercussions of its deliberations and a significant parliamentary process. Furthermore, this transposition was subject to critical analysis by the European Commission, social organisations, and especially human rights organisations, a process that generated a series of proposals for improvement. The transposition has also proved to be insufficient and inefficient in tackling the problems related to equality and non-discrimination in Spanish society, especially in the current context of the health, social and economic crisis'.

In fact, Law 15/2022 establishes in Article 2 that 'no one may be discriminated against on the grounds of birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, gender expression, illness or health condition, serological status and/or genetic predisposition to suffer pathologies and disorders, language, socio-economic situation, or any other personal or social condition or circumstance'. As can be seen from the reading of this precept, Article 2.1 of Law 15/2022 now adds to the grounds of discrimination prohibited by Article 14 of the Constitution the grounds of 'illness or health condition', 'serological state and/or genetic predisposition to suffer pathologies and disorders', 'sexual identity', 'gender expression', 'language' and 'socio-economic situation'.

The broadening of discrimination factors in Article 2.1 of Law 15/2022 can be explained by the fact that this Law aims to be a comprehensive regulation 'on grounds of discrimination', i.e. it aims to prohibit discrimination against persons on any personal or social grounds, and especially on those mentioned explicitly in the legal text. According to the explanatory memorandum of Law 15/2022, the grounds provided for in Article 2.1 are explained in a context of 'structural discrimination that accounts for historical inequalities resulting from a situation of social exclusion and systematic subjugation through social practices, beliefs, prejudices and stereotypes'. This reference to 'structural discrimination' against groups or collectives (for example, against women, or people of other ethnicities, or for holding other religious beliefs) is of interest. On the one hand, the spirit of protection of groups or collectives that have historically faced discrimination is latent in the law. On the other hand, although the notion of structural discrimination is not employed in the Articles included in Law 15/2022, it does justify the specific grounds which are included in Article 2.1, and which affect groups of people even though the grounds of discrimination may not be visible (e.g. people with mental illnesses or certain religious minorities).[196]

[196] Of interest are the references made by the European Commission to groups that are potentially victims of discrimination, some of which are visible (women, older people, people with certain disabilities, young people, ethnic minorities), while others are not (see European Commission: European Network of Public Employment Services, *Mapping PES Responses against labour market discrimination*, March 2022.

12.2 Case law

Relevant discrimination ground(s): Disability
Name of the court: Labour Court No. 5 of the city of Bilbao
Date of decision: 20 June 2022.
Reference number: 266/2022
ECLI reference: N/A
Link:
https://www.poderjudicial.es/stfls/TRIBUNALES%20SUPERIORES%20DE%20JUSTICIA/TSJ%20Pais%20Vasco/JURISPRUDENCIA/Jdo%20Social%205%20Bilbao%2020%20junio%202022.pdf

Brief summary: The court ruling settled a request by a schoolteacher with a mobility-impairing physical disability for compensation from the regional government of the Basque Country for failing for almost 18 years to carry out works to accommodate her physical disability at the school where she worked.

The woman had been a civil servant in the Department of Education of the Regional Government of the Basque Country since 1982 and worked as a primary school teacher. In 1996, this teacher took part in a public examination to work at the primary school Z. This school is located on the slopes of a hill and the entrances are steeply sloping (uphill as you enter the school). The school has several floors (ground, first and second) and had no lift, mechanical ramps or other facilities when the teacher took up her job. In general, classes were held on the first and second floors. The teacher then sent a letter to the Prevention Service of the Basque Government's Department of Education requesting that architectural barriers be removed from the school and also asked to be given preference to work in other schools for as long as this situation lasted. In fact, the teacher requested temporary transfers to other schools, approved in some cases and denied in others. The teacher actually returned to her post at school Z in 2008 but no work had been carried out. Finally, in 2019, the teacher was granted official retirement due to her inability to perform her duties. In 2021, work was carried out to remove architectural barriers and a lift was installed.

The teacher claimed that the Department of Education of the Basque Government failed to comply with its legal obligations in terms of occupational risk prevention. In addition, it violated her fundamental rights to dignity, physical and moral integrity, equal treatment and non-discrimination, honour, and safety at work. She therefore requested that the Department of Education pay her EUR 168 000 in compensation and send her a letter apologising for the way she had been treated, and that the letter or the sentence be posted in the school staff room for 30 days.

The ruling of the Labour Court in Bilbao stated that the Basque Department of Education was guilty of indirect discrimination on grounds of disability due to its failure to act in response to the repeated requests made by the teacher, the various school principals, the prevention services, and other schools (the author of this report wishes to point out that despite the above statement, at no point in the judgment is there any mention of the administration's obligation to make reasonable adjustments). The legal foundation for the statement of the Judgment is Royal Legislative Decree 1/2013, of 29 November, which states that 'Indirect discrimination shall exist when a legal or regulatory provision, a contractual or contractual clause, an individual agreement or a decision of a public authority, or an individual decision, provides for indirect discrimination, contractual clause, an individual agreement or a unilateral decision of the employer, apparently neutral, can cause a disadvantage unilateral decision of the employer, apparently neutral, may cause a particular disadvantage to persons with disabilities in relation to other persons with disabilities in relation to other persons, provided that they do not objectively serve a legitimate aim and that the means of achieving that aim are not objectively a legitimate

aim and the means of achieving that aim are not appropriate and necessary, or unless the employer necessary, or unless the employer is obliged to take appropriate measures…'.

The Court did not accept the various arguments put forward by the Basque Government's Department of Education to justify not having carried out the work requested by the teacher; for example, that the work could not be carried out due to the economic crisis in 2009 (in fact, in 2004 the works had already been requested). Nor did the Court accept the Basque Government's argument that the school should have moved classes to the ground floor, since according to the judge, this floor only allowed for the installation of common areas such as the library, etc. The judge noted that in addition to the lack of a lift, access to the school was via a steep slope which was not asphalted until late 2014 or early 2015, and it was only the school management that took certain decisions that year to excuse the teacher from supervising the playground or to allow her to park inside the school.

In short, the judge considered that the failure to carry out building and other accessibility works at the centre meant that the worker was unable to participate in her teaching activities under equal conditions because of her disability.

3/ Finally, the judge ruled that the teacher's right to physical and moral integrity had also been violated. In response to the situation that started at least in 2004, and which was brought to their attention by the teacher herself and by various organisations and institutions, not to mention the prevention services, the Department of Education had failed to act in any way on these requests, nor had it taken any action to encourage the temporary transfer of the teacher to other schools.

Finally, the judge decided in favour of the claim, but only awarded damages of EUR 40 000 based on the financial, personal and non-pecuniary damage caused to the teacher.

Relevant discrimination ground(s): Age
Name of the court: High Court of Justice of the region of Andalucia (Seville)
Date of decision: 3 February 2022
Reference number: 307/2022
ELCI reference: N/A
Link:
https://www.poderjudicial.es/search/AN/openDocument/5f230732cde27298/20220325
Brief summary: The conflict arose between a transport company and one of its transport workers, who was nearing retirement age. The company decided to reduce the pay of all their workers except those close to the age of retirement ((it is of interest to note that reducing pay also gave a worker a right to terminate the contract and receive severance pay, and the worker challenging the decision to maintain his/her pay wanted to have the right to terminate the contract, although nothing is said about this in the sentence).

A company in the road haulage sector decided to initiate the procedure for substantial changes in working conditions for its entire workforce, as provided for in Article 41 of the Workers' Statute Law. It should be noted that this provision foresees the possibility for a company to make a downward adjustment to workers' wages when it can prove that it is undergoing an economic situation justifying such a decision (e.g. because it is making losses). If the company can demonstrate that it finds itself in a negative economic situation and decides to adjust the salary of its entire workforce, it must initiate a period of consultation with the workers' representatives in the company with the aim of reaching an agreement. If such an agreement is not reached, the employer may adjust workers' wages downwards, but workers have the right to the termination of the employment contract with a severance payment of 20 days' salary per year of service with a maximum of nine months' salary.

Using this legal basis, the company proved that it was going through a negative economic situation and after having tried unsuccessfully to reach an agreement with the workers' representatives, it decided to lower the salary payments received by all its workers. The workers' representatives responded by saying that the entire workforce would take advantage of the possibility provided for in the Workers' Statute Law to terminate the employment contract with the corresponding legal severance pay.

In response to this, the company decided to reduce the salaries of the entire workforce except of those workers nearing retirement age; i.e. the company maintained the amount of money they had been paying for these workers alone. According to the company, the decision not to apply wage reductions for certain employees was taken because the bases for these employees' social security contributions might be adversely affected, thus putting their future retirement pensions at risk. The company also stated that in taking this decision it had weighed up the financial impact that the termination of the employment contract of the entire workforce could have for the company, because it would be more favourable for the company to maintain the salaries of these workers than to pay them compensation for the termination of their employment contracts.

There were four employees in the company nearing the age of retirement. One of them contested the company's decision not to be included in the wage adjustment procedure and thus opt for the termination of his contract with the right to severance pay. The worker claimed that his right to non-discrimination on grounds of age under Article 14 of the Spanish Constitution had been violated.

The High Court of Justice of the region of Andalusia ruled in a judgment of 3 February 2022 that the company's decision not to reduce the pay of a worker nearing retirement and thus not to grant him the right to termination of contract with severance pay did not constitute discrimination on grounds of age.

The Court held that the fact that the company had not selected workers close to retirement age for wage reductions was an appropriate and proportionate criterion, since it had been adopted to avoid prejudice to the workers concerned as a result of a substantial change in pay: a reduction in their salary and in the social security contributions that would serve for the calculation of their future retirement pension.

The Court went on to state that the use of the near-retirement-age criterion for not adjusting pay was objectively justified and did not entail a disproportionate sacrifice for older staff, since it did not deprive them of work and it prevented them from becoming unemployed at an age when their employment prospects were worse than those of younger workers. Moreover, the Court added that targeting these workers close to retirement age for salary reductions could be more burdensome for the company if these workers were to use the option of having their contracts terminated and receiving a severance payment, given the company's current business crisis.

Relevant discrimination ground(s): Age
Name of the court: Supreme Court
Date of decision: 3 March 2022
Reference number: 269/2022
ECLI reference: N/A
Link:
https://www.poderjudicial.es/search/TS/openDocument/a2496ee7a2c7270c/20220314

Brief summary: The conflict arises from the appeal brought before the Spanish Supreme Court by the Professional Association of Non-Commissioned Officers of the Armed Forces (ASFASPRO) against Royal Decree 309/2021, of 4 May, approving the Regulations for entry and promotion in the Armed Forces, seeking the annulment of Article 17, which establishes specific age requirements for participation in selection for training courses for officer ranks.

Under this provision, for non-commissioned officers (NCOs) to be promoted to the officer ranks, they must meet certain age limits. Firstly, if they have no prior university degree, they must not be over 34 years of age (except for the basic specialisation of the Air Force Flight Corps, which is set at 24 years of age). On the other hand, if they have a previous university degree, they may not exceed 38 years of age.

In the case that was brought, the Professional Association of Non-Commissioned Officers of the Armed Forces alleged that the age limits established in Article 17 of Royal Decree 309/2021 were illegal, discriminatory and lacked objective and scientific justification.

The case claimed that the age limits established in Article 17 of Royal Decree 309/2021 were not justified with objective and scientific data either in Royal Decree 309/2021 itself or in other documents or files of the Ministry of Defence concerning the approval of said decree. On this point, the Court referred to several judgments of the Court of Justice of the European Union, in particular the judgment of the Court (Grand Chamber) of 12 January 2010 in Case C-229/08 (*Colin Wolf v. Stadt Frankfurt am Main*), and the judgment of the Court (Second Chamber) of 13 November 2014 in Case C-416/13 (*Mario Vital Pérez v. Ayuntamiento de Oviedo*). According to the case that was brought, these rulings served as a basis for overturning age limits that were not based on scientific justification. In this regard, it was stated that Royal Decree 309/2021 should have provided exhaustive justification for the age limits it establishes for NCOs. In fact, they should have done so more thoroughly for those who are already career military personnel, as is the case of NCOs, who want to be promoted within their corps in order to reach the officer ranks.

The case also pointed out that establishing such age limits is contrary, among other rules, to the principles of equality, merit and ability, which govern access to the military career and which are protected by Articles 14, 23.2 and 103.3 of the Spanish Constitution concerning equality, merit and ability (these provisions regulate in general the principle of equality and non-discrimination, as well as their application to access to the civil service).

Finally, the case noted that the age limits in Royal Decree 309/2021 contradict several previous Spanish court rulings, as well as being contrary to Directive 2000/78, as they amount to direct discrimination as defined in Article 2(2)(a) thereof, and cannot be included in the exceptions provided for in Articles 4 (1) and 6(1) of the aforementioned Directive.
As regards the defendant, the General State Administration (Ministry of Defence) upheld the validity of Article 17 of Royal Decree 309/2021, stating, among other allegations, that establishing age limits to access the officer ranks by promotion responds to the personnel needs of the Armed Forces and the requirements that its personnel must meet to fulfil the tasks assigned to them: the preparation and use of force, tasks in which the action of command reaches its maximum and particular responsibility. The General State Administration stressed that it was necessary to set these upper age limits for the military organisation to achieve the greatest possible efficiency in the resources it has available, for which the necessary skills and experience must be acquired over the years in order to become officers.

In its ruling of 3 March 2022 (ruling No. 269/2022), the Supreme Court confirmed that neither Royal Decree 309/2021 nor the documents or files relating to its adoption contained any objective or scientific data justifying the establishment of upper age limits.

The Supreme Court added that no reference as to why it was deemed necessary to establish age limits for promotion had been found either in the law or in the files leading to its adoption. It stressed that no justification between age and physical condition had been detected. Factors other than physical fitness were also not indicated or justified for the setting of maximum age limits, such as the functions to be performed and the needs arising from the specific organisation of the corps concerned (NCOs or officers), or based on military manpower planning issues.

Nor was there any justification that the age restriction resulted from an essential occupational requirement, or that it was proportionate or objective in nature. Furthermore, the Supreme Court found that no information was provided on the fact that in these corps (NCOs or Officers), entry at certain ages and the effect that this may have on pursuing a full professional career, including the possibility to apply for the highest posts in the Corps, may influence the motivation of military personnel to carry out their duties.

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ANNEX 1: TABLE OFINTERNATIONAL INSTRUMENTS

Country: **Spain**
Date: **1 January 2023**

Instrument	Date of signature	Date of ratification	Derogations / reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	24.11.1977	04.10.1979	Reservation with regards to Arts. 5 and 6 relating to disciplinary regime of the armed forces	Yes	Yes
Protocol 12, ECHR	04.10.2005	13.02.2008	None	--	--
Revised European Social Charter	23.10.2000	08.06.2021	None	Yes	Yes
International Covenant on Civil and Political Rights	28.09.1976	27.04.1977	None	Yes	Yes
Framework Convention for the Protection of National Minorities	01.02.1995	01.09.1995	None	Yes	Yes
International Covenant on Economic, Social and Cultural Rights	28.09.1976	27.04.1977	None	No	Yes
Convention on the Elimination of All Forms of Racial Discrimination	13.09.1968	13.09.1968	None	Yes	Yes
ILO Convention No. 111 on Discrimination	06.11.1967	06.11.1967	None	No	Yes
Convention on the Rights of the Child	26.01.1990	06.12.1990	None	Yes	Yes

Instrument	Date of signature	Date of ratification	Derogations / reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Rights of Persons with Disabilities	30.03.2007	03.12.2007	None	Yes	Yes

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