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Non-discrimination

Spain

2026

including summary



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*European Commission
B-1049 Brussels*

Country report

Non-discrimination

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

Spain

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Reporting period 1 January 2025 – 1 January 2026

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EXECUTIVE SUMMARY

1. Introduction

In the course of 2025, the trend towards significant demographic transformation observed since the beginning of this century has been consolidated, due to constant population growth, which is largely a result of the arrival of migrants. In this context, it should be noted that Government regulations on immigration came into force in 2025, making it easier for undocumented immigrants to obtain residence and work permits.

Between 1975 and 2025, the population of Spain grew from 36 million to 49 442 844 inhabitants as of 1 October 2025,¹ which is an increase of almost 500 000 people compared to 2024. Immigration has played an important role in this population growth. According to data from 1 January 2025, the population of Spain stood at 49 128 297 inhabitants: 42 216 326 were Spanish nationals (85.9 %) and 6 911 971 were of foreign nationality (14.1 %). Compared to the previous year, the number of Spanish nationals increased by 0.2 % while the number of foreign nationals increased by 6.3 %. The largest population of foreign nationals on 1 January 2025 were Moroccans (968 999), Colombians (676 534) and Romanians (609 270).² In addition, there has been a continuous increase in foreigners being granted Spanish nationality (with consequent effects on the European Union). According to figures published in 2025, the number of foreign residents acquiring Spanish nationality increased by 5.1 % in 2024, to 252 476. The most common countries of origin were Morocco (42 910), Venezuela (35 403) and Colombia (26 224).³

In relation to the discrimination factors covered by European legislation, it is worth mentioning those for which statistical data is available, mainly religion and age. Regarding religion, a survey conducted in December 2025 by the Centre for Sociological Research found that 53.9 % of the population declared themselves Catholic (which is roughly the same as in 2024, when there was a decrease of around two percentage points compared to 2023), although only 18.9 % considered themselves practising Catholics, while 35.9 % identified as non-practising. Only 3.7 % of the population declared themselves to be members of another religious faith (mainly Islam and Protestantism). In addition, in 2025, it was found that the agnostic, atheist or indifferent population had reached 40.5 %, thus far exceeding the number of practising Catholics.⁴

According to the latest statistics published by the National Statistics Institute with data from 2022 (with a population of 47.5 million at the time), the average age of the population registered on the census is 44.1 years (covering all age ranges). The average age of Spaniards is 45 years and that of foreigners is 37.1 years (the average age of citizens of countries belonging to the European Union is 39.6 years).⁵ In general, this is confirmation that the age profile of the foreign population is making a considerable contribution to the rejuvenation of the Spanish population. As of 2021, 14.9 % of the Spanish population were under 16 years old; 32.6 % were between 16 and 44 years old (but note, with respect to the foreign population, this percentage rises to 52.9 %); 30.9 % were between 45 and 64

¹ Instituto Nacional de Estadística (INE) (National Statistics Institute) 'Continuous population statistics': https://www.ine.es/dynqs/INEbase/es/operacion.htm?c=Estadistica_C&cid=1254736177095&menu=ultiDataos&idp=1254735572981.

² INE (2025) 'Annual population census', press release, 2 December 2025, <https://www.ine.es/dynqs/Prensa/CensoVariables2025.htm>.

³ INE (2025) 'Statistics on the acquisition of Spanish nationality by residents', press release, 5 June 2025: <https://www.ine.es/dynqs/Prensa/EANER2024.htm>.

⁴ In fact, 15.8 % of the population consider themselves atheists (they deny the existence of God); 12.5 % consider themselves agnostics (they do not deny the existence of God, but neither do they rule it out); and 12.5 % define themselves as indifferent. See: Centre for Sociological Research (2024) *Barometer for 2025*, December 2025: https://www.cis.es/documents/d/quest/es3536mar_a-pdfhttps://www.cis.es/documents/d/quest/es3536mar_a-pdf.

⁵ INE (2021) 'Avance de la Estadística del Padrón Continuo a 1 de enero de 2022' https://www.ine.es/prensa/pad_2022_p.pdf.

years old (only 24.8 % of the foreign population); and 21.6 % were aged 65 or older (only 7.5 % of the foreign population).⁶

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, the population aged between 20 and 64, which currently accounts for 60.9 % of the total, will have fallen to 53.7 % in 2051. On the other hand, the percentage of the population aged 65 and over, which currently stands at 20.4 % of the total, will reach a maximum of 30.5 % around 2055. Meanwhile, if current trends continue, the dependency ratio (the percentage of the population aged under 16 or over 64 compared to the population aged 16 to 64) would also peak at around 75.3 % in 2052, gradually falling from then onwards to 73.9 % in 2074.⁷

In relation to Spain's ethnic population, it is worth mentioning the data on the Spanish Roma population in Spain. The report by the Fundacion Secretariado Gitano, entitled *A comparative study from 2018 on the employment and poverty of the Roma population in Spain*,⁸ 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. The Roma population is much younger than the overall national population, as 66 % of the Roma population in Spain were under 30 years of age, compared to only 30 % of the general population. It should also be noted that only 17 % of Roma people had completed compulsory secondary education (ESO), compared with 77 % of the general population.

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,⁹ disability¹⁰ and sexual orientation¹¹ 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 Decree-Law (RDL) 2/2015 of 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

⁶ INE (2021), 'Avance de la Estadística del Padrón Continuo a 1 de enero de 2022' (Provisional continuous statistics as of 1 January 2022), https://www.ine.es/prensa/pad_2022_p.pdf.

⁷ INE (2020) 'Proyecciones de Población 2024-2074' (Population projections 2024-2074) <https://www.ine.es/dynqs/Presna/PROP20242074.htm#:~:text=Seq%C3%BAn%20las%20proyecciones%20publicadas%20hoy,5%2C98%20millones%20de%20personas.>

⁸ Fundacion Secretariado Gitano (2019), *Estudio comparado sobre la situación de la población gitana en España en relación al empleo y la pobreza 2018* (A comparative study on the employment and poverty of the Roma population in Spain 2018).

⁹ Constitutional Court Judgment 31/1984, 7 March 1984.

¹⁰ Constitutional Court Decision 269/1994, October 1994.

¹¹ Constitutional Court Decision 41/2006, February 2006.

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 initially made in Chapter III of Title II of Law 62/2003,¹² 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.¹³ 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 2022, Law 15/2022 of 12 July, which comprehensively covers equal treatment and non-discrimination, was passed, which completed the transposition of Directives 2000/43 and 2000/78. The Law entered into force on 14 July 2022. The Law 15/2022 of 12 July 2022 complements Law 62/2003, which is still in force. However, Law 15/2022 carried out a more adequate transposition of the European Directives, which is manifested, for example, in the regulation 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. Of note in the area of disability is Royal Decree-Law (RDL) 1/2013¹⁴ 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.

In relation to disability in the workplace, in January 2024, the CJEU ruled that the automatic termination of employment contracts due to the employee's total permanent incapacity to perform their tasks, could amount to a violation of Article 5 of the Employment Equality Directive, which imposes a duty to provide reasonable accommodation to employees with disabilities.¹⁵ Such automatic termination was provided for by the Workers' Statute of 2015 in the event of the death, severe incapacity, or total or absolute permanent incapacity of the worker.¹⁶

Following the ruling of the CJEU, legislation was passed in April 2025 to amend the relevant provisions of the Workers' Statute.¹⁷ The new provisions stipulate that in the case of severe, total permanent or absolute permanent incapacity, the contract will only be terminated if it is not possible to make reasonable accommodations because they would constitute an excessive burden on the employer, there is no vacant position matching the professional profile and situation of the worker, or the worker refuses the proposed adjustments. When determining whether the burden of proposed reasonable adjustments is excessive, account must be taken of the cost of the adaptation measures in relation to the size, economic resources, economic situation and total turnover of the company. The burden shall not be considered excessive when it is sufficiently alleviated by public

¹² 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.

¹³ 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>.

¹⁴ Royal Decree-Law 1/2013 (RDL 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.

¹⁵ CJEU, 18 January 2024, *J.M.A.R. v Ca Na Negreta SA*, C-631/22, EU:C:2024:53. See also [European equality law review 2024](#), pp 82-83.

¹⁶ Total permanent incapacity meant that the worker was unable to do their job while absolute permanent incapacity meant that they were unable to do any job.

¹⁷ Spain, Law No. 2/2025 of 29 April: <https://www.boe.es/buscar/doc.php?id=BOE-A-2025-8567>.

measures, aid or subsidies. There are specific regulations regarding what is considered as an 'excessive' burden for companies employing fewer than 25 workers.

3. Main principles and definitions

The Spanish Constitution 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 Court¹⁸ 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.

Spanish legislation transposes the principles of non-discrimination and concepts established in European Directives 2000/78 and 2000/43. Notably, according to Law 15/2022, different types of discrimination have been prohibited. 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), the other types of discrimination newly prohibited in Spanish law are discrimination by association, discrimination by assumption (the literal translation of the Spanish term would be 'discrimination by error' but its definition is effectively 'discrimination by assumption'), multiple discrimination 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 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.

Law 15/2022 extends the areas in which the prohibition of discrimination is applicable. The full material scope of EU anti-discrimination law is covered. The areas to which the 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 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)

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

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 rule¹⁹ 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 (RDL 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 introduction by Law 15/2022 of a regulation on standing: 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' 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' (as seen, those entities can act in defence of their affiliates, if they have their authorisation).

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*) provided that such action is covered by law. Accordingly, *actio popularis* is possible in criminal proceedings and also in the administrative sphere, i.e. in respect of the actions of the Administrations or general provisions of a lower rank than the law (Article 19(1)(i) and (j) of Law 29/1998, of 13 July 1998, regulating contentious-administrative jurisdiction).

In the area of equal treatment and non-discrimination, Law 15/2022 amended Law 1/2000 of 7 January 2000, regulating civil procedure in such a way as to guarantee the exercise of *actio popularis*. Therefore, when the affected persons are an indeterminate number or difficult to determine, various bodies can bring a legitimate legal action in defence of diffuse rights or interests: the Independent Authority for Equal Treatment and Non-Discrimination, the most representative political parties, trade unions and professional associations of self-employed workers, as well as organisations of consumers and users at the state level, and other organisations at the state level or at the territorial level in which the situation of discrimination occurs and where the defence and promotion of human rights is one of their aims, in accordance with the provisions of the Comprehensive Law

¹⁹ See: Law 1/2000 of 7 January 2000, regulating civil procedure, and Law 29/1998 of 13 June 1998, regulating administrative jurisdiction.

for Equal Treatment and Non-Discrimination, notwithstanding the individual legal standing of those affected if they have been identified.

This form of *actio popularis* applies to the five grounds of discrimination provided for by European regulations.

Furthermore, 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 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. 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 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. The offences and penalties that were in force before this Law was passed are maintained in the field of employment for all grounds and for the ground of disability in all fields.

In general, there are 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 and 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. In June 2010, the Council launched the Network of Centres of Assistance for Victims of Racial or Ethnic Discrimination, involving seven major NGOs. However, the Council is still not well known by the public, and its scope for anti-discrimination action is limited. 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 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 will be a body of the General State Administration, which means that it will be configured as a public law entity that will act for the fulfilment of its purposes with full independence and functional autonomy with respect to the public administrations; it will be 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 the Law, in both 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; however, as of the end of 2025 it had not yet been set up in practice.

A Royal Decree was published on 6 May 2025, noting in its preamble that, in order to facilitate the functioning of the new Independent Authority for Equal Treatment and Non-Discrimination, it is imperative to establish regulatory provisions to ensure the proper performance of the functions of the new authority, until its statutes and the list of job positions are approved.²⁰

First, the Decree provides that the new 'Independent Administrative Authority' will be attached to the Ministry of Equality of the Government of Spain, through the person appointed to lead the body.²¹ The provision specifies, however, that this link will in no way affect the full independence and functional autonomy of the Authority, which will not receive or accept instructions in the performance of its duties and the exercise of its competences by public authorities. The provision further establishes that the person appointed as president of the Authority will be regarded as a senior official, holding a rank equivalent to that of undersecretary.

Secondly, the following provisions are included as a 'Guarantee of Operation of the Independent Authority for Equal Treatment and Non-Discrimination':

1. The Ministry of Equality shall provide the necessary services and administrative support to guarantee the start of the Independent Authority's activities until the date to be determined by order of the Minister of Equality.
2. Until the Independent Authority has its own budget, its activities shall be financed from the budgetary appropriations of the Ministry of Equality.
3. Until the Independent Authority approves its statutes and its own budget, the staff providing services to it shall be remunerated from the budgetary appropriations of the Ministry of Equality, being provisionally assigned to the undersecretariat of that ministerial department.

The Ministry for Digital Transformation and the Civil Service, upon a proposal from the Ministry of Equality, will approve the provisional list of job positions for the Authority, which shall remain in effect until the statutes of the Independent Authority and its definitive list of job positions are approved.

7. Key issues

In 2025, no issues of concern could be identified that relate to the use of artificial intelligence (AI) regarding the effective implementation of national legislation transposing the directives.

Issues of concern are:

²⁰ Spain, [Royal Decree No. 360/2025 of 6 May](#) amending Royal Decree 246/2024 of 8 March developing the basic organic structure of the Ministry of Equality and amending Royal Decree 1009/2023 of 5 December establishing the basic organic structure of ministerial department.

²¹ While it is noteworthy that Law 15/2022, when stipulating the creation of a new equality body, used the terminology 'Independent Authority' and the new Royal Decree uses the term 'Independent Administrative Authority', it is not certain that this will imply any legal modification of the status of the new Authority.

- The delay, far exceeding the provisions of Law 15/2022, in setting up the Independent Authority for Equal Treatment and Non-Discrimination.
- The Council for the Elimination of Racial or Ethnic Discrimination continues to fulfil its functions with interesting statements and reports. However it is considered that its effectiveness is questionable, because it is made up primarily of Government representatives. This could jeopardise the independence of 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 legal progress has been accompanied by an increase in cases recorded by the police, which may suggest that the political discussion of a law in 2023 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 LGBTIQ+ 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. In this regard, it is worth mentioning the Spanish Government's adoption in 2025 of the Action Plan for Improving the Employability of the Roma Population (2025-2028).
- The adoption of the disability strategy.
- Sign languages and speech aid systems (positive action measures on the ground of disability), a pioneering law in its time that has allowed 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.

²² See table in section 6(c) of this report based on the author's extrapolation of data from the annual statistical reports of the Ministry of Interior.

INTRODUCTION

The national legal system

The public administration, as defined in the Spanish Constitution (SC)²³ 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 amendment: N/A

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 amendment: Law 3/2023 of 28 February on employment

Web link: <https://www.boe.es/buscar/act.php?id=BOE-A-2023-5365#df-2>

²³ Spanish Constitution (*Constitución Española*), BOE, 29 December 1978, [https://www.boe.es/eli/es/c/1978/12/27/\(1\)/con](https://www.boe.es/eli/es/c/1978/12/27/(1)/con).

Grounds covered: disability

Material scope: Employment

Principal content: The main purpose of the Employment Act is to regulate public employment policies and the range of resources, services and programmes that make up the National Employment System in Spain. Within this framework, it regulates the rights and obligations of those using employment services, as well as the activities they are required to undertake, with particular attention paid to certain priority groups who face difficulties in accessing or remaining in employment. The amendment to Law 3/2023 of 28 February on employment, introduces a requirement that regulatory provisions issued by public authorities and administrations, as well as their decisions, acts, communications and statements, and those of their officials and agents, must use the terms 'person with a disability' or 'people with disabilities' when referring to such individuals. Furthermore, the amendment improves the regulations to treat those with recognised specific types of incapacity for work as equivalent to persons with disabilities.

Official Title of the Law: Law 15/2022, of 12 July, comprehensive for equal treatment and non-discrimination (*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 amendment: N/A

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: Law 4/2023, of February 28, 2023, for real and effective equality of transgender people and for the guarantee of LGBTBI rights (*Ley 4/2023, de 28 de febrero, para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGBTBI*)

Name used in this report: Law 4/2023, of 28 February 2023

Abbreviation: Law 4/2023

Date of adoption: 28 February 2023

Entry into force: 2 March 2023

Latest amendment: N/A

Grounds covered by the article: The law that prohibits discrimination on the basis of sexual orientation, sexual identity, gender expression or sexual characteristics. It also

recognises as direct discrimination the lack of reasonable accommodation for persons with disabilities. Finally, it recognises as multiple discrimination when a person is discriminated against, simultaneously or consecutively, for two or more of the causes foreseen in this law 4/2023, and/or for another cause or causes of discrimination foreseen in Law 15/2022, of 12 July, integral for equal treatment and non-discrimination.

Material scope: any natural or legal person, whether public or private, residing, staying or acting in Spanish territory, whatever their nationality, racial or ethnic origin, religion, domicile, residence, age, marital status or administrative situation, in the terms and with the scope contemplated in this law and in the rest of the legal system

Principal content: To guarantee and promote the right to real and effective equality of lesbian, gay, transgender, bisexual and intersex people (hereinafter LGTBI), and their families

Official Title of the Law: (Catalonia) Law 19/2020 of 30 December 2020, on equal treatment and non-discrimination (*Ley 19/2020, de 30 de diciembre, de igualdad de trato y no discriminación*)

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 amendment: N/A

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 LGBTI phobia 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: (Catalonia) Law 13/2025, of 29 December, on the rights of LGBTI persons and the eradication of LGBTI-phobia (*Ley 13/2025, de 29 de diciembre, de los derechos de las personas LGBTI y la erradicación de la LGBTIfobia*)

Name used in this report: Law 13/2025 of Catalonia

Abbreviation: Law 13/2025

Date of adoption: 29 December 2025

Entry into force: 19 January 2026

Latest amendment: N/A

Web link: <https://www.boe.es/ccaa/dogc/2025/9574/f00001-00048.pdf>

Grounds covered: sexual orientation, gender identity, gender expression or sex characteristics

Material scope: This law applies to all public and private areas under the competence of the Government of Catalonia and local authorities. On this basis, the law applies to any natural or legal person, under public or private law, regardless of their administrative or personal situation, without prejudice to the provisions of immigration legislation, applicable international treaties and other legislation in force.

Principal content: It lays down duties for public administrations and companies. With regard to the former, it is envisaged that public administrations must adopt the necessary administrative measures to ensure that people are treated in accordance with their expressed gender identity and that their dignity and privacy are respected. It also establishes, for example, that the Catalan Government must establish mechanisms to ensure that transgender people have access to appropriate administrative documentation in order to guarantee their integration process and avoid situations of discrimination. It also obliges companies to be active agents in the eradication and prevention of LGBTI-phobia. Of interest is the duty to implement anti-harassment protocols as a requirement for accessing public subsidies. Furthermore, the regulation pays close attention to the healthcare system, establishing, for example, that the Catalan healthcare system must incorporate an intersectional gender perspective and take into account the specific needs of LGBTI people in order to guarantee their right to receive healthcare and enjoy health services under conditions of objective equality and quality.

Official Title of the Law: (Comunidad de Madrid): Law 3/2016, of July 22, on protection, effective equality, and non-discrimination of LGTBI persons in the Community of Madrid (Ley 3/2016, de 22 de julio, de protección, igualdad efectiva y no discriminación de las personas LGTBI de la Comunidad de Madrid).

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 amendment: Law 18/2023, of December 27

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),

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 amendment: N/A

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 LGBTI people and their families in Andalucía (*Ley 8/2017, de 28 de diciembre, para garantizar los derechos, la igualdad de trato y no discriminación de las personas LGBTI y sus familiares en Andalucía*),

Name used in this report: Law 8/2017 (Andalucía)

Abbreviation: Law 8/2017 (Andalucía)

Date of adoption: 28 December 2017

Entry into force: 5 February 2018

Latest amendment: N/A

Web link: <https://www.boe.es/buscar/act.php?id=BOE-A-2018-1549&p=20180115&tn=1>

Grounds covered: 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 Andalucía.

Material scope: This law shall apply to the Administration of the Autonomous Community of Andalucía, to the local entities of Andalucía 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 Andalucía.

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 Aragón (*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*)

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 amendment: N/A

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 Aragón.

Principal content: The purpose of this law is to regulate, within the territorial scope of the Autonomous Community of Aragón 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)

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 amendment: N/A

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.

Official Title of the Law (Galicia): Law 2/2014, of April 14, on equal treatment and non-discrimination of lesbians, gays, transsexuals, bisexuals, and intersex persons in Galicia *(Ley 2/2014, de 14 de abril, por la igualdad de trato y la no discriminación de lesbianas, gays, transexuales, bisexuales e intersexuales en Galicia)*

Name used in this report: Law 2/2014

Abbreviation: Law 2/2014

Date of adoption: 14 April 2014

Entry into force: 26 April 2014

Latest amendment: N/A

Web link: <https://www.boe.es/buscar/act.php?id=BOE-A-2014-5488>

Grounds covered: Sexual orientation and gender identity of homosexual, bisexual, transsexual, transgender, and intersex persons

Material scope: the subjective scope of application of this law encompasses all natural and legal persons, both in the public and private sectors, and includes regional and local public entities and bodies that are located, operate, or reside in the territory of the Autonomous Community of Galicia, regardless of their nationality, residence, domicile, or civil neighbourhood, and in accordance with the entire legal system

Principal content: The purpose of this law is to guarantee the principle of equal treatment and non-discrimination based on sexual orientation and gender identity of homosexual, bisexual, transsexual, transgender, and intersex persons. In this regard, this law establishes principles and measures aimed at preventing, correcting, and eliminating all discrimination based on sexual orientation and gender identity, in both the public and private sectors

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,²⁴ disability²⁵ and sexual orientation²⁶ are included in the generic phrase 'any other personal or social circumstance'.²⁷
- 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 (amended in February 2024).²⁸ As amended, Article 49 now states:
 1. People with disabilities shall exercise the rights provided for under this Article in conditions of real and effective freedom and equality. The special protection required for the exercise of these rights shall be regulated by law.
 2. The public authorities will promote policies that guarantee the full personal autonomy and social inclusion of people with disabilities, in universally accessible environments. Likewise, they will encourage the participation of the organisations they represent, in accordance with the law. Particular attention will be paid to the specific needs of women and minors with disabilities.
- 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 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.

²⁴ Constitutional Court Decision 31/1984, 7 March 1984: <http://hj.tribunalconstitucional.es/HJ/docs/BOE/BOE-T-1984-8175.pdf>.

²⁵ Constitutional Court Decision 269/1994, 3 October 1994: <http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/2786>.

²⁶ 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).

²⁷ 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>.

²⁸ Reform of Article 49 of the Spanish Constitution, 15th February 2024: <https://www.boe.es/buscar/doc.php?id=BOE-A-2024-3099>.

The Constitutional Court²⁹ 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'.³⁰

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).

²⁹ Constitutional Court Decision 128/1987, 1 July 1987:
<http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/860>.

³⁰ 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'.

With regard to the concept of 'ethnic origin' within the meaning of Directive 2000/43, it is worth bearing in mind the points set out in paragraphs 71 *et seq.* of the judgment of the Court of Justice of the European Union of 18 December 2023 in C-417/23, *Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge, v. MV, EH, LI, AQ, LO*).

Neither of the two decisions of the Constitutional Court-TC (STC 13/2001³¹ and STC 69/2007)³² that 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' (*etnia 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 Freedom³³ 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 in the register of religious entities on the ground of these denominations' lack of religious aims. However, the situation has changed since Constitutional Court Decision 46/2001.³⁴ 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).

³¹ Constitutional Court Decision 13/2001, 29 January 2001: <http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/4309>.

³² Constitutional Court Decision 69/2007, 16 April 2007: <http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/6036>.

³³ 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>.

³⁴ Constitutional Court Decision 46/2001, 15 February 2001: <http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/4342>.

Article 3(2) of the Law on Religious Freedom allows 'sects' to be excluded from the register of religious associations. Registration 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.

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. Consequently, 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' do 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

Royal Legislative Decree 1/2013 of 29 November, approving the consolidated text of the General Law on the Rights of Persons with Disabilities and their social inclusion, is the law that sets out the basic definition of disability, prohibits various forms of discrimination (such as direct, indirect and discrimination by association), and lays down obligations regarding reasonable accommodation. The definition of disability set out in Article 4 of RDL 1/2013 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 Union in joined cases C-335/11 and C-337/11.³⁵ The first paragraph of Article 4(1) defines persons with disabilities as those '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) also stipulates that regulations of public authorities and administrations, decisions, acts, communications and statements by them and their authorities and agents, when acting in their capacity as

³⁵ Judgment of 6 December 2012, joined cases of *HK Denmark (Ring)*, C-335/11 HK, and *HK Denmark (Skouboe Werge)*, C-337/11, ECLI:EU:C:2013:222: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62011CA0335>.

such, shall use the terms 'person with disabilities' or 'persons with disabilities' to designate them.

However, the second part of the definition (Article 4(2)) retains the medical perspective of disability and has an administrative purpose: individuals need to have a certain degree of impairment in order to claim some rights. It could be said that the need to establish a degree of impairment 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). Article 4(2) states that for the purposes of the Law, persons who have been recognised as having a degree of disability equal to or greater than 33 % will be considered to be persons with disabilities. The precept adds that without prejudice to the foregoing, persons who are social security pensioners who have been recognised as having a permanent disability pension to the degree of total, absolute or major disability and passive class pensioners who have been recognised as having a retirement pension or retirement pension for permanent incapacity for service or complete lack of capacity will be deemed to be disabled to a degree equal to or greater than 33 %. This provision affects the existing material scope of the Law because 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 system), will be considered as people with disabilities. The Law covers social benefits, social security, education, work and housing and access to goods and services.

Finally, there have been several judgments of the CJEU that have influenced Spanish law regarding the possibility that a person who is unable to work may be regarded as a person with a disability. First, it is necessary to recall the doctrine laid down in the CJEU judgment of 1 December 2016, in C-395/15, *Daouidi*, in which the Court held that a person in a situation of 'temporary' incapacity for work of uncertain duration may be classified as a person with a disability depending on whether the limitation suffered is 'long term'. Furthermore, the question whether the concept of 'workers particularly sensitive to certain risks' – provided for in Article 25 of Law 31/1995 of 8 November on the Prevention of Occupational Risks – is equivalent to the concept of 'disability' within the meaning of Directive 2000/78 is also of particular interest. In its 2019 judgment in Case C-397/18, *D.W. v Nobel Plásticos Ibérica, S.A.*, the CJEU held that such workers fall within the concept of 'disability' only where their state of health entails a limitation of capacity arising, in particular, from 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 professional life on an equal basis with other workers.

d) Age

The national law on discrimination does not define the term 'age', and nor 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.³⁶

e) Sexual orientation

In 2023, Law 4/2023 of 28 February, for real and effective equality of transgender people and for the guarantee of LGTBI rights was passed.

³⁶ For example, Constitutional Court, Decision 66/2015 of 13 April 2015, which accepts that 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>.

Law 4/2023 defines what sexual orientation and identity, gender expression and sexual characteristics are with the aim of preventing situations of discrimination based on these grounds that cause direct, indirect, multiple and intersectional discrimination, as well as discrimination by 'mistake' (this is the literal translation from Spanish, which equates to discrimination by assumption) and by association.

In this regard, sexual orientation is defined as 'Physical, sexual or affective attraction to a person', adding that 'sexual orientation may be heterosexual when physical, sexual or affective attraction is felt only towards people of "different sexes"; homosexual when physical, sexual or affective attraction is felt only towards people of the same sex; and bisexual when physical, sexual or affective attraction is felt towards people of "different sexes", not necessarily at the same time, in the same way, to the same degree or with the same intensity. Homosexual people may be gay if they are men, and lesbian if they are women.'

In its Article 3, Law 4/2023 defines sexual identity as the 'internal and individual experience of sex as felt and defined by each person, which may or may not correspond to the sex assigned at birth'. Law 4/2023 also states that 'gender expression' is 'each person's manifestation of their sexual identity'.

Regarding the issue of 'gender identity', Law 4/2023 expresses it only in Article 35, regarding adoption and foster care, when it states that in the centres for minors, work will be done on family diversity with the aim of guaranteeing that minors who are likely to be adopted or fostered are aware of family diversity due to sexual diversity and 'gender identity'. However, the law does not define specifically gender identity.

Before this law, it should be recalled that 'sexual orientation' as a prohibited ground for discrimination was included in the pre-existing Law 62/2003. However, neither this law nor the Workers' Statute or the Criminal Code define what is meant by 'sexual orientation'.

The Constitutional Court's Decision of 2016, STC 41/2006, in *PC v. Alitalia Italian Airlines*,³⁷ recognised that 'sexual orientation' is a protected ground under Article 14 of the Spanish Constitution. However, the Constitutional Court did not define 'sexual orientation'.

In this context, 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, is important. 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. All of these personal conditions (sexual orientation and gender identity) are fundamentally linked to the right to respect for 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.

³⁷ Constitutional Court, Decision 41/2006, 13 February 2006: <http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/5643>.

All of the above TC doctrine may be of interest since Law 15/2022 was passed after this ruling. Article 2(1) includes people's 'sex', 'sexual orientation or identity' and 'gender expression' as anti-discrimination factors (however, Law 15/2022 does not define these concepts). In contrast to Law 62/2003, in Law 15/2022 the legal distinction 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. Finally, it should be noted that if a person feels discriminated against on the basis of the characteristics set out in Law 15/2022 itself, such as 'sexual orientation or identity' and 'gender expression', he or she is protected by that law. If he or she feels discriminated against on the basis of other grounds that do not correspond to these concepts, it is a matter of judicial interpretation as to whether Law 15/2022 would protect them. However, Law 15/2022 also protects against discrimination based on 'any other personal or social condition or circumstance'.

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 by the same law.

In Spain, multiple discrimination must be considered when deciding on cases of discrimination (e. g. also when imposing sanctions).

Likewise, intersectional discrimination must be kept in mind when deciding on cases of discrimination (e.g. also when imposing sanctions).

Law 15/2022 establishes 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 provided for therein coincide or interact, generating a specific form of discrimination (Article 6.3). The Law (Article 47.4) provides for very severe sanctions for situations of multiple discrimination (and leaves intersectional discrimination without specific sanction).

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 (Article 6.3).

Bearing in mind that the purpose of Law 4/2023 is to guarantee and promote the right to real and effective equality of lesbian, gay, transgender, bisexual and intersex people and their families, it also includes the notion of multiple and intersectional discrimination. Article 3 states that 'multiple discrimination occurs when a person is discriminated against, simultaneously or consecutively, under two or more of the causes provided for in this law, and/or by another cause or causes of discrimination provided for in Law 15/2022, of July 12, the comprehensive law for equal treatment and non-discrimination'. Intersectional discrimination occurs when various causes included in the previous section concur or interact, generating a specific form of discrimination. In terms of multiple discrimination, the law does not add other requirements to those set out in Law 15/2022. However, it

does establish in Article 39 that public administrations, within the scope of their powers, must take into account the situations of multiple and intersectional discrimination suffered by LGBTBI people in rural areas, such as minors, young people, the elderly, people with disabilities and, in a cross-cutting manner, lesbian and bisexual women and trans women, in the development of their public policies.

In addition to the above legislation, it should also be noted that Organic Law 3/2007 on the Effective Equality of Women and Men³⁸ 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.'

In Spain, regarding case law dealing with multiple and/or intersectional discrimination, it should be noted that the Constitutional Court (TC) has recognised the possibility of multiple discrimination on the grounds of disability and age.³⁹ 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 discrimination 'by mistake' (a literal translation from Spanish, which equates to discrimination by assumption), as a violation of the right to equal treatment and non-discrimination. According to Article 6 of the Law, discrimination by assumption is discrimination based on an incorrect assessment of the characteristics of the person or persons being discriminated against.

In addition, in its Article 3, Law 4/2023 regulates discrimination by assumption establishing that this discrimination occurs on the basis of an incorrect assessment of the characteristics of the person or people discriminated against.

Prior to these pieces of legislation, the Workers' Statute, Article 28 of Law 62/2003 (transposing Directives 2000/43 and 2000/78) and the Criminal Code spoke 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 discrimination 'by association' as a violation of the right to equal treatment and non-discrimination. 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.

³⁸ 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>.

³⁹ Constitutional Court, judgment 3/2018, of 22 January 2018.

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 and all the grounds covered by Law 15/2022 (see Article 3 on employment, education, etc).

The General Law on the Rights of Persons with Disabilities and their social inclusion (RDL 1/2013) formally introduced into Spanish legislation the concept of discrimination by association in the field of disability. RDL 1/2013 defines discrimination by association in Article 2(e): 'Discrimination by association exists when a person or group to which they belong is subjected to discriminatory treatment due to their relationship with another by reason of disability'. Article 63 of RDL 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*.⁴⁰

Notably, Article 3 of Law 4/2023 regulates discrimination by association, establishing that there is discrimination by association when, due to their relationship with another person who is subject to any of the causes of discrimination based on sexual orientation and identity, gender expression or sexual characteristics, a person or a group they form part of is subject to discriminatory treatment.

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, 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.

Secondly, the solution to this problem has been provided by Law 15/2022, adopted in July 2022. Under this 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 (Article 6(1)(a) linked to Article 2). This 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.

Thirdly, Article 2(c) of the General Law on the Rights of Persons with Disabilities and their social inclusion (RDL 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'.

Article 3 of Law 4/2023 defines direct discrimination as a situation where a person or a group they form part of, has been or could be treated less favourably than others in an

⁴⁰ Judgment of 17 July 2008, *Coleman v. Attridge Law and Steve Law*, C-303/06, ECLI:EU:C:2008:415: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-303/06>.

analogous or comparable situation because of sexual orientation, sexual identity, gender expression or sexual characteristics.

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))

In the field of disability, the General Law on the Rights of Persons with Disabilities and their social inclusion (RDL 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 RDL 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.⁴¹ The need for ordinary courts to take into account EU law when applying Spanish rules has been reiterated by the Constitutional Court.⁴²

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.

⁴¹ See, for example, Constitutional Court, Decision 61/2013, 14 March 2013: <http://hj.tribunalconstitucional.es/HJ/docs/BOE/BOE-A-2013-3797.pdf>.

⁴² STC 64/1991 of 22 March 1991; 58/2004 of 19 April 2004 and 329/2005 of 15 December 2005.

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 (Article 6(1)(b) linked to Article 2). In this sense, the words, criteria 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.

According to Article 3(b) of Law 4/2023, indirect discrimination occurs when an apparently neutral provision, criterion or practice causes or is likely to cause one or more people a specific disadvantage with respect to others on the grounds of sexual orientation, sexual identity, gender expression or sexual characteristics.

In the field of disability, it is important to recall a number of leading cases. First, the judgment of the CJEU in C-270/16, *Ruiz Conejero v Ferroser*, of 18 January 2018, held that Article 2(2)(b)(i) of Council Directive 2000/78/EC must be interpreted as precluding national legislation under which an employer may dismiss a worker on the grounds of intermittent absences from work, even where justified, where those absences are the consequence of illnesses attributable to that worker's disability, unless such legislation, whilst pursuing the legitimate aim of combating absenteeism, does not go beyond what is necessary in order to achieve that aim, that being a matter for assessment by the referring court.

It is also worth mentioning, as noted above, the CJEU's judgment in C-397/18, *D.W. v Nobel Plásticos Ibérica SA* (see section 2.1.c), which held that a worker classified as being particularly sensitive to workplace risks could be regarded as a person with a disability. Indeed, in line with that case law, the judgment of Social Court No. 3 of Barcelona of 19 November 2019 found that the employer had failed to adopt sufficient measures to adapt the workplace to the worker and, accordingly, held that there had been 'indirect discrimination on the grounds of disability' in using the worker's absenteeism as a criterion for dismissal (since a person with a disability is more exposed to the risk of having a high rate of absenteeism than a worker without a disability, given the additional risk of taking sick leave owing to an illness related to that disability).

b) Justification test for indirect discrimination

Neither Law 62/2003 nor RDL 1/2013 specifies how indirect discrimination is to be justified. The general provision in Article 2(2)(b) of Law 62/2003 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.

Law 15/2022 contains a provision (Article 6) on indirect discrimination similar to that of Law 62/2003. 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. RDL 1/2013 also opens up the possibility of indirect discrimination whenever a legal or regulatory provision, a contractual or contractual clause, an individual agreement, a unilateral decision or a criterion or practice in the case objectively does not respond to a legitimate aim and the means for the achievement of this aim are not appropriate and necessary. However, Law 4/2023 does not establish anything in this regard, although it should be understood that the general provision of Law 15/2022 would apply.

2.5.1 Statistical evidence

a) Legal framework

In Spain, there is legislation regulating the collection of personal data.

Since 25 May 2018, the European Regulation on Data Protection (Regulation (EU) 2016/679, GDPR) has been directly applicable. Subsequently, in December 2018, Organic Law 3/2018 of 5 December 2018, on the protection of personal data and the guarantee of digital rights, was passed.

According to these rules, age and disability are treated very differently from ethnic or racial origin, religion or belief or sexual orientation. Article 9(1) of Regulation (EU) 2016/679 provides that 'Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited'. Spanish legislation provides that this prohibition cannot be lifted by the data subject: Article 9 of Organic Law 3/2018 on the Protection of Personal Data⁴³ establishes that 'for the purposes of Article 9(2)(a) of Regulation (EU) 2016/679, in order to avoid discriminatory situations, the consent of the affected party alone will not suffice to lift the prohibition of the processing of data whose main purpose is to identify their ideology, union affiliation, religion, sexual orientation, belief or racial or ethnic origin'. In this sense, Article 9 regulates the processing of special categories of data and Article 9(2) enshrines the principle of the reservation of law for its authorisation in the cases provided for in Regulation (EU) 2016/679.

As a result, employers may not gather data on the ethnic or racial origin, religion or belief or sexual orientation of their workers. However, there are some exceptions to this general rule, such as those arising from Article 4(2) of Directive 2000/78 for 'churches and other public or private organisations the ethos of which is based on religion or belief'. However, these exceptions are only for positions linked to spreading the religious ethos, and not for positions of purely technical expertise or restricted to the pure transmission of (neutral) knowledge in religious schools (see section 4.2, below).

In Spain, statistical evidence may be admitted under national law in order to establish indirect discrimination.

Although this is not expressly provided for in law, complainants have a right to require or request that respondents provide data that may be necessary for them to determine whether there has been a *prima facie* case of discrimination.

Finally, it is worth mentioning that Article 7 of Law 4/2023 for real and effective equality of transgender people and for the guarantee of LGTBI rights, states that public authorities, within the scope of their powers, must promote the carrying out of studies and surveys on the situation of LGTBI people that allow for an in-depth study 'of the nature and scope of the main situations of discrimination that affect them' and to record their evolution over time (Article 7 is dedicated to the subject of statistics and studies).

In this regard, the provision adds that the public authorities, within the scope of their powers, will include in their studies, reports or statistics, when they refer to or affect aspects related to discrimination against LGTBI persons, the indicators and procedures that allow the causes, extension, evolution, nature and effects of said discrimination to be

⁴³ Organic Law 3/2018 of 5 December 2018 on the Protection of Personal Data and the Guarantee of Digital Rights (*Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales*), BOE, 6 December 2018, <https://www.boe.es/buscar/pdf/2018/BOE-A-2018-16673-consolidado.pdf>.

known. This data should be broken down according to the discriminatory causes provided for in the Law whenever possible. Law 15/2022 also recognises that in order to give effect to its provisions, the public authorities must prepare studies, reports or statistics, provided that they refer to or affect aspects related to equal treatment, and in accordance with existing international standards, which allow for a better understanding of the causes, extent, evolution, nature and effects of discrimination on the grounds of the causes provided for in that Law (Article 36).

The third section of the precept highlights that those responsible for the processing of personal data from the activities covered by this Article must diligently comply with the obligations imposed by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016; Organic Law 3/2018, of 5 December on the protection of personal data and guarantee of digital rights; and, where applicable, Organic Law 7/2021, of 26 May on the protection of personal data processed for the purposes of the prevention, detection, investigation and prosecution of criminal offences and the execution of criminal penalties. In particular, they shall ensure the security and confidentiality of personal data and, where appropriate, anonymise or pseudonymise the data collected.

b) Practice

In Spain, statistical evidence is used in practice in order to establish indirect discrimination. Its use in that context is not very common, but it is spreading in the Spanish courts. In the civil and administrative fields (the spheres of application of Directives 2000/43 and 2000/78) there are no agencies or authorities that can conduct formal investigations. In criminal cases, the Public Prosecution Service can conduct all investigations that are deemed necessary. Statistical evidence has been used in some judgments, especially in cases of sex discrimination in the employment field, and there is no reluctance to use statistical data as evidence in court.

Constitutional Court Decision 240/1999⁴⁴ used statistical evidence to qualify as sex discrimination the failure to grant maternity leave to a female doctor working in Castilla y León. According to the judgment, the fact that those permissions are granted only to public service doctors and not to temporary doctors can be considered discriminatory, because the former group are almost exclusively men and the latter group are generally women. The ruling upheld the use of situation testing.

As regards access to employment, Decision 1161/2005 of the High Court of Cantabria of 14 November 2005 noted the existence of indirect sex discrimination in the selection process of a chemical company. The Court concluded that the selection criteria used by the company (regarding the holders of a vocational qualification in a technical branch) generated an adverse impact on women, because they are underrepresented in this field. The Court considered a report from expert advisors to be acceptable as evidence and cited the example of reports by the Institute for Women (as this public body was known at the time).

The evolution of the situation in other countries and the jurisprudence of the CJEU have played an important role in the presentation of data collection in the Spanish courts.

2.6 Harassment (Article 2(3))

a) Prohibition and definition of harassment

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

⁴⁴ Constitutional Court, Decision 240/1999, 20 December 1999, <http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/3982>.

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. The Law sets out various provisions for the implementation of the above definition: on the one hand, 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 the other hand, 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).

In addition, 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, but this gap has been closed by Law 15/2022, which defines what constitutes discriminatory harassment (Article 6(4)). 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. This concept applies to all areas of Law 15/2022 (see section 3.2).

The Workers' Statute (RDL 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'. In addition, 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.

Article 6(4) of 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 existing legislation on harassment, although it does clarify the material scope of protection against harassment as set out in Law 62/2003: it no longer regulates the distinction between the material scope of application that this Law 62/2003 establishes between grounds for discrimination (on the one hand, on grounds of ethnicity, and on the other, on other grounds – such as religion, for example). In fact, it can be concluded that Act 15/2022 extends the scope of harassment to areas where there may previously have been problems of interpretation regarding its application. In Spain, harassment explicitly constitutes a form of discrimination.

Article 3(d) of Law 4/2023 also provides a definition of discriminatory harassment (on the basis of sexual orientation, sexual identity, gender expression or sexual characteristics), which is 'Any conduct carried out on the basis of any of the causes of discrimination provided for in this law, with the aim or the consequence of violating the dignity of a person or a group they form part of, or of 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 caveated.

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, according to Article 27 of Law 15/2022, employers or providers of goods and services will be liable for damage caused by discrimination, including harassment, that occurs within their organisation or management and they have failed to comply with their obligations to protect against discrimination (Article 25(1) Law 15/2022). Therefore, it is not necessary for the employer or service provider to have participated directly in the discrimination, but only that the harassment occurs within their sphere of organisation or management and that they have failed to protect the victim.

The Article 25 (1) of Law 15/2022 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 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 provides that any 'inducement, order or instruction' to discriminate on any of the grounds set out in the Law is discriminatory; consequently, the 'inducement, order or instruction' to discriminate or to commit an act of intolerance is 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 Article 6(5) linked to Article 4 of Law 15/2022). It should therefore be understood that 'express instructions to discriminate' involve conduct included in the instruction to discriminate provided for under the law, in that said conduct is specific, direct and effective, as specified by the legislation. Also included are 'preferences/suggestions' which have a discriminatory impact. It should be noted that Article 6(5) states that the instruction to discriminate must be 'effective', and therefore, it must entail an 'impact of discrimination'. Based on the provision, it can be interpreted that encouragement, pressure, or persuasion to treat individuals less favourably are behaviours that are also covered by the concept of instruction to discriminate.

However, Law 15/2022 does not establish any condition or requirement of dependence or hierarchical relationship between the instructor and the instructed person.

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. Furthermore, the Law also speaks of 'inducement', and when this instrument is used, the Law requires it to be specific and direct. To conclude, it may be considered that what the directives say is respected. In the disability field, RDL 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.'

Notably, Article 3(p) of Law 4/2023 also provides a definition of inducement, order or instruction to discriminate against LGBTBI persons, stating that 'any inducement, order or instruction to discriminate for any of the reasons set forth in this law is discriminatory. The inducement must be specific, direct and effective to cause a discriminatory action in another person'.

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, RDL 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 applies only to natural or legal persons who cause discrimination or harassment or who make instructions to discriminate, but it should be recalled 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.

General Law on the Rights of Persons with Disabilities and their social inclusion (RDL 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.'

However, Law 15/2022 also states that denial of reasonable accommodation 'is prohibited'. In other words, this Law 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 Law 15/2022 that establishes the 'obligation of reasonable accommodation' is a state law, subsidies to facilitate the practical implementation of such accommodation depend on the 17 regional Governments. In this regard, there is a division of powers between the state and the autonomous communities. Furthermore, in the event that, within the scope of its powers, an autonomous community makes regulations on the issue of reasonable accommodation and there is a possible conflict between state law and the legislation of the autonomous community, the state law prevails (in respect of equality and non-discrimination).

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'. However, this Law does not provide for a specific duty on employers to provide such accommodation, stating only: 1) the ban on denial of reasonable accommodation and 2) that the lack of reasonable accommodation implies direct discrimination. Consequently, with regard to persons with disabilities, Law 15/2022, which is the statute transposing Directive 2000/78, does not include any 'regulation' on the 'employer's obligation' to provide reasonable accommodation. Furthermore, in the specific legislation on the rights of persons with disabilities (RDL 1/2013), that obligation is regulated for 'employers'. The logical interpretation is that this obligation refers to private undertakings or to public administrations where they hire salaried workers, but not to civil servants. In conclusion, Law 15/2022, which applies generally (to private employers and civil servants), establishes that a failure to provide reasonable adjustments constitutes discrimination (although it does not specify how this specific obligation to provide adjustments is to be fulfilled); although the provision of reasonable adjustments is clear for the private sector, particularly under Royal Decree-Law 1/2013, some gaps in the provision of reasonable adjustments for civil servants have been identified.

With regard to the public administration and its employees who are civil servants, under Law 15/2022, if the public administration, upon the request of a civil servant who has been recognised as having a disability, fails to implement a reasonable accommodation measure in his or her post or denies the implementation of such reasonable accommodation, that inaction or denial by the public administration is to be considered direct discrimination on the ground of disability.

In order to find specific provisions on equal treatment and non-discrimination that may affect civil servants, one must look to the Royal Legislative Decree of 30 October approving the revised text of the Basic Law on Public Employees. Royal Legislative Decree 5/2015 provides that in selection procedures for persons seeking to work for the public administration, the administration must adopt the necessary measures to provide reasonable adaptations and adjustments of time limits and means in the selection process and, once that process has been passed, adaptations in the workplace to the needs of persons with disabilities. Within this framework, Ordinance PJC/804/2025 of 23 July 2025 was approved, establishing general criteria for adapting resources and timeframes and making other reasonable adjustments in the selection processes for access to public

employment for persons with disabilities. These adjustments for selection tests for entry into the General State Administration consist of:

- a) providing applicants with disabilities with the necessary material and human resources;
- b) providing persons with disabilities with assistance and support; with the assistive products and technologies required to take the tests in which they are participating, as well as ensuring their access to information and communications relating to the processes and to the premises, physical space and virtual media and channels where these are carried out or used;
- c) allowing additional time to complete the relevant exercises in the selection tests, or making reasonable adjustments required by the specific circumstances of applicants with disabilities that cannot be resolved through generic adaptations of resources and time.

It must also be noted that Law 4/2023, which relates to the real and effective equality of trans persons and the guarantee of the rights of LGBTI persons, also considers as direct discrimination the denial of reasonable accommodation to people with disabilities who are part of this group. Article 3(a) states that the denial of reasonable accommodation to people with disabilities will be considered direct discrimination: 'To this effect, reasonable accommodation means necessary and appropriate modifications and adjustments to the physical, social and attitudinal environment that do not impose a disproportionate or undue burden, where they are needed in a specific case and in an effective and practical manner, to facilitate accessibility and participation and to ensure that people with disabilities can enjoy and exercise all their rights on an equal basis with others'. The truth is that Law 4/2023 (which aims to protect the LGBTI community) states that the lack of reasonable adjustments for a person with a disability is considered 'direct discrimination' (it should be understood that this refers to a person with a disability from the LGBTI community), although if that were the case, it could also be considered multiple discrimination. However, the law is not clear on this last interpretation.

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 according to Article 6 (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) of RDL 1/2013 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'.⁴⁵

Royal Decree-Law 6/2023 of December 19 approving urgent measures for the implementation of the Recovery, Transformation and Resilience Plan in the areas of public

⁴⁵ 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 the Social Integration of Persons with Disabilities (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 (RDL 1/2013).

service of justice, the civil service, local government and sponsorship, was approved. In relation to the field of 'civil service', i.e. human resources in the public administration, Article 113 of Royal Decree-Law 6/2023 aims to regulate the 'access to public employment of people with disabilities'. The precept provides that the access of people with disabilities to public employment as either civil servants or employees is based on the principles of equal opportunities, non-discrimination and universal accessibility.

Article 113(5) of RDL 6/2023 (the last section of the precept) includes a specific measure of reasonable accommodation. In particular, the state administration is expected to adopt the appropriate measures to make reasonable adaptations and adjustments in terms of time and means to the selection processes carried out to access the administration, allowing the use of prostheses, including hearing aids, during the selection processes by those who have a proven need for them. Once a candidate passes the selection process, the state administration will make the necessary adaptations to the workplace, including accessibility measures, reasonable adjustments and other support, so that people with disabilities can adequately perform the professional tasks required of them.

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

Law 3/2012 on urgent measures to reform the labour market⁴⁶ 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 who evidence 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 setting 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).

From a general overview of the legislation (especially RDL 1/2013), it can be concluded that 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; however, if they request a reasonable accommodation, they must notify their employer of their disability (RDL 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'. (RDL 1/2013, Article 66(2))

⁴⁶ 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>.

In general, financial assistance from the state is taken into account when assessing whether there is a disproportionate burden in providing reasonable accommodation. 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 can be seen, this 'disproportionate' factor derives from RDL 1/2013, although in Law 15/2022 (Article 6) 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 additional 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 must 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 a complaint 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 this regard, it is worth noting that, as will be seen below, in 2025 a legislative reform was introduced that establishes certain parameters for determining when the cost of reasonable accommodation is disproportionate for the company: before terminating the employment contract of a worker who has been declared permanently unable to work (a situation equivalent to disability), the company must make reasonable accommodations to their job. In this regard, the new Article 49(n) of the Workers' Statute provides that in order to determine whether the burden of making such adjustments is excessive, particular account should be taken of the cost of the adaptation measures in relation to the company's size, financial resources, economic situation and total turnover. The burden will not be regarded as excessive where it is sufficiently alleviated by public measures, aid or subsidies. The statutory provision adds that, in companies employing fewer than 25 employees, the burden will be considered excessive where the cost of adapting the job position – without taking into account any portion that may be covered by public aid or subsidies – exceeds the higher of the following two amounts:

1. The compensation that would correspond be paid to the employee in the event of unfair dismissal
2. Six months of the salary of the employee requesting the adaptation.

In any case, it is worth going back to the origins of this new legislation adopted in 2025.

On the issue of reasonable adjustments for workers, specific mention should be made of a particular case that occurred in 2024, arising from a ruling by the Court of Justice of the European Union, according to which, under Article 5 of Directive 2000/78, the employer 'is required to take appropriate measures' to enable any person with a disability to have access to, participate in or advance in employment, or to be offered training, provided that such measures do not impose a disproportionate burden on the employer (judgment of 18 January 2024, *Ca Na Negreta*, C-631/22).

This is reflected in Article 49 of the 2015 Workers' Statute, which states that an employer may dismiss an employee if that employee is declared permanently incapacitated.⁴⁷ Therefore, in 2025, following the *Ca Na Negreta* ruling, the Workers' Statute was amended by Law 2/2025 of 29 April on the termination of the employment contract due to permanent incapacity of workers. This 2025 law imposes a duty on the employer to implement reasonable accommodations when one of its workers is awarded a 'declaration of permanent incapacity' (in the forms of severe permanent incapacity; permanent absolute incapacity or permanent total incapacity). The employer may only terminate the worker's contract if making such reasonable accommodations would impose an excessive burden on the employer or where there is no vacant and available post consistent with the worker's professional profile and compatible with the worker's new situation, or where, despite the existence of such a vacancy, the worker rejects the change of post duly proposed. It should be noted that this new regulation applies to workers in the private sector and to workers employed by the public administration under the Workers' Statute. However, this regulation does not apply to civil servants working for the public administration.

As mentioned above, this provision is included in the Workers' Statute, but not in the specific regulations governing public employees or civil servants (Royal Legislative Decree 5/2015 of 30 October approving the revised text of the Basic Law on Public Employees).

It could be considered that the absence of an express statutory provision obliging the public administration to provide reasonable accommodation in the face of a civil servant's permanent incapacity, or the absence of a statutory provision specifically laying down the provision of reasonable accommodation to civil servants with disabilities (who have acquired that status while already in employment), prior to termination of the employment relationship, may be contrary to Article 5 of Directive 2000/78 or detract from the intended effectiveness of this provision of the Directive.

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'.

⁴⁷ The Workers' Statute does not specifically mention employees with disabilities, but nevertheless, the 'situation of permanent incapacity' is recognised in other regulations as being equivalent to disability.

National law does not provide clearly for a shift in the burden of proof for claims relating to reasonable accommodation. However, Article 77 of RDL 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' (RDL 1/2013, Article 66(2)). However, recourse to the arbitration system is voluntary (RDL 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 (RDL 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 set out by RDL 1/2013, Law 31/1995 of 8 November 1995 on the prevention of occupational risks⁴⁸ (Articles 14, 15 and 25) and Royal Decree 39/1997 of 17 January 1997 on the regulation of prevention services⁴⁹ 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 in *D.W. v. Nobel Plásticos Ibérica SA* (C-397/18),⁵⁰ the CJEU established that some general criteria 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 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

There are two recent significant judicial decisions. First, in the judgment of the Spanish Constitutional Court of 15 March 2021, the Court recognised that a lawyer serving within the public administration, who had Asperger's syndrome, had requested recognition of his right to reasonable accommodation in his workplace. In the absence of any action on the part of the administration, the Constitutional Court held that the failure to provide the reasonable accommodation requested by the claimant in his workplace did indeed constitute a form of discrimination. The Court considered that, where a person requests reasonable accommodation at work on grounds of disability, such a request must be addressed from the moment it is made and the existence and extent of the disability have been duly established. The response of the employer or public authority must be explicit and properly reasoned, particularly where the requested accommodations are refused on the grounds that they are considered disproportionate or inappropriate.

⁴⁸ 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>.

⁴⁹ 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>.

⁵⁰ Judgment of 11 September 2019, *D.W. v. Nobel Plásticos Ibérica SA*, C-397/18, ECLI:EU:C:2019:703, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=217624&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=501000>.

Another ruling of interest in employment matters was Supreme Court Judgment No. 194/2018 of 22 February 2018. That judgment examined the case of a bank employee who was dismissed because, owing to a state of anxiety resulting from a robbery, she was unable to adapt to her job. Prior to the dismissal, the employer had made other positions within the company available to her. The Supreme Court confirmed that the dismissal was not discriminatory. The Court reasoned that discrimination was not established because, for discrimination to exist, two conditions had to be met: '(a) the worker's situation of disability ... and (b) the non-existence or insufficiency of reasonable accommodation measures'. The Court concluded that, although the worker's disability had been recognised, there had been no discrimination, since the employer had adopted adjustment measures consisting of transferring her from one branch to another and assigning her different duties, all of them aimed at adapting the worker's specific circumstances to other positions that could minimise the consequences arising from her disability.

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.

However, it should be highlighted that RDL 1/2013 was amended in 2023 by Law 3/2023 on employment. In particular, Law 3/2023 amended Article 4. This Article defines 'persons with disabilities' as those who have physical, mental, intellectual or sensory impairments, which are expected to be permanent and which, in interaction with various barriers, may prevent their full and effective participation in society, on an equal basis with others. Moreover, the Article 4 adds that in addition to the above definition, for the purposes of the Law, persons with disabilities shall also be considered to be those who have been recognised as having a degree of disability equal to or greater than 33 %. Finally, Article 4 states that for many of the purposes established by the Law, persons with a degree of disability equal to or greater than 33 % will be considered to be those social security pensioners who have been recognised as having a permanent disability pension to the degree of total, absolute or severe disability and those pensioners of passive classes who have been recognised as having a retirement pension due to permanent incapacity for service or complete lack of capacity.

Consequently, on the one hand, the amendment regarding persons with disabilities means that in notifications made to persons with disabilities, this nomenclature must be used. On the other hand, the amended specification in Article 4 of RDL 1/2013 means that, for legal purposes, reasonable accommodation measures should be provided not only for people who have been recognised as having a 33 % disability, but for any person with a disability: Article 4 states that the regulation of RDL 1/2013 applies to any person with a disability, and adds that 'in addition' to the above, it also applies to persons with an official recognition of disability of 33 % (this is recognised by public social services agencies in each region of Spain). In this sense, it can be concluded that the law has solved a potential breach in Spanish legislation which required that in order to carry out reasonable accommodation, the person must have a recognised disability of 33 % (as stated in previous reports, 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).⁵¹

⁵¹ 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:

On the other hand, Article 35 goes on to regulate that people with disabilities have the right to work, under conditions that guarantee the application of the principles of equal treatment and non-discrimination. The purpose of the precept is to regulate the exercise of the right to work of persons with disabilities, and in particular of certain groups that receive social security pensions but that may have a margin to exercise an employment activity; in this sense, the precept states that persons receiving a social security pension who have been granted a permanent disability pension in the degrees of total, absolute or severe disability will be considered as persons with disabilities (automatically, it should be understood).

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

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 is considered to be 'direct discrimination' (Article 6.1(a)).

Article 63 of RDL 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. 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.⁵²

The breach of reasonable accommodation duties is considered a serious offence (RDL 1/2013, Article 81(3)). Therefore, the public administration may punish the perpetrator with a penalty of up to EUR 90 000 (RDL 1/2013, Article 83(3)). Furthermore, it may impose additional penalties on companies, such as prohibiting access to official benefits (such as 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 (RDL 1/2013, Article 81(4)). Consequently, the sanctions may be higher (up to a maximum of EUR 1 million). Furthermore, it should be noted that Law 15/2022 sets out penalties for acts constituting direct discrimination (ranging from EUR 10 001 to EUR 40 000) and that a failure to make reasonable adjustments is classified as direct discrimination under the same law. Regarding whether the sanctions of RDL 1/2013 can be applied simultaneously with those contained in Law 15/2022, the legislation establishes the impossibility of imposing double sanctions for the same infringement. It is worth noting that the failure to provide reasonable adjustments is considered a specific breach under Royal Decree-Law 1/2013 (breach of the obligation to adopt reasonable adjustment measures). Furthermore, under Act 15/2022, the failure to provide reasonable adjustments constitutes a breach on the grounds of 'direct discrimination'. The regulation of one infringement under RDL 1/2013 and another under Law 15/2022 could result in two simultaneous penalties. In any event, this will be subject to judicial interpretation.

If the claim 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:

<https://curia.europa.eu/juris/document/document.jsf?pageIndex=0&docid=136161&doclang=EN&text=&cid=4511251>.

⁵² 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#>.

'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'. (RDL 1/2013, Article 75(2))

Finally, it should be mentioned that Article 3 of Law 4/2023, on the real and effective equality of transgender people and the guarantee of the rights of LGBTI people, states that:

'the denial of reasonable accommodation of people with disabilities shall be considered direct discrimination. To this effect, reasonable accommodation means necessary and appropriate modifications and adjustments to the physical, social and attitudinal environment that do not impose a disproportionate or undue burden, where they needed in a specific case and in an effective and practical manner, to facilitate accessibility and participation and to ensure that people with disabilities can enjoy and exercise all their rights on an equal basis with others'.

- 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 RDL 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 authorities; the administration of justice; cultural heritage; and employment. As regards social housing, RDL 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 Court⁵³ resolved a landmark case of disability discrimination in the field of education. LX, a person with physical and intellectual disabilities of 75 %, applied for a scholarship to study law during the academic year 2005-06. The relevant 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 LX 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.

⁵³ See National Court (*Audiencia Nacional*), Appeal 160/2007, 2 November 2009.

In Spain, several groundbreaking court rulings 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, of 22 January 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 person with a severe mental 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 identified 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.

In 2023, a law on universities was introduced. According to Article 37(2) of Organic Law 2/2023, of 22 March on the university system,⁵⁴ universities must promote inclusive and accessible curricular structures in university education. In particular, they should adopt positive action measures so that students with disabilities can enjoy an inclusive, accessible and adaptable university education, on an equal footing with the rest of the student body, making reasonable adjustments, both curricular and methodological, to teaching materials, teaching methods and the assessment system. The precept adds that universities must facilitate the use of sign languages by sign-language users when necessary. Finally, Article 37 makes a specific reference to persons with intellectual disabilities by stating that 'Universities will promote access to university studies for people with intellectual disabilities and other disabilities by promoting tailored studies adapted to their abilities.'

On the other hand, Royal Decree-Law 6/2023 of December 19 approving urgent measures for the implementation of the Recovery, Transformation and Resilience Plan in the areas of public service of justice, the civil service, local government and sponsorship, amended Law 1/2000 of 7 January 2000 on Civil Proceedings (*Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil*).⁵⁵ Specifically, it amended Article 7*bis*, which is now entitled 'Adjustments for people with disabilities and older people'.

According to the new provision, in judicial proceedings involving persons with disabilities and older persons who so request (persons aged 65 or over) as well as those involving persons aged 80 or over, the necessary adaptations and adjustments must be made to ensure their equal participation. This is an anti-age discrimination measure that can assist older people in courts; the adaptations and adjustments can be made at the request of any of the parties or the Public Prosecutor's Office, or *ex officio* by the court itself. The adaptations must be made in all phases and procedural actions in which it is necessary,

⁵⁴ *Ley Orgánica 2/2023, de 22 de marzo, del Sistema Universitario* (Organic Law 2/2023 of 22 March on the university system) <https://www.boe.es/buscar/act.php?id=BOE-A-2023-7500>.

⁵⁵ See: <https://www.boe.es/buscar/act.php?id=BOE-A-2000-323&b=14&tn=1&p=20210603#a7-2>.

including acts of communication, and may relate to communication, comprehension or interaction with the environment.

The precept adds that persons with disabilities, as well as elderly people, have the right to understand and be understood in any action to be carried out. For that reason, all communications, oral or written, addressed to persons with disabilities, aged 80 or over, and to older persons who have so requested, must be made in clear, simple and accessible language, in a way that takes into account their personal characteristics and needs, making use of means such as easy-read format. If necessary, communication must also be made with the person who supports the person with a disability in exercising his or her legal capacity.

In addition, the person with a disability will be provided with the necessary assistance or support to be understood, which will include interpretation in legally recognised sign languages and means of support for oral communication for persons who are deaf, hearing impaired or deafblind.

The Law also provides for the participation of an expert professional who, as a facilitator, will be allowed to carry out the necessary adaptation and adjustment tasks so that the person with a disability can understand and be understood.

Finally, Article 7*bis* provides that the person with a disability and elderly persons may be accompanied by a person of their choice from the first contact with authorities and civil servants.

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

In Spain, there is a legal duty to provide reasonable accommodation in respect of other grounds in the public sector and the private sector, but only on the ground of religion or belief.

Laws 24, 25 and 26 of 1992, approving the Agreement of Cooperation between the state and the Federation of Evangelical Religious Entities, the Federation of Israeli Communities and the Islamic Commission of Spain, respectively, contain specific regulations to ensure reasonable accommodation for employees of these religions. The three agreements contain provisions in the field of employment (religious holidays) and in areas outside employment (special diets). In general, these laws regulate the possibility for employees who belong to these religions to request leave for the practice of their faith, which they may exercise only with the agreement of their employer. This leave has to be linked to known religious festivals connected with the exercise of the faith of workers.

Some interesting examples of collective agreements can be cited that regulate specific issues relating to days off work and the interruption or reduction of the working day for religious reasons. Agreements between employers and employees have been made in which companies offer leave days to their workers, based, above all, on their religion and their migrant status – for instance, several business agreements that promote reconciliation between working hours and the working day and the worker's family commitments are worth mentioning. These include emergency trips to the worker's country of origin for family illness or for designated celebrations, always provided that this is 'feasible in terms of organisation'.⁵⁶

In addition, following the decision of Social Court No. 1 of Palma de Mallorca (Decision 31/2017 of 5 February 2017: see section 3.2.3 of this report), allowing the wearing of the

⁵⁶ Diversity Management Agreement in Hotel Majestic SPA Barcelona, 2009; Diversity Management Agreement in Mantylim, S.A., 2008; Diversity Management Agreement in Ferroberica, S.L., 2010; Diversity Management Agreement in ABD, 2009.

hijab in employment may, under certain conditions, be considered as coming under a reasonable accommodation duty based on religion.

3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

No legal disputes on the discrimination of persons based on European law arising from the use of artificial intelligence systems have been identified.

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, Article 2 of Law 15/2022, adopted in July 2022, 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 immigrants authorised to reside in Spain, as well as those who are unauthorised, have the right not to be discriminated against. Furthermore, it is interesting to note that Article 15 of Law 15/2022 provides, in relation to the right to healthcare, that no one may be excluded or suspended from basic or specialised healthcare 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-effect 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 specific legislation on foreigners (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 it 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 applies 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. No legal disputes on the discrimination of persons based on European law arising from the use of artificial intelligence systems have been identified

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 Criminal Code might be possible under judicial interpretation). Law 15/2022 provides a set of sanctions, both in terms of discrimination on the grounds of race and other factors.

In this context, 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. Consequently, Law 15/2022 lists sexual orientation, sexual identity and gender expression as grounds for discrimination, but does not include the terms gender identity and sex characteristics, which could be interpreted as meaning that they are not specifically or explicitly included, and so would require judicial interpretation.

Regarding employees, self-employed workers, and civil servants, it should be noted that Article 4(2)(c) of the Workers' Statute (RDL 2/2015), which covers the employee scheme, also applies to conditions of access to employment and internal promotion. This provision regulates the right of workers not to be discriminated against directly or indirectly regarding access to employment or, once employed, for reasons of marital status, age within the limits set by this law, racial or ethnic origin, social condition, religion or beliefs, political ideas, sexual orientation, sexual identity, gender expression, sexual characteristics, membership or not of a trade union, on grounds of language within the Spanish state, disability, as well as on grounds of sex, including unfavourable treatment of women or men for the exercise of the rights of reconciliation or co-responsibility of family and working life (it should be noted that the prohibition of discrimination on grounds of 'sexual identity, gender expression and sexual characteristics' has been added to RDL 2/2015 by Law 4/2023, on transgender persons and LGTBI rights).

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. In addition, 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, Law 3/2023, of February 28, on employment, which repeals the previously in force Royal Decree-Law 3/2015 of 23 October 2015, establishes in Article 4 as one of its objectives 'To favour conditions for the generation of inclusive labour markets wherein effective equal opportunities and non-discrimination are guaranteed in access to employment and in the actions aimed at gaining this employment, seeking in particular the balanced presence of working people of both sexes in all sectors, activities and professions, and working conditions compatible with the co-responsibility of care work'.

In fact, Article 5 of Law 3/2023 establishes the guiding principles of the employment policy to be developed under the law. The first principles it establishes are those of equality and non-discrimination in accessing and consolidating employment and professional development in Spain on the grounds of age, sex, disability, health, sexual orientation, gender identity, gender expression, sexual characteristics, nationality, racial or ethnic origin, religion or beliefs, political opinion, union membership, language, or any other

personal, family or social condition or circumstance, thereby favouring social cohesion. The precept adds that these principles particularly govern the design and execution of employment policies, the guarantee and fulfilment of the guaranteed services and commitments recognised in this Law, and access to basic and complementary employment services and other programmes or actions aimed at insertion, permanent employment or progression in the labour market.

The General Law on the Rights of Persons with Disabilities and their social inclusion (RDL 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.

In this field, it is important to mention Law 20/2007 of 11 July 2007, on the Statute of Self-employment. This Law 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.

Specifically 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.

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.

No legal disputes involving artificial intelligence or the use of automated systems were identified in 2025.

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 three 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, for both employed and self-employed workers, covering access, working conditions, including remuneration and dismissal, professional promotion and training for employment (Article 3). Article 9 refers to the field of employment and stipulates the general prohibition of establishing limitations, segregation or exclusions based on the causes set out in the Law (birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity,⁵⁷ 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.

Following this general requirement, employers are charged with two specific duties: first, that they 'may not inquire about the medical conditions' of the job applicant; and 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).

Secondly, non-discrimination in employment and working conditions, including pay and dismissals, is expressly recognised in Article 17(1) of the Workers' Statute (RDL 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 RDL 2/2000 on violations and sanctions of labour laws (modified by Law 62/2003, Article 41) considers very serious infringements:

⁵⁷ 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 concepts is subject to judicial interpretation.

'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'.

Thirdly, the General Law on the Rights of Persons with Disabilities and their social inclusion (RDL 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.⁵⁸

The courts have also heard cases of discrimination on the grounds of religion (wearing the headscarf). A judgment of Social Court of Palma de Mallorca on 6 February 2017⁵⁹ 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 ceases, if it clashes with a fundamental right, such as the right to religious freedom. Nevertheless, if one considers that the company had a policy of neutrality, one should apply the judgment of the CJEU in *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).⁶⁰ In addition to the above judgment, it should be noted that two further judgments of the CJEU have helped to clarify this doctrine. Firstly, the CJEU judgment of 13 October 2022 in Case C-344/20 (*LF v. SCRL*), which held that Article 2.2)(a) of Directive 2000/78 allows a company's employment regulations to prohibit employees from expressing, verbally, through their dress or in any other way, their religious or philosophical beliefs, of whatever kind, as this will not constitute direct discrimination 'on grounds of religion or belief' provided that the provision is applied generally and without distinction. Furthermore, the judgment of the CJEU of 28 November 2023, in Case C-148/22 (*OP v. Commune d'Ans*), establishes that Article 2.2)(b) of the same Directive also permits an internal rule of a local authority to prohibit, in a general and non-discriminatory manner, members of that authority's staff from the visible wearing, in the workplace, of any symbol which reveals, in particular, philosophical or religious beliefs, may be justified by that authority's desire to establish, having regard to its specific context, a completely neutral administrative environment, provided that such a rule is appropriate, necessary and proportionate in the light of that context and taking into account the various rights and interests at stake.

Occupational pensions in Spain are governed by Royal Decree-Law 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 RDL only contains a general anti-discrimination

⁵⁸ Social Court No. 35 of Madrid, Decision 84/2009, 23 February 2009.

⁵⁹ Social Court of Palma de Mallorca, [judgment 478/2016](#), 6 February 2017, ECLI:ES:JSO:2017:2.

⁶⁰ CJEU, judgment of 15 July 2021, *WABE and MH Müller Handels* C-804/18 and C-341/19, ECLI:EU:C:2021:594, <https://curia.europa.eu/juris/document/document.jsf?jsessionid=19FCC6DA93B0DA069903D7740275FC3B?text=&docid=244180&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3527926>.

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 (RDL 2/2015) and Article 8(12) of Law 5/2000 on violations and sanctions in labour laws.

Finally, it should be noted that the Government sponsored a study entitled 'Analysis of the economic impact of discrimination and inequality between the native population and foreigners residing in Spain'.⁶¹ The study measures in economic terms the discrimination experienced by the foreign population with respect to the native population in the labour market in four main areas: the rate of activity in the labour market of the two groups, the unemployment experienced by foreigners with respect to the native population, overqualification in jobs, and salaries. The study also measures the discrimination that foreigners may face in relation to education, i.e. when the education system is not able to provide its students with equal opportunities.

Drawing on this analysis, the study provides an economic estimate of the employment and educational discrimination affecting the foreign population. It estimates that employment discrimination amounts to a cost of just over EUR 12 billion, or around 1 % of gross domestic product (GDP) in 2022, while educational discrimination amounts to almost EUR 5 billion, or 0.4 % of GDP. Overall, discrimination faced by the foreign population is quantified at around EUR 17 billion, or 1.3 % of GDP. The study points out that this is a gross waste of resources of enormous magnitude, equivalent to a large part of the total personnel expenses of the general state budget in 2022, or approximately half of the corporate tax revenue in the same year (EUR 32 million).

Finally, in 2025 no judicial conflicts involving artificial intelligence or the use of automated systems were identified.

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, 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,⁶² 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 and employment training (Article 9).

Articles 34 and 41 (in the field of labour law) of Law 62/2003 include this subject in relation to all the grounds of Directives 2000/43 and 2000/78: 'measures are aimed at the real

⁶¹ Mahía Casado, R. and Medina Moral, E. (2024) [Análisis del impacto económico de la discriminación y la desigualdad entre la población autóctona y la extranjera residente en España](#).

⁶² 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 concepts is subject to judicial interpretation.

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 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.

In the field of vocational training, Organic Law 3/2022, of 31 March 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.⁶³

The General Law on the Rights of Persons with Disabilities and their social inclusion (RDL 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).

No judicial conflicts involving artificial intelligence or the use of automated systems were identified in 2025.

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'. Article 3 in conjunction with Article 12 of Law 15/2022 also prohibits discrimination in relation to 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,⁶⁴ 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

⁶³ 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 Profesional*), 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'.

⁶⁴ 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 concepts is subject to judicial interpretation.

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.

No judicial conflicts involving artificial intelligence or the use of automated systems were identified in 2025.

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, conviction or opinion, age, disability, sexual orientation or identity,⁶⁵ 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.

The social security system is based on four principles: universality, unity, solidarity and equality (RDL 8/2015 of the General Social Security Act, Article 2). According to RDL 8/2015, one of the principles of social security in Spain is equality, i.e. the protection of individuals on the basis of equal treatment among them. Article 2 establishes that the social security system, made up of contributory and non-contributory protective action, is based on the principle of 'equality'. It should be remembered that Article 14 of the Spanish Constitution establishes that all Spaniards are equal before the law, without any discrimination on the grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance; this precept is applicable to the social security system, the existence of which is also guaranteed in the Spanish Constitution (Article 41 states that the public authorities 'shall maintain a public social security system for all citizens'). The principle of 'equality' as the basis of the social security system, as provided by Article 2 of RDL 8/2015 is linked to the concept of equality before the law (and through judicial interpretation with the principle of equal treatment and non-discrimination), which is stated in Article 14 of the Constitution. Thus, RDL 8/2015 assumes the general principle of equality in response to discriminatory treatment on the grounds specified in Article 14 (race, sex, religion, opinion, birth or any other personal or social condition or circumstance). However, RDL 8/2015 does not contain any specific provisions on non-discrimination assumptions (except for a reference in Article 94 regarding company contracts in the social security system, where contracting procedures must be guaranteed by the principles of publicity, concurrence, transparency, confidentiality, equality and non-discrimination).

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 measures to make the principle of equal treatment 'real and effective', because it does not establish any sanctions if the Law is breached. In this sense, judicial

⁶⁵ 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 concepts is subject to judicial interpretation.

interpretation is important in order to establish measures to prevent and punish discrimination, for example using the Criminal Code. Judges must consider whether Article 512 of the Criminal Code (Organic Law 10/1995)⁶⁶ is applicable. 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. Therefore, 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 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).

Article 3 of General Health Law 14/1986⁶⁷ 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 System⁶⁸ (as amended since 2012 and last reformed in 2018). Following the reform introduced by RDL 7/2018 on universal access to the National Health System,⁶⁹ Article 3(1) of the amended Law 16/2003 now establishes that 'Persons with Spanish nationality and foreigners who have established their legal residence in Spanish territory are entitled to the right to health protection and healthcare'. 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).'⁷⁰

Law 15/2022, which covers social protection, 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, 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 healthcare on an equal basis, nor be excluded from

⁶⁶ 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>.

⁶⁷ 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>.

⁶⁸ 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>.

⁶⁹ 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>.

⁷⁰ Although both Law 14/1986 (in general terms) and Law 16/2003 (as drafted by RDL 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.

health treatment 'due to lack of documentary proof or a demonstrable minimum length of stay'.

The General Law on the Rights of Persons with Disabilities and their social inclusion (RDL 1/2013) establishes that any 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).

In its Decision 3/2018,⁷¹ 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 claimant 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 that 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'.

In 2024, there was a notable court ruling that addressed the issues of the violation of the principle of equality due to discrimination, and the principle of equality in access to National Health System benefits: Supreme Court (contentious-administrative chamber) ruling of 19 February 2024 (Resolution No. 264/2024).⁷² The case was as follows: a mother had repeatedly asked a Barcelona hospital to provide her son, a minor with a rare disease (Duchenne muscular dystrophy), with individualised access to the drug Translarna, the active ingredient of which is ataluren. At the time this medication came under 'conditional' authorisation by the European Medicines Agency, and was not included in the Spanish National Health Service list, but was pending clinical trials. Treatment with the medicine had to be authorised by a state body responsible for the exceptional treatment authorisation but the hospital refused to process her request.

The Supreme Court upheld the mother's complaint and found that she had been discriminated against. It stated that the hospital had not only refused the authorisation, but that its decision meant a refusal to process the application, thereby preventing the competent authority from being able to rule on the application, which excluded any possibility of cooperation. Furthermore, the judgment states that the mother had produced the recommendation from her son's specialist doctor and had accredited proof that exceptional authorisation had been given to other patients within the National Health System. However, the judgment acknowledged that the European Medicines Agency's Committee for Medicinal Products for Human Use has recommended that the marketing authorisation for Translarna (ataluren) should not be renewed.

In relation to discrimination on the grounds of disability, a 2024 judgment by the High Court of Justice of Catalonia is notable as it referred to the use of artificial intelligence.⁷³

⁷¹ 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.

⁷² Supreme Court ruling of 19 February 2024 (Resolution No. 264/2024), <https://www.poderjudicial.es/search/AN/openDocument/f27a6eb990522a8ba0a8778d75e36f0d/20240223>.

⁷³ High Court of Justice of Catalonia, judgment of 16 October 2024, No. 5515/2024, <https://www.poderjudicial.es/search/AN/openDocument/5d2f1baf482a433aa0a8778d75e36f0d/20241114>.

The case involved a worker that had recently joined a construction company as a marble setter. After starting the job, a medical examination carried out by the company found that he was 'fit to work, but with limitations', specifically stating that he could not be exposed to silica dust without respiratory protection equipment (bearing in mind that exposure can lead to the disease silicosis). A few days after this certificate was issued, the worker fell ill and was absent from work for some days, it having been recognised that he was temporarily unable to work (the company did not provide breathing equipment). When the worker returned to work, he was dismissed by the company. The worker filed a legal claim against the ensuing dismissal. The court found that there had been discrimination on the grounds of disability. To reach this conclusion, the court started from the basis that there was a fit-to-work with limitations certificate (and the company did nothing to implement this by specifically adapting the worker's workstation, e.g. by providing breathing equipment) and that the worker subsequently underwent several periods of temporary incapacity, which should have led the employer, in particular, to believe that the worker was beginning to develop a respiratory disease. The court recognised that although the illness was slow in developing, it could lead to a disability. Incidentally, the judge also stated that under Law 15/2022, the conduct of the company could also be considered discriminatory because it was based on discrimination by assumption, i.e. it stemmed from an incorrect assessment of the characteristics of the person discriminated against, namely the development of the illness and its limiting scope. In conclusion, because the company did nothing by way of reasonable accommodation or the adoption of preventive measures, the court considered that discrimination on the grounds of disability had taken place.

Notably in relation to this judgement, the court found that the dismissal letter had been drafted using an artificial intelligence application, to which it attached importance. The court considered that this behaviour on the part of the company showed that there was no reason to terminate the worker's employment contract. Furthermore, the court said that the use of an artificial intelligence application showed that the company made no special effort to deliver the termination decision in a formal manner, under the supposition that the dismissal was unjustified but worth enforcing because the severance pay would be low due to the employee's short length of service in the company.

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*,⁷⁴ 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.

⁷⁴ ECtHR, *Manzanas v. Spain*, No. 17966/10, 3 April 2012, <http://hudoc.echr.coe.int/eng?i=001-110180>.

No judicial conflicts directly involving artificial intelligence or the use of automated systems were identified in 2025.

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 (RDL 8/2015 of the General Social Security Act, Article 2). The Law does not provide in this Article a specific reference to non-discrimination, although it should be understood that this principle of non-discrimination is included in the principle of equality (understood as equal treatment) in Article 2. On the other hand, 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 punishment and prevention 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 decide whether 'social advantages' should be included under the concept of 'a benefit' (*una prestación*) as mentioned in the Criminal 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, under 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,⁷⁵ 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 (RDL 1/2013) establishes that the 'social advantages' must avoid discrimination, direct or indirect, on the ground of disability (Articles 48-52) and provides a system of sanctions that mean that the prohibition can be said to be real and effective (Articles 80-88).

Any provisions 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 RDL 1/2013, there are some benefits available for persons with disabilities, such as special discounts for transport or in accessing some

⁷⁵ 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 concepts is subject to judicial interpretation.

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 RDL 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.

No judicial conflicts involving artificial intelligence or the use of automated systems were identified in 2025.

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

According to the latest data released by the Ministry of Education in 2024, for the academic year 2022-2023, a total of 966 924 students were assessed as having specific educational needs and receive support, of whom 262 732 (27.2 %) are students with special educational needs, where the support is associated with some type of disability or serious disorder, and the remaining 704 192 (72.8 %) have other specific educational support needs. Males are in the vast majority, representing 61.6 % of this group of students, a percentage that rises in students with special educational needs to 70.1 %, and is somewhat reduced in the rest of the categories of specific needs, at 58.4 %. The most frequent disabilities among students with special educational needs are pervasive developmental disorders/autism spectrum disorders (29.7 %), intellectual disabilities (26.1 %) and severe behavioural disorders (13.5 %). The highest percentages of those students with a disability who are integrated in mainstream education are those with severe behavioural disorders (98.1 %), language disorders (98 %) and hearing impairment (95.5 %).⁷⁶

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: 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,⁷⁷ 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.

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 measures 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, as of 2022, Law 62/2003 has been supplemented by Law 15/2022, which provides for comprehensive regulation of equal

⁷⁶ Ministry of Education (2024), *Estadística de las enseñanzas no universitarias. Alumnado con necesidad específica de apoyo educativo. Curso 2022-2023* (Statistics on non-university education. Students with specific educational support needs. Academic year 2022-2023), <https://www.educacionfpydeportes.gob.es/eu/servicios-al-ciudadano/estadisticas/no-universitaria/alumnado/apoyo/2022-2023.html>.

⁷⁷ 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 concepts is subject to judicial interpretation.

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, Article 13 states that the education authorities will 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 (RDL 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),⁷⁸ modified by Organic Law 8/2013 on improving the quality of education⁷⁹ 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 principle set out in Article 1(a)*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 principle set out in Article 1(b), the education system is based on equity, helping to overcome any form of discrimination and affording universal access to education. It acts 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.

Secondly, 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

⁷⁸ 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>.

⁷⁹ 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>.

people on grounds of birth, racial or ethnic origin, religion, beliefs, age, disability, sexual orientation or identity, illness, or any other condition or circumstance.

Thirdly, the Law sets out that primary education (6-12 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.

Fourthly, 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.

Fifthly, 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 6 and 16). It adds that the study of, and respect for, other cultures, particularly those of the Roma and other groups, must 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 2/2023 of 22 March on the university system, which repealed Organic Law 6/2001 on Universities, regulates that universities will ensure that students will not be discriminated against on the grounds of birth, racial or ethnic origin, sex, sexual orientation, gender identity, religion, belief or opinion, age, disability, nationality, illness, socio-economic status, language, political or union affiliation, appearance, or any other personal or social condition or circumstance in the exercise of their rights and the fulfilment of their duties (Article 37). This Law does not regulate or establish sanctions in the event of non-compliance with this right.

Furthermore, Article 46 attributes to the governing council of each university the duty to define and promote, in coordination with the diversity unit, an inclusion and non-discrimination plan for all university staff and sectors of people linked to the University on the grounds of disability, ethnic and national origin, sexual orientation and gender identity, and any other social or personal condition, and to draw up protocols and develop measures to prevent and respond to violence, harassment at work or discrimination (as mentioned earlier, this provision is directed at the entire university staff and people linked to the university as university students; moreover, the plans to be drawn up by the universities are certainly wide-ranging in their content, as they must foresee situations of violence, harassment at work and all kinds of discrimination; accordingly, these 'inclusion and non-discrimination plans' cover both staff and students, although if we start from what the law literally says, it seems that these inclusion plans in relation to situations of harassment at

work will only apply when a member of staff is involved (in any case, the application of this precept will require a judicial interpretation).

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 Organic Law on Education (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), which guarantees the non-discrimination of migrants in Spain in the field of education). The same protection and equality among Spanish nationals is 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.

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 must 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 teaching 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 must develop compensatory actions 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). With regard to immigrants, Law 15/2022 recognises the right of all persons to equal treatment and non-discrimination regardless of their nationality and whether or not they have a legal residence permit, although 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, must be considered 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.

No judicial conflicts involving artificial intelligence or the use of automated systems were identified in 2025.

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 (Article 17). 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,⁸⁰ gender expression, disease or health condition, serological status and/or genetic predisposition to pathologies and disorders, language, socio-economic status, or any other

⁸⁰ 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 concepts is subject to judicial interpretation.

personal or social condition or circumstance). Against 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 context 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 must 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.

RDL 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 (RDL 1/2013, Article 29(1)). Article 29(3) establishes that differences of treatment in access to goods and services 'will be admissible when justified by a legitimate purpose and the means to achieve it are adequate, proportionate and necessary.'

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. Therefore, the provision introduces measures that make the prohibition of discrimination in access to public services 'real and effective'. However, it does not cover private services that are open to the public. Although Article 29(1) of Law 62/2003 also recognises the principle of non-discrimination on the ground of racial or ethnic origin in 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). This issue has been addressed by Law 15/2022, under which, public administrations, entities, companies, or individuals offering goods and services to the public within the context of a commercial or professional activity, such as financial services, transportation, education, leisure, or similar, may not discriminate in access to them for the reasons set forth in the law (among others, based on racial and ethnic origin).

In respect of access to goods, the adoption of Law 15/2022 has brought Spain into line with the European directive: Law 15/2022 establishes 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 addition, some courts had already recognised the application of the principle of discrimination (direct and indirect) in relation to goods and services, before the entry into force of Law 15/2022.⁸¹

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).

In addition, a specific regulation has been adopted concerning goods and services in relation to persons with disabilities. Royal Decree 193/2023 of 21 March 2023, regulating the basic conditions of accessibility and non-discrimination of people with disabilities for access to and use of goods and services available to the public applies to goods and services made available to the public, defines 'goods' as items, articles and products, in particular merchandise, the provision of which does not constitute the provision of services and which are made available to the public through the ordinary course of trade in an open market. It also defines 'services' as services provided to the public by a natural or legal person, whether or not for remuneration, and whether or not they are provided to the public by a public or private person. Services include, in particular: (a) activities of an industrial character; (b) activities of a commercial character; (c) craft activities; (d) professional activities; (e) artistic and recreational activities; (f) other activities similar to the above. Furthermore, services available to the public are those services offered outside the sphere of private and family life, which are in a position to be acquired, contracted, consumed or used by the public, as they are offered generically and are in principle available to any person, whether or not in exchange for remuneration, and which usually constitute the object of transactions typical of the ordinary traffic of an open market.

No judicial conflicts involving artificial intelligence or the use of automated systems were identified in 2025.

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, although 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 decide whether 'housing' should be 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 powers, must 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

⁸¹ See, for instance, Madrid Provincial Court, judgment No. 211/2009 of 6 May 2009.

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 policy making, 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:

- refusing an offer to purchase or rent, or refusing 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;
- discriminating 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 continues 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 (RDL 1/2013) provides 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 RDL 1/2013 provides for a housing stock for persons with disabilities and sets out that at least 4 % of homes built in public programmes (*viviendas protegidas*) will be built with a design suitable for persons with disabilities.

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 ... 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.

Many Spanish local authorities have carried out generally successful relocation programmes for Roma in towns (moving from the marginal and segregated dwellings that they previously occupied to new areas with 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.

No judicial conflicts involving artificial intelligence or the use of automated systems were identified in 2025

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. Spanish legislation and the court rulings interpreting it are considered to be in line with European regulations and the case law of the Court of Justice of the European Union (CJEU) as regards 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. in its judgment of 17 April 2018 in *Vera Egenberger*). In addition, 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.⁸²

- 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' Statute, RDL 2/2015), employees in ideological or ethos-based organisations can be asked to conform to a minimal extent with the organisation's ethos.⁸³

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.⁸⁴ 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.⁸⁵ 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, 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.⁸⁶

⁸² See: Arastey, L. (2016) 'Jurisprudencia laboral en materia de libertad religiosa' (Labour jurisprudence in matters of religious freedom), in Camas Roda, F. (ed.) *El ejercicio del derecho de libertad religiosa en el marco laboral* (The exercise of the right to religious freedom in the workplace) Editorial Bomarzo.

⁸³ Constitutional Court, Decision 47/1985, 27 March 1985, <http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/427>.

⁸⁴ Constitutional Court, Decision 106/1996, 12 June 1996, <http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/3158>.

⁸⁵ Constitutional Court, Decision 5/1981, 13 February 1981, <http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/5>.

⁸⁶ Camós Victoria, I. (2016) '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.) *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)

Spanish legislation provides a definition of armed forces. Organic Law 5/2005 of 17 November on national defence establishes the basis for military organisation. Specifically, Article 10 establishes that the armed forces are 'the essential element of defence and form a single entity conceived as an integrated whole comprising the specific forms of action of each of its components: the army, the navy and the air force'. In addition, the provision states that the organisation of the armed forces must enable them to carry out the missions entrusted to them in such a way as to ensure the effective execution of military operations. Finally, provision is made for members of the armed forces to be integrated into or assigned to different corps, in accordance with the tasks they are required to perform.

Furthermore, Law 39/2007 of 19 November on military careers establishes that Spanish citizens may join the armed forces professionally as career military personnel, as enlisted personnel and navy personnel, and also as reserve military personnel. 'Career military personnel' are those who maintain a permanent professional service relationship; 'reserve military personnel' are officers who establish their professional service relationship through temporary commitments to meet specific needs of the armed forces; and finally, 'troops and navy personnel' are those who establish their professional service relationship through temporary commitments, but who may become career military personnel.

Law 8/2006 of 24 April on troops and navy personnel establishes measures aimed at professionalising both army and navy personnel. According to Article 4, the status of military and naval personnel is acquired upon being appointed by the Chief of Staff after completing the training period established in the call for tests for admission to that rank and after signing an initial commitment, whereby such personnel will be included in the corresponding social security system.

Finally, Royal Decree 309/2021 of 4 May approves the regulations on entry and promotion in the armed forces. The purpose of these regulations is to establish the requirements and procedures for admission to military training centres in order to pursue studies that will enable students to join the armed forces as career military personnel, army and navy personnel or reserve military personnel, and to enable professional military personnel to change rank and, where appropriate, corps.

In Spain, national legislation does not provide for an explicit exception for the armed forces. However, the aforementioned legislation makes numerous references to age limits.

For army troops and navy personnel (*militares de tropa y marinería*), Law 8/2006 on troops and navy personnel⁸⁷ establishes that, in order to participate in the selection processes for the training courses required 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,⁸⁸ 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

⁸⁷ Law 8/2006 of 24 April 2006 on Troops and Navy Personnel (*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>.

⁸⁸ Judgment of the Supreme Court (contentious-administrative chamber) 3842/2012, 30 May 2012, <http://www.poderjudicial.es/search/index.jsp>.

armed forces (Law 39/2007 of 19 November 2007 on Military Careers)⁸⁹ 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 anticipates that such age limits will be established by regulations.

In addition, Royal Decree 309/2021 establishes specific regulations for admission to military training centres: Article 17 sets out specific age requirements. These requirements are established according to professional rank as career military personnel and for those joining the army and navy. Career military personnel can enter training centres either through direct entry or promotion. In the first case, maximum ages (ranging from 21 to 27) are established for direct entry into the centre, although there is no maximum age limit for entry through promotion (in addition to the restrictions mentioned earlier regarding access to training centres for those wishing to join the army and the navy). However, no legal age limit is currently in force for entering the military career in three branches: the quartermaster corps, the military legal corps and the military intervention corps (Supreme Court ruling of 9 May 2014).

In addition to the different situations within the armed forces, there are different situations within the police forces. For example, the National Police does not have a fixed upper age limit, while the regional police in the Basque Country has an incorporation age limit of 35 years (Ballester, 2010; Solà, 2016). In the context of the police, of note is the judgment of the Supreme Court of 15 March 2023, which resolved an appeal in cassation against an administrative decision deemed discriminatory on grounds of age by a police officer. In 2021, the Basque Country's National Police and Emergencies Academy announced a selection procedure for entry into the category of basic rank officer of the Basque Country Police Corps (both the Basque Country Police or Ertzaintza, and the local police), with the requirement that the applicant be under 38 years of age, as established in the Basque Country Police Act. One of the key aspects of this dispute is that the call for applicants under a certain age was made not only for the regional or autonomous community police (the Ertzaintza) but also for the local police force. A person who did not meet the age requirement was excluded from the selection procedure and appealed to the Courts of Justice on these grounds. In response to these arguments, the Supreme Court ruled that no age-based discrimination was involved in requiring applicants to the Ertzaintza and the local police to be under 38 years of age. In support of this decision, the Supreme Court followed the criteria of the judgment of the Court of Justice of the European Union of 15 November 2016,⁹⁰ which included an endorsement for establishing a specific age limit based on workforce ageing analyses and the need for the gradual replacement of staff by younger people.

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 regarding 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

⁸⁹ 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>.

⁹⁰ CJEU, judgment of 15 November 2016, *Salaberría Sorondo*, C-258/15, ECLI:EU:C:2016:873, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62015CJ0258>.

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 posting. 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 against foreigners on the ground of nationality in relation to acts of a public authority; or acts which involve resistance to providing a foreigner with goods or services offered to the public; or acts 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.

In addition, 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 that it establishes does not affect Law 4/2000, and therefore it must be understood that the regulation in the latter law 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 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*.⁹¹ 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 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

⁹¹ 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.

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 people with recognised physical, psychological or sensory disability [*The definition of a person with a disability can be found in Article 4 of the RDL 2013, which has been previously referenced*] who 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 as to 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, *D.W. v. Nobel Plásticos Ibérica SA*,⁹² 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 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.’

⁹² Judgment of 11 September 2019, *D.W. v. Nobel Plásticos Ibérica SA*, 11 September 2019, C-397/18, ECLI:EU:C:2019:703: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=217624&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=501000>.

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

4.6.1 Direct discrimination

a) Justification of direct discrimination on grounds of age

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 varied, as the courts have accepted the exceptions in some cases and not in others, which results in similar situations having different age requirements.

Above all, three judgments of the Constitutional Court should be highlighted: judgment 75/1983⁹³ can be considered as a landmark because it is cited in all subsequent judgments and sets out guidelines for the possible justification of direct discrimination based on age (in 1983, the Spanish Constitution, which prohibits discrimination on grounds of age in Article 14, was already in force). There was a highly relevant dissenting opinion 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 in force at that time, and which 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 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 opinion, set out 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 nor did it respond to a 'justified exceptionality'.

Decision 37/2004 of the Constitutional Court is a landmark judgment:⁹⁴ the Court declared the last subsection of Article 135(b) of Royal Decree-Law 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

⁹³ Constitutional Court, Decision 75/1983, 3 August 1983: <https://hj.tribunalconstitucional.es/docs/BOE/BOE-T-1983-22275.pdf>.

⁹⁴ Constitutional Court, Decision 37/2004, 11 March 2004: <https://hj.tribunalconstitucional.es/docs/BOE/BOE-T-2004-6131.pdf>.

pharmacy, or working for the national police or emergency services; the latter was ended by a judgment of the CJEU.⁹⁵

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 (Blázquez, 2005).⁹⁶

b) 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 differences of treatment 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 law and must be 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).

Other age differences arise regarding access to some benefits, such as unemployment benefit (to which workers over the age of 52, among others, have access in some circumstances) (General Social Security Act, Article 274).

c) 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 section 3.2.2), 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. Moreover, Royal Legislative Decree 1/2002 (Article 5) states that, when it comes to joining

⁹⁵ Regarding pharmacy: Constitutional Court, Decision 78/2012, 16 April 2012: <http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/22845> and 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 CJEU, judgment of 16 November 2016, *Salaberría Sorondo v. Academia Vasca de Policía y Emergencias*, C-258/15, ECLI:EU:C:2016:873: <http://curia.europa.eu/juris/liste.jsf?language=es&td=ALL&num=C-258/15>.

⁹⁶ 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>.

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.⁹⁷

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).⁹⁸

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. Under Law 18/2014 of 15 October 2014 approving urgent measures for growth, competitiveness and efficiency, young people have to be aged between 16 and 30 to be included in this plan. This Law establishes certain measures that facilitate registration in the plan and access to training programmes for young people with disabilities or those young people who 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 up to the age of 21 who have special educational needs. The administrations may also organise vocational training programmes for people over 17 who have 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).⁹⁹

The unemployment benefit system also makes distinctions based on age. 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).

⁹⁷ Constitutional Court, Judgment 104/2004 of 28 June 2004: <http://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/5109>.

⁹⁸ 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>.

⁹⁹ RDL 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>.

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 1981.¹⁰⁰ 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 2 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 (this Article will be fully implemented 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 have contributed for 38 years and 6 months), which will apply from 2027. In 2025, the pensionable age was 65 (if the worker had contributed for at least 38 years and 3 months) or 66 years and 8 months (if the worker had contributed for less than that period) (General Social Security Act, Seventh Transitional Provision). For non-contributory pensions, the pensionable 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 General Social Security Law has in any case adopted an intergenerational equity mechanism (Article 127*bis*): according to the law, the reason is that in order to preserve balance and equity between generations, given the intergenerational dimension of the pension system (and the exceptional burden that the retirement of the baby boom generation will place on its balance), it is necessary to incorporate factors that provide a more reliable picture of the challenge posed to the system by the aging of the population and to free the younger generations from an adjustment caused by the arrival of larger groups of workers at retirement. The aim of this mechanism is therefore to ensure that those who are now young do not suffer any disadvantages when they reach retirement age. In this respect, from 2023 onwards, and for the 10 years thereafter, the 'additional earmarked contribution' has come into play. This consists of a mandatory increase in the contribution of both companies and workers. And it is this extra contribution that will feed the social security reserve fund.

On the other hand, 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:

¹⁰⁰ Constitutional Court, Decision 22/1981, 2 July 1981:
<http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/22>.

in this regard, it should be borne in mind that, in 2025, the Spanish Government adopted Royal Decree 402/2025 of 27 May, which regulates the preliminary procedure for determining the cases in which it is appropriate to allow the bringing forward of the retirement age (or pensionable age). As stated in Article 1, the purpose of this regulation is to govern the preliminary procedure for determining the circumstances in which it is appropriate to permit the retirement age (or pensionable age) to be brought forward in the social security system by applying reduction coefficients, in relation to those occupations or professional activities whose work is of an exceptionally arduous, toxic, hazardous or unhealthy nature and which present high rates of morbidity or mortality. Although the regulation makes it possible to bring forward the retirement age, it also provides that the application of the relevant age reduction coefficients may under no circumstances result in the worker becoming entitled to an old-age retirement pension at an age below fifty-two years. In 2025, a specific example of the regulation on the reduction in the retirement age was the introduction of Royal Decree 817/2025 of 16 September (amending a Royal Decree from 2008: Royal Decree 383/2008, of 14 March), establishing the reduction coefficient for the retirement age for firefighters in the service of public administrations and bodies. According to this new regulation, for firefighters, the normal age for access to a retirement pension will be reduced by a period equivalent to that resulting from applying the reduction coefficient of 0.20 to the full years actually worked as a firefighter or forest firefighter. However, the regulation stipulates that the application of the reduction in the retirement age will not allow the interested party to access the retirement pension at an age younger than 60, or 59 in cases where 35 or more years of effective contributions to the social security system are accredited.

The Government may also reduce the pensionable age 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 67¹⁰¹ and Law 55/2003 (Article 26) for the personnel of the health services of the public system).¹⁰² 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, pension 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 1 184 in 2025)¹⁰³ (General Social Security Act, Articles 213, 214 and 215).

¹⁰¹ RDL 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>.

¹⁰² 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>.

¹⁰³ Royal Decree 87/2025 of 11 February setting the national minimum wage for 2025: <https://www.boe.es/buscar/doc.php?id=BOE-A-2025-2576>.

The conditions are the same for women and men.

b) Occupational pension schemes

In Spain, there is a standard age at which people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements. In 2025, this was 65 (if the worker had contributed for at least 38 years and 3 months) or 66 years and 8 months (if the worker had contributed for less than that period of 38 years and 3 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, with discretion to extend, but not for the private sector.

The retirement age is voluntary in the private sector (although, see section 4.6.4.d below). The state rule requiring people to retire no later than 69 was declared unconstitutional on the ground of age discrimination.¹⁰⁴

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 and any other public bodies linked to or dependent on it.

As a general rule, civil servants must retire at the age of 65. However, civil servants who must retire at 65 can request an extension of their employment until the age of 70 (RDL 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 and 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 (RDL 5/2015, Article 67(4)).

The mandatory retirement age and the possibility for staff working in public administrations and public health services to extend their working life to 70 years 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 2708/2018.¹⁰⁵ The content of this judgment can be summarised in four aspects in relation to the right to request the extension of active life up to 70 years of age among health services personnel:

¹⁰⁴ Constitutional Court, Decision 22/1981, 2 July 1981:
<http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/22>.

¹⁰⁵ Supreme Court, Decision 2708/2018, 17 July 2018:
<http://www.poderjudicial.es/search/AN/openDocument/7f60c64dbfa6aac2/20180720>.

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 85/2013.¹⁰⁶
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 HRMPs, 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 embodiment 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' that is relevant 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.¹⁰⁷

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).

From 2015 until 2022, the 10th additional provision of the Workers' Statute Law (RDL 2/2015) 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'. This rule was subsequently amended by Law 12/2021 of 28 December 2021 so that, from 2022 onwards, collective agreements may provide for clauses enabling the termination of the employment contract. In accordance with this 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:

¹⁰⁶ Constitution Court Order 85/2013, 23 May 2013: <https://hj.tribunalconstitucional.es/docs/BOE/BOE-A-2013-5449.pdf>.

¹⁰⁷ For example, judgment 2544/2018 of the High Court of Justice of the Basque Country 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, which concerned a health service worker 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.

- 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 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 age¹⁰⁸ 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. Furthermore, 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 (RDL 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.

The CJEU judgment in *Palacios de la Villa v. Cortefiel*,¹⁰⁹ for example, explicitly accepted that Spanish legislation in this field was 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 (RDL 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

¹⁰⁸ In the author's view, this should be understood as the ordinary pensionable age as established by law: in 2025, the pensionable age was 65 (if the worker had contributed for at least 38 years and 3 months) or 66 years and 8 months (if the worker had contributed for less than that period) (General Social Security Act, Seventh Transitional Provision).

¹⁰⁹ Judgment of 16 October 2007, *Palacios de la Villa v. Cortefiel Servicios*, C-411/05, ECLI:EU:C:2007:604: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-411/05>.

certain age or persons with disabilities'.¹¹⁰ 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.¹¹¹ 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,¹¹² 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.

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.

¹¹⁰ 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.

¹¹¹ 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>.

¹¹² Supreme Court, Social Chamber, judgment 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>.

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' (this definition is set out in Article 6; in any event, Article 4 prohibits non-compliance with affirmative action measures).

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 RDL 1/2013). The General Law on the Rights of Persons with Disabilities and their social inclusion (RDL 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,¹¹³ 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 RDL 1/2013).

The General Law on the Rights of Persons with Disabilities and their social inclusion (RDL 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:

¹¹³ Persons with disabilities who are more vulnerable are defined in RDL 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.'

'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 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 RDL 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.

Law 4/2023, relating to transgender and LGTBI people, also defines positive action measures for these people. According to Article 3, these are differences in treatment aimed at preventing, eliminating and, where appropriate, compensating for any form of discrimination or disadvantage in the collective or social dimensions. According to this precept, measures of this kind shall be applicable for as long as the situations of discrimination or disadvantage that justify them persist (the author of this report interprets this to mean that they will be subject to review by the courts), and they must be reasonable and proportionate in relation to the means for their development and the objectives they pursue.

Finally, it should be noted that the Law 4/2023 contains specific positive action measures on gender identity (e.g. its Article 46 on rectification of sex in the civil registry).

Priority will be given to positive action measures in the fields of employment, education and health.

Decree 1026/2024 of 8 October, which was adopted in 2024, develops the planned set of measures for equality and non-discrimination of LGTBI persons in companies. This regulation is applicable to companies with more than 50 employees. It provides that companies must reach agreement with workers' representatives on a series of measures, including the following:

1. That collective bargaining agreements and company agreements include equal treatment and non-discrimination clauses in their articles that contribute to creating a context that is favorable to diversity and progress towards eradicating discrimination against LGTBI people, with express reference not only to 'sexual orientation and identity' but also to 'gender expression' and 'sexual characteristics'. (This report uses the term 'sexual identity' because it is the exact or literal term used in the decree under discussion. In this sense, the rule refers to sexual orientation and identity, on the one hand, and 'gender expression' on the other. In this sense, it is considered preferable to maintain the direct translation of 'sexual identity' because, if 'sexual identity' is replaced by 'gender identity', these concepts could be confused in the decree and in other laws).
2. That through the measures provided for in collective bargaining agreements, companies contribute to the eradication of stereotypes in access to employment for LGTBI persons, in particular by providing the people involved in the selection processes with appropriate training. The regulation adds that to this end, clear and specific criteria need to be established to guarantee an adequate selection and recruitment process that prioritises the training and suitability of the person for the

job, regardless of their sexual orientation and identity or gender expression, with special attention to trans people as a particularly vulnerable group.

3. That collective bargaining agreements and company agreements will regulate criteria for classification, professional promotion and advancement in a way that does not lead to direct or indirect discrimination against LGBTBI people, based on objective elements, including qualifications and ability, thereby guaranteeing the development of their professional careers under equal conditions.
4. That in their training plans, companies will include specific modules on the rights of LGBTBI people in the workplace, with special emphasis on equal treatment and opportunities and non-discrimination.

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 (RDL 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, RDL 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 RDL 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 (Law 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.¹¹⁴

¹¹⁴ 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),¹¹⁵ 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).¹¹⁶ 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 under 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.

¹¹⁵ 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>.

¹¹⁶ 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>.

Finally, regarding the issue of discrimination on the ground of gender identity, Law 15/2022 amends Law 50/1981 of 30 December on the Organic Statute of the Public Prosecutor's Office. In accordance with this amendment, a special prosecutor against hate crimes and discrimination has been created in the General Prosecutor's Office. This special prosecutor performs the following functions: carrying out the proceedings referred to in Article 5 of the Organic Statute of the Public Prosecutor's Office, and intervening directly in those criminal proceedings of special significance undertaken by the Attorney General of the State, referring to crimes committed by the victim's belonging to a certain social group, based on their age, race, sex, sexual orientation, expression or gender identity, religion, ethnicity, nationality, ideology, political affiliation, disability or socio-economic situation.

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 for 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 (RDL 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 bringing a claim (although not in a 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 claimants 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 on 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 court cases relating to discrimination that are brought to justice.

The main data is derived from the Public Prosecutor's Office and his 'Report submitted by the Public Prosecutor's Office to the Government' (2025). In this report, there is a chapter entitled 'Hate Crimes and Anti-Discrimination Offences', with a subsection relating to statistical data on hate crimes and discrimination, which lists indictments brought before the courts, as well as the judgments rendered by the courts concerning hate crimes based on various grounds of discrimination.¹¹⁷

In relation to hate crimes and discrimination, the 2025 report publishes the total number of investigation proceedings, the number of indictments that are finally formalised before the court, and the number of sentences resolved in 2024.

The report states that in 2024, 477 pre-trial investigations were initiated, compared to 511 in 2023, representing a slight decrease from 2023. However, it is important to bear in mind that 2023 saw a dramatic increase of more than 200 % compared to 2022. In the investigations carried out by the Public Prosecutor's Office, the most common grounds for discrimination are racism and xenophobia (nationality or national origin), followed by sexual orientation and gender identity. With regard to the place where the reported offences were committed, 192 investigations were carried out online or on social media, representing approximately 40 % of the total. In addition, 14 investigations were launched into incidents that took place in the world of sport, practically all of which were racist incidents.

The Public Prosecutor's Office also reports that, in relation to indictments submitted to the judge once the investigation (which may have lasted several years) has been completed, there were a total of 293 indictments compared to 210 in 2023, a significant increase of

¹¹⁷ Public Prosecutor's Office (2025) *Report submitted by the Public Prosecutor's Office to the Government*, https://www.fiscal.es/memorias/memoria2025/FISCALIA_SITE/index.html.

almost 40 % (according to the Public Prosecutor's Office, this increase may be due to the reinforced prosecution of discriminatory insults involving public humiliation). Similarly, as in the investigation proceedings, the primary grounds for discrimination in the indictments filed by the Public Prosecutor's Office are racism and xenophobia, cited in 121 cases, followed by sexual orientation and gender identity, which are mentioned in 119 indictments.

Finally, the 2025 report indicates that in 2024, a total of 173 judgments were handed down in both the trial and appeal phases, including both convictions and acquittals. Racism and xenophobia (nationality and national origin) are the primary grounds for discrimination, with a 10 % increase compared to 2023, followed by sexual orientation and gender identity, which have seen a notable increase of 22 %. Furthermore, the statistics on sentences in the Public Prosecutor's Office report highlight that in 129 of the 173 sentences, and therefore the vast majority, the ruling was a conviction. According to the Public Prosecutor's Office, this data reflects, on the one hand, the success of the charges being brought by prosecutors, as their claims are being upheld by the courts and tribunals, but on the other hand, it is also the result of the progressive qualitative improvement observed in the reports drawn up by the security forces, due to the incorporation of the guidelines established in their protocols and, in particular, the impact of the training provided to these professionals in recent years.

Notable in the 2025 Public Prosecutor's Office report is the statement that Spanish society is experiencing excessive tension and polarisation, which is witnessed in political discourse, with serious discrediting of opponents that generates unnecessary tension that inevitably spreads to society and unfortunately constitutes a breeding ground for intolerant and sometimes violent behaviour on our streets. The Public Prosecutor's Office also highlights the proliferation of particularly reprehensible discourse directed against an extremely vulnerable sector of the population, namely foreign minors without family references, sometimes criminalising them and often spreading malicious fake news about them. This is all done to denigrate them and to associate them with antisocial or violent acts, thereby discrediting them and contributing to arousing or increasing prejudice and stereotypes among the population against this particularly vulnerable group of people, with the consequent risk of generating feelings of rejection and social hostility towards them. Consequently, the Public Prosecutor's Office considers it imperative to reduce verbal aggression and restore the appropriate composure that has always characterised political debate in Spanish democracy, without compromising the legitimate exercise of constitutional principles and rights such as political pluralism, ideological freedom and freedom of expression.

Following the recommendation 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). This strategy has been replaced by the Strategic framework for citizenship and inclusion against racism and xenophobia (2023-2027),¹¹⁸ which was approved by the Spanish Government on 4 July 2023.

The Home Office of the Government of Spain (*Ministerio del Interior*) has continued to publish data on hate crimes and discrimination (the source of the data does not allow differentiation between hate crimes and discriminatory acts). The latest published report refers to data from 2024: *Report on the evolution of hate crimes and hate incidents in*

¹¹⁸ See: https://www.inclusion.gob.es/oberaxe/ficheros/documentos/MarcoEstrategicoCiudadaniaInclusionContraRacismoXenofobia_REV.pdf.

Spain 2024).¹¹⁹ These data cover complaints reported to the police and indicate whether they have been resolved by the police (where 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; 1 401 in 2020; 1 802 in 2021; 1 869 in 2022, 2 268 in 2023 and 1 955 in 2024, representing a decrease of 13.8 % between 2024 and 2023.

Based on the total data for 2024, the grounds for the complaints are set out in the table below.

Reason for making a complaint	Complaints					Complaints resolved by police				
	2020	2021	2022	2023	2024	2020	2021	2022	2023	2024
Religion	45	63	47	55	59	25	36	36	36	37
Disability	44	28	23	49	31	26	20	17	41	23
Sexual orientation	277	466	459	522	528	212	314	309	381	398
Racism/ Xenophobia	485	639	755	856	804	386	465	536	695	658
Anti-Gypsyism	22	18	22	37	18	14	16	16	17	13
Islamophobia					15					13
Ideology	326	326	245	352	147	161	169	116	164	76
Antisemitism	3	11	13	23	37	1	4	17	12	20
Others	132	173	232	256	230	102	109	128	198	166
Total	1401	1802	1796	2268	1955	927	1133	1175	1544	1405

The category of 'others', includes: aporophobia; gender discrimination; generational discrimination; discrimination on grounds of illness.¹²⁰

As stated in the report, where this data can be consulted, the total number of 'hate crimes and incidents' recorded by the Spanish security forces throughout 2024 amounts to 1 955 incidents, representing a decrease of 13.8 % compared to 2023. Known incidents in 2024 have decreased in almost all areas, except for 'antisemitism', 'aporophobia' and 'religious beliefs and practices', which have increased. It should be noted that the greatest decline has occurred in 'ideology', 'anti-Gypsyism' and 'dysphobia' (in general, an irrational hatred towards people with disabilities) in that order. In any case, most known incidents related to hate crimes, and incidents tend to stem from situations of racism and xenophobia (43.73 %) and sexual orientation and gender identity (27.57 %).

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 as well as section 7.10 below).

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

¹¹⁹ See Ministerio del Interior (2024) *Informe sobre la evolución de los delitos de odio e incidentes de odio en España 2024*, https://oficinacional-delitosdeodio.ses.mir.es/publico/ONDOD/dam/jcr:5a91cf6e-8355-47d9-bcf4-96abb21413e9/INFORME_2024.pdf.

¹²⁰ These fields have been grouped under 'Other', although their incidence can be delineated in the 2024 statistics as complaints on: aporophobia 14.3 %; gender discrimination 20.3 %; discrimination on grounds of illness 8 %; generational discrimination or age: 5.6 %.

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. The following paragraph explains how the legal standing of associations is regulated with regard to the grounds of discrimination that may arise (racial or ethnic grounds, disability, etc.), and in which types of proceedings (civil, criminal, employment, etc.) this legal standing is recognised.

In 2003, Law 62/2003 focused on regulating the standing of entities in matters of discrimination on grounds of race in certain legal proceedings. In this sense, 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 legitimisation 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 legitimisation 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 on Regulating the Administrative Courts (Articles 18 and 19). The legitimisation (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 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. On the other hand, under Article 31(2) of Law 15/2022 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.

It can be said that this regulation has also been accepted by Law 4/2023 (on the equality of transgender people and for the guarantee of LGBTI rights), since it has established in its fifth final provision that for the defence of the rights and interests of persons who are victims of discrimination for reasons of sexual orientation and identity, gender expression or sexual characteristics, in addition to the persons affected and provided that they have their express authorisation, political parties, trade union organisations, business organisations, professional associations of self-employed persons, associations of consumers and users and legally constituted associations and organisations whose aims

include the defence and promotion of the rights of lesbian, gay, bisexual, trans and intersex persons or their families, will also be legitimised (and have legal standing) in accordance with the provisions of the Law for the real and effective equality of trans persons and for the guarantee of the rights of LGTBI persons. This provision, which amends Act 1/2000 on civil procedure, adds that when the persons affected are an indeterminate or difficult to determine plurality, the legal standing to sue for the defence of these diffuse interests shall correspond exclusively to the public bodies with competence in the matter, to the political parties, trade union organisations, business organisations, professional associations of self-employed persons, associations of consumers and users and legally constituted associations and organisations whose aims include the defence and promotion of the rights of lesbian, gay, bisexual, trans and intersex persons or their families. Finally, the fifth final provision adds that the harassed person is the sole legitimate party in litigation regarding discriminatory harassment on the grounds of sexual orientation and identity, gender expression or sexual characteristics.

On disability, the General Law on the Rights of Persons with Disabilities and their Social Inclusion (RDL 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 RDL 1/2013 provide that the Law's provisions regarding the safeguarding 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 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 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.

Law 62/2003, RDL 1/2013 and Law 15/2022, 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 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 6.2.e, below, regarding class actions to understand the difference between the legitimisation of associations under Law 62/2003 and RDL 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 claim brought by the party is upheld by a judgment.¹²¹ Therefore, the upholding of the claim must have legal utility for the claimant.¹²² The legitimate interest may be individual or collective, direct or indirect, present or future (if the harm to be avoided or eliminated, and against which the claim has been brought, 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.¹²³

Law 62/2003, RDL 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 applies regarding 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.

¹²¹ Supreme Court, Decision 2733/2003, 4 March 2003.

¹²² 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>.

¹²³ Supreme Court, Decision 873/2003, 11 February 2003.

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.

Some civil society organisations are active in this field, are visible and stimulate public discourse on equality, but the number of claims involving discrimination 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; the nuances are explained below.

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. Similarly, associations may not intervene in support of the claimant in civil cases (Law 1/2000, Articles 11 and 11-*bis*).

Law 15/2022 provides for similar regulation, but this statement needs to be qualified. Judicial interpretation will be required to determine whether this provision implies that authorised organisations have legal standing to act in support of victims of discrimination. 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 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 that they can act in defence of the victim (if the victim is a partner, member or user of an organisation’s services) in relation to the defence of their rights and interests, if the relevant organisation is authorised to do so.

c) Submitting observations, e.g. *amicus curiae* briefs/letters

In Spain, there is no specific regulation on the role of *amicus curiae*. Consequently, associations, trade unions, or other types of organisations do not have the right to submit observations to courts or other judicial bodies, such as *amicus curiae* briefs, in cases of discrimination. As a specific role, the *amicus curiae* is not used in practice.

In the context of judicial proceedings before the Constitutional Court (i.e. constitutional proceedings), the figure of the ‘*coadyuvante*’ (intervener) could be considered to be similar, but not identical to *amicus curiae*. According to the Organic Law of the Constitutional Court, persons affected by the decision, act or event on the basis of which an application for appeal for constitutional protection (*recurso de amparo*) is made, and who have a legitimate interest in that application, may appear in the constitutional proceedings for ‘*amparo*’ (on the grounds of a violation of a fundamental right), either as a defendant or as an intervener. However, this involves direct participation in the proceedings, provided that a legitimate interest is proven (Article 47).

In proceedings brought by either the Independent Authority for Equal Treatment and Non-Discrimination, or 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, 'those who are affected by having suffered the discrimination that gave rise to the proceedings shall be called to the proceedings to assert their individual rights or interests' (Second final provision of Law 15/2022 amending Article 15^{ter} of Law 1/2000 of 7 January on Civil Procedure). Therefore, those entities (which are 'affected') will be summoned to appear in the proceedings, but this is a different situation from that of an *amicus curiae*.

d) *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*) provided that such action is covered by law.

Thus, *actio popularis* is possible in criminal proceedings and also in administrative proceedings, that is, against actions of the Administration or against general provisions of a lower rank than the law (Article 19 of Law 29/1998 of 13 July 1998, regulating Contentious-Administrative Jurisdiction). *Actio popularis* in criminal proceedings is provided for under Article 101 of Law 1/2000 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 stated¹²⁴ 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.

In the area of equal treatment and non-discrimination, Law 15/2022 amended Law 1/2000 of 7 January 2000, regulating civil procedure, in such a way as to guarantee the exercise of *actio popularis*. Therefore, when the Independent Authority for Equal Treatment and Non-Discrimination is created, it should have legal standing to instigate legal actions in defence of various rights or interests when the affected persons are an indeterminate number or difficult to determine. Such legal standing to bring legal actions in defence of various rights or interests is also granted to the most representative political parties, trade unions and professional associations of self-employed workers, as well as to organisations of consumers and users at the state level, and to organisations, at the state level or at the territorial level in which the situation of discrimination occurs, where the defence and promotion of human rights is one of their aims, in accordance with the provisions of the Comprehensive Law for Equal Treatment and Non-Discrimination, notwithstanding the individual legal standing of those affected, if they have been identified.

e) 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.

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 similar forms of claim are not allowed in civil proceedings under Spanish law (Carrasco and González, 2001).

¹²⁴ Constitutional Court, Decision 175/2001, 26 July 2001, <http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/4471>.

Although the texts of Article 76 of RDL 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.

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 that the interested parties 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 on the claimant (Article 217(2)) but sets out a 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'.¹²⁵

In the field of anti-discrimination law, the most important provisions are contained in Law 62/2003, RDL 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).
- The general principle of the shift in the burden of proof is recognised in Article 30 of Law 15/2022 on equal treatment and non-discrimination: the Law provides that with regard to any form of discrimination (including inducement, order or instruction to discriminate), when the claimant or the person concerned alleges discrimination and provides substantiated evidence in this regard, it will be up to the defendant or the party to whom the discriminatory situation is imputed to provide an objective and

¹²⁵ See, for example, the judgment of the High Court of Justice of Galicia of 23 November 2012.

reasonable, sufficiently proven justification of the measures taken and their proportionality. To this end, the judicial or administrative body may, of its own initiative or at the request of a party, request a report from the public bodies competent in matters of equality. In labour and social security case law, this principle is recognised in Article 96 of the Law on social litigation procedure (Law 36/2011).

- 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).
- General burden of proof on ground of discrimination by disability: the General Law on the Rights of Persons with Disabilities and their social inclusion (RDL 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 RDL 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 measures which are founded on 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'. Article 96 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 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 (consequently, only in relation to this ground for discrimination: 'In proceedings in which the claimant'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 (for example, Article 96 of Law 36/2011, as outlined above) 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 wording 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)¹²⁶ 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).¹²⁷

We should briefly recall what the Constitutional Court stated in STC 144/2006¹²⁸ (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 (Article 6).

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

¹²⁶ Constitutional Court, Decision 31/2014, 24 February 2014:
<http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/23819>.

¹²⁷ Constitutional Court, Decision 98/2003, 2 June 2003:
<http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/4873>.

¹²⁸ Constitutional Court, Decision 144/2006, 8 May 2006:
<http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/5746>.

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. On the other hand, under Law 15/2022 the extension of protection to other persons would be subject to judicial interpretation, on the basis that the reprisal affects a person or ‘group in which he or she is a member’.

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).¹²⁹

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 applicable in Spain only in the field of employment for all the grounds (Law 5/2000) and for the ground of disability in all fields (RDL 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, which judges must consider whether can be applied in some cases of discrimination).¹³⁰ 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, makes 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, first, Law 15/2022 attributes to itself a supplementary role by providing a preference for the application of the sanctioning regime that is established in those autonomous communities that have legislated on equal treatment and non-discrimination. However, it makes an exception for the provisions that lead to infringement procedures and sanctions that were already set out in two sets of legislation, namely in relation to discrimination against persons with disabilities and in the field of employment. This means that in two fields, in relation to persons with disabilities

¹²⁹ 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.

¹³⁰ 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 RDL 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.

and to 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 Decree-Law 1/2013 of 29 November applies. 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 RDL 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 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 Law 15/2022 provides that acts or omissions that constitute multiple discrimination are considered very serious, as well as the harassment behaviours set out in Article 6 (in general, 'discriminatory harassment', i.e. any conduct carried out on the basis of any of the grounds of discrimination with the purpose or effect of violating the dignity of a person or group of which he or she is a member and of creating an intimidating, hostile, degrading, humiliating or offensive environment). 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 the event that it occurs.

Field of employment for all grounds

The Law on offences and penalties in social matters (Law 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 RDL 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 includes 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).

Law 5/2000 includes discrimination on 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)).

Law 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)).

Law 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 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 6 months to 2 years or a fine of 12 to 24 months' (with a daily fee that can range from EUR 2 to EUR 400) for those who cause serious discrimination in public or private employment against any person on the grounds of their ideology, religion or beliefs, their family situation, their membership of an ethnic group, race or nation, their national origin, their sex, age, sexual or gender orientation or identity, reasons of gender, aporophobia or social exclusion, the illness they suffer or their disability, for holding the legal or trade union representation of the workers, for being related to other workers in the company or for the use of any of the official languages in the Spanish state, and do not re-establish the situation of equality before the law following a summons or administrative sanction, repairing the economic damage that has resulted.

Disability

In addition to the sanctions established on the ground of disability in the field of employment by Law 5/2000, Articles 83-88 of the General Law on the Rights of Persons with Disabilities and their social inclusion (RDL 1/2013) establish a system of sanctions for discrimination on the ground of disability in other fields. RDL 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.

RDL 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 (Law 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, antisemitism 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 1/2015¹³¹ has amended the Criminal Code, in particular Articles 510, 511 and 512, which provide for imprisonment for racist crimes and xenophobia. In addition, in 2022, the Organic Law 6/2022, of 12 July, complementary to Law 15/2022, modified the Criminal 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). Article 510 of the Criminal Code provides for prison sentences of 1 to 4 years and a fine (the fine is calculated as a number of days, which can range from 6 to 12 months, with a daily fee ranging from EUR 2 to EUR 400) in the event of the following actions:

- Actions of incitement to hatred or violence against certain groups or individuals because of their membership of a group on racist, antisemitic 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, 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 511 provides prison sentences of 6 months to 2 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'.

i. Preventive and socio-preventive sanctions

Spanish legislation does not generally provide for preventive and socio-preventive sanctions (Article 25 of the Constitution only allows for reactive sanctions, not preventive sanctions).

¹³¹ 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>.

Before a sanction is imposed by the public administration, it is possible to provide for preliminary 'warnings' and 'orders' for cessation of the conduct that could lead to such a sanction (there are different legal interpretations in respect of these issues); the legal provisions covering these types of warnings are set out below.

For instance, in the field of equal treatment and non-discrimination, Law 15/2022 stipulates that 'serious infractions' arise with respect to non-discrimination when the affected party has disregarded a specific administrative order – one that does not merely entail a formal requirement – issued by the competent administrative body that holds the necessary powers to sanction. Another example of a warning could be the Royal Decree-Law 5/2000, of 4 August, approving the consolidated text of the Law on offences and penalties in social matters: it provides that one of the reasons that infringements are considered serious is the failure to follow the previous requirements of the administration in terms of occupational risk prevention. Moreover, in the area of personal data protection, Organic Law 3/2018 of 5 December 2018 on the protection of personal data and guarantee of digital rights provides that the Spanish Data Protection Agency may issue a 'warning', as well as order the data controller or processor to adopt corrective measures aimed at ending the possible breach of data protection law in a certain manner and within the specified timeframe. Accordingly, the Spanish Data Protection Agency may initiate a warning procedure in order to make a data controller correct or rectify conduct that is not in compliance with the law. Finally, it is worth noting the report of the Spanish Data Protection Agency for the year 2024, which was published in 2025. This report refers to the sanctions imposed by the agency, and no sanctions for discriminatory reasons are identified (the report indicates that the area of activity with the highest number of sanctions resolved in 2024 was video surveillance).¹³²

In respect of administrative penalties, Law 15/2022 establishes the possibility of replacing the payment of a fine with the 'performance of an action or obligation'. In this regard, according to Article 50 of Law 15/2022, when administrative sanctions are imposed (in any case in which the infringements are not considered very serious), the economic penalty (fine) may be replaced by the provision of unpaid personal cooperation in activities of public utility, of 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 caused to the victims and the groups affected.

ii. Specific sanctions for cases of collective redress (*actio popularis* or class actions)

In the field of equal treatment and non-discrimination, there are no specific provisions regarding sanctions in the area of collective redress.

iii. Sanctions dealing with cases of mass discrimination, particularly as a result of the use of AI or automated systems

According to Law 15/2022, infringements are classified as minor, serious and very serious depending on the conduct. In classifying conduct, no account is taken of cases of mass discrimination. Once the offences have been classified as minor, serious, or very serious, the law sets forth the specific monetary ranges of sanctions corresponding to each type of offence. In this regard, such sanctions may be imposed in the highest allowable amount under the law if the conduct in question has affected a significant number of individuals or has had substantial social impact.

¹³² Spanish Data Protection Agency (2025) *Annual Report 2024*, <https://www.aepd.es/memorias/memoria-aepd-2024.pdf>.

It should also be noted that personal data protection legislation imposes an obligation on both data controllers and processors to implement appropriate technical and organisational measures to ensure and demonstrate that data processing complies with European regulations as well as with the applicable Spanish law (Organic Law 3/2018 of 5 December 2018 on the protection of personal data and the guarantee of digital rights). When adopting the measures referred to in the preceding paragraph, controllers and processors must take into account the heightened risks that may arise from large-scale processing involving a substantial number of data subjects or entailing the collection of a large volume of personal information.

Furthermore, Organic Law 3/2018 itself sets forth a specific sanctioning regime regarding 'automated systems' (the law speaks of automated systems, but does not specifically use the term artificial intelligence). In the same vein, the Spanish Data Protection Act provides that if the data obtained from an individual is to be processed for profiling purposes, the basic information given to that individual must also disclose this circumstance. In such a case, the data subject must be informed of their right to object to automated individual decision making that produces legal effects concerning them or similar automated actions that significantly affects them, whenever this right applies in accordance with Article 22 of Regulation (EU) 2016/679 (Article 11 of Organic Law 3/2018).

b) Pecuniary sanctions – 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. RDL 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)).

Apart from the specific fields of employment and disability, Law 15/2022 on equal treatment and non-discrimination, which is of general application, establishes that the infringements established will be sanctioned with fines ranging from EUR 300 to EUR 500 000, according to the following scale: a) minor infringements between EUR 300 and EUR 10 000; b) serious infringements between EUR 10 001 and EUR 40 000; c) very serious infringements between EUR 40 001 and EUR 500 000.

There is no information available regarding the average amount of compensation awarded to victims of discrimination.¹³³

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.

The amounts of fines relating to sanctions may vary between sectors: in the field of employment, acts of discrimination carried out by a company is a very serious infringement, and fines may range from a minimum of EUR 7 501, to a maximum of EUR 225 018 (Article 40 of Royal Decree-Law 5/2000 of 4 August, approving the revised text of the Law on offences and penalties in the social order). In the sectors covered by Law 15/2022, discrimination offences can be minor, serious and very serious. The minimum fine is EUR 300 and the maximum fine is EUR 500 000 (Article 48).

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, following the approval of Law 15/2022, some time is needed to

¹³³ There is no information about the average amount of fines imposed in discrimination cases.

ensure its effectiveness. In the field of employment, the Labour Inspectorate has the power to establish an infringement and propose a sanction. No data on the number of proposed infringements have been published since the entry into force of Law 15/2022.

d) Enforcement and monitoring of the implementation of sanctions

i. Courts and other adjudicating bodies' mechanisms to monitor or enforce their decisions

According to Article 118 of the 1978 Spanish Constitution, it is compulsory to execute the sentences and other final judgments of judges and courts, as well as to collaborate with them as they may require during the course of trials and execution of judgments. This applies to all types of courts.

Articles 17 and 18 of Organic Law 6/1985 of 1 July on the Judiciary reiterate the obligation of all public authorities, officials, corporations, public and private entities, and private individuals to respect and carry out judgments and other judicial decisions that have become final or are otherwise enforceable under the law.

With regard to the Constitutional Court, Organic Law 2/1979 of 3 October on the Constitutional Court, provides that the Court may declare null and void any resolutions that contravene those issued in the exercise of its jurisdiction, when such contravention arises in the course of their enforcement, after having heard the Public Prosecutor and the body issuing those resolutions. Furthermore, if the Court becomes aware that a resolution delivered in the exercise of its jurisdiction is being disregarded, the Court may, *ex officio* or at the request of any party to the proceeding in which the resolution was issued, require the institutions, authorities, public servants, or private persons responsible for its enforcement to provide, within a set time period, detailed information on the matter.

Upon reviewing that information, the Constitutional Court may adopt any of the following measures:

- Impose coercive fines of between EUR 3 000 and EUR 30 000 on the authorities, public servants or private individuals who fail to comply with the Court's decisions, with the possibility of repeatedly imposing such fines until full compliance is achieved.
 - Order the suspension from duty of the authorities or public servants of the responsible administration for as long as necessary to ensure observance of the Court's orders.
 - Arrange for substitute enforcement of the decisions rendered in constitutional proceedings. In this respect, the Court may seek the cooperation of the national Government so that, within the terms indicated by the Court, it adopts the necessary measures to ensure compliance with the rulings issued.
 - Issue the appropriate testimony of facts to initiate any criminal liability proceedings that may arise
- ii. Possibility for courts and other adjudicating bodies to retain jurisdiction after sanctions have been imposed

Following the imposition of administrative sanctions, the courts retain their jurisdiction; in other words, their authority to review and oversee such sanctions is duly recognised. In the case of administrative sanctions, this review falls within the jurisdiction of the contentious-administrative courts. The applicable regulations grant the contentious-administrative jurisdiction *ex post* monitoring of the exercise of the administration's

sanctioning power. Such monitoring is initiated at the request of the party aggrieved by the administration. With regard to discrimination, it should be noted, for example, that if the public administration imposes an administrative sanction in a case of discrimination (e.g. a case of discrimination in housing), the person who has committed the alleged discrimination may appeal the penalty before the contentious-administrative courts. If the offender wishes to take their claim to the Constitutional Court, they must prove that the sanction imposed has violated a fundamental right.

iii. Further steps/measures courts or adjudicating bodies can take in case of non-compliance with the sanctions

Generally speaking, judgments are enforced. If enforcement proves impossible, the judge or court must adopt the necessary measures to ensure the greatest effectiveness of the enforcement, and must in any case set the appropriate compensation for the part of the judgment that cannot be fully enforced. Only for reasons of public utility or social interest, declared by the Government, may the rights recognised against the public administration in a final judgment be expropriated prior to its enforcement. In this case, the judge or court responsible for enforcement has sole jurisdiction to determine the corresponding compensation by way of incidental proceedings (Article 18 of Organic Law 6/1985).

The courts that review sanctions imposed by the public administration either uphold the administration's action in imposing the sanction or rectify it. If the administration has imposed a sanction and a judicial decision finds it lawful and properly grounded, the next step is for the administration to initiate enforcement proceedings to collect said sanction. In other words, the administration will adopt measures to execute the imposed sanction by compulsion, although such enforcement is not carried out by the courts themselves.

Regarding the imposition of sanctions, and pursuant to Law 39/2015 of 1 October on the common administrative procedure of public administrations, public administration authorities are empowered to order measures such as the imposition of coercive fines, the seizure of assets, and compulsion with respect to individuals. Specifically, when the Administration orders a strictly personal obligation not to act or to tolerate a certain act, such obligations may be enforced through direct compulsion upon individuals in those cases expressly authorised by law, and always within due respect for their dignity and the rights recognised in the Constitution.

Within the judicial sphere, specific procedures are likewise provided for the enforcement of judicial rulings, specifically known as processes of compulsory execution.

iv. The burden of enforcing sanctions

In general, courts and tribunals are responsible for enforcing their decisions. To this end, they may request the intervention of public authorities. In any case, if a sanction is imposed by the public administration, it is the administration itself that bears the responsibility for its enforcement. Conversely, if the public administration is the sanctioned party, the courts assume oversight and monitoring of ensuring compliance with the sanction.

7 BODY FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)¹³⁴

In 2025, work is underway to draft the statute of the Independent Authority for Equal Treatment and Non-Discrimination. The adoption of this statute aims to transpose Directive (EU) 2024/1499 into Spanish law.

7.1 National equality body

a) General architecture of equality bodies

Until such time as the Independent Authority for Equal Treatment and Non-Discrimination provided for by Law 15/2022 is created, the main equality body on the grounds of racial or ethnic origin discrimination is the Council for the Promotion of Equal Treatment and Non-Discrimination of Persons on the Grounds of Racial or Ethnic Origin, in addition to the Institute for Women and Equal Opportunities, which is recognised as the equality body for matters of gender discrimination.

The Council for the Promotion of Equal Treatment and Non-Discrimination of Persons on the Grounds of Racial or Ethnic Origin derives directly from Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Article 13 of which provides that each Member State must designate a body or bodies for the promotion of equal treatment between all persons without discrimination on the grounds of racial or ethnic origin.

However, in addition to the Council, there are three other bodies worth noting, although they do not have the specific powers under equal treatment and non-discrimination legislation that the Council has.

Regarding Roma people, Royal Decree 891/2005¹³⁵ 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 4/2000,¹³⁶ 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

¹³⁴ Assessments and views concerning compliance with EU law throughout Section 7, notably for Directive 2024/1499 whose transposition deadline is 19 June 2026 after the cut off date for this report, reflect the author's opinion.

¹³⁵ 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>.

¹³⁶ 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>.

and employers' organisations with an interest and involvement in the field of immigration.¹³⁷ 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 representing immigrant and refugee associations and social support organisations.¹³⁸

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 2021,¹³⁹ 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 the diversity units of Spanish universities and business organisations and the LGTBI working groups or sections of trade union organisations have their own seat on the Committee.¹⁴⁰

In fact, this regulation has been consolidated by Law 4/2023, which confirms that 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 (Article 9).

Finally, Law 15/2022 regulates the Independent Authority for Equal Treatment and Non-Discrimination, which in 2025 has not yet been established. Its creation should be in accordance with the provisions of Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC.

- b) Designated body for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive

The only body exercising the competences as listed in Article 13 of the Racial Equality Directive is the Council for the Elimination of Racial or Ethnic Discrimination (*Consejo para*

¹³⁷ Royal Decree 3/2006 of 16 January 2006 on the composition, 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>.

¹³⁸ See: Resolution of 7 September 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.

¹³⁹ 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) people 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.

¹⁴⁰ In accordance with this 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.

la eliminación de la discriminación racial o étnica) (the Council), but Spain is going through a period of transition in relation to equality institutions. 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, by the end of 2025, the Independent Authority for Equal Treatment and Non-Discrimination had not yet become operational. Nevertheless, an important step was taken in 2025 that leads us to believe that this entity will begin its work in the near future. First, on 18 May 2025, the Government approved the appointment of a chairperson for the Independent Authority for Equal Treatment and Non-Discrimination. Secondly, in the same month of May, Royal Decree 360/2025 of 6 May was approved, amending Royal Decree 246/2024 of 8 March developing the basic organisational structure of the Ministry of Equality, and amending Royal Decree 1009/2023 of 5 December establishing the basic organisational structure of ministerial departments.

However, until this authority is operational 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 operate. As such, at the present time, the Spanish body designated for the promotion of equal treatment irrespective of racial or ethnic origin is the Council (Council for the Elimination of Racial or Ethnic Discrimination).

Law 62/2003 of 30 December 2003 on fiscal, administrative and social measures¹⁴¹ (Article 33) (as amended by Article 18 of Law 15/2014 of 16 September 2014)¹⁴² established the Council. Royal Decree 1262/2007 of 21 September 2007¹⁴³ (modified by Royal Decree 1044/2009 of 29 June 2009)¹⁴⁴ 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 service offices 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 be accessed in a variety of ways that are advertised on the body's website, including a freephone service, 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, the Independent Authority will be created within the scope of the General State Administration, and will be tasked with protecting and

¹⁴¹ 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>.

¹⁴² Law 15/2014 on the rationalisation of the public sector and other measures of administrative reform.

¹⁴³ 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>.

¹⁴⁴ 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>.

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.

Until the Independent Authority is established, the Council remains in operation.

7.2 Political, economic and social context of the designated body

In 2025, the designated equality body was the Council.

Judging from the Council's website, it reduced its activities from 2023, as it has not been particularly active in exercising its information or event promotion functions. However, it continued to publish reports of interest throughout 2025.

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.

The Independent Authority for Equal Treatment and Non-Discrimination is intended to replace the Council. However, although it was created by Law 15/2022, as of the end of 2025, the Authority had not yet been established (its statutes are currently being drafted for approval). Furthermore, the preamble of Royal Decree No. 360/2025, which was introduced on 6 May 2025, states that, in order to facilitate the launch of the new Independent Authority for Equal Treatment and Non-Discrimination, regulatory provisions are being put in place to ensure the proper performance of the new Authority's functions until its statutes and list of jobs are approved. Therefore, the Authority will not become operational until these statutes have been passed

Finally, 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 for the Promotion of Equal Treatment and Non-Discrimination of Persons on the Grounds of Racial or Ethnic Origin in the fight against discrimination based on racial or ethnic origin. It was only through the discussion of the comprehensive Bill on 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 became part of the political debate.

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

The Council continued to exercise its powers during 2025.

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 hierarchical structure;
- it is fundamentally governmental in its structure, 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
 - 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. There are three distinct 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 ECRI general recommendation 2, on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level of 13 June 1997, and the European Commission Recommendation on Standards for Equality Bodies of 22 June 2018 (Spain has not yet transposed Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC).

Law 15/2022 provided for 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. Moreover, 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). This appointment took place in May 2025, as a first step towards the effective establishment of the Authority (Decree 420/2025 of 27 May appointing Ms M.T. Verdugo Moreno as President of the Independent Authority for Equal Treatment and Non-Discrimination).

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.

Under Article 42, the Independent Authority for Equal Treatment and Non-Discrimination will, for the fulfilment of its objectives, have the following financial resources at its disposal: the appropriations established annually from the General State Budget; the grants and contributions awarded to it; the assets and rights constituting its patrimony, as well as the proceeds and income therefrom; payments arising from cooperation agreements it enters into; and any others that may lawfully be attributed to it. However, prior to becoming operational as part of the Ministry of Equality, its provisional resources will be drawn from that body. The amount of the resources is not known.

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 will be regulated by the future statute of this equality body. Law 15/2022 establishes that they must be civil servants.

Accountability

The Council is accountable to the Ministry of the Equality. 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 provided for the establishment of the Independent Authority for Equal Treatment and Non-Discrimination, although it has not yet been set up. 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, Article 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 formal representatives of the public administration; the seven members 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 (furthermore, Spain has not yet transposed Council Directive (EU) 2024/1499).

According to Law 15/2022, the Independent Authority does not establish its liability regime, which must be regulated by its bylaws and approved by a Government regulation. However, it does provide 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).

According to this regulation, 'the Independent Administrative Authority for Equal Treatment and Non-Discrimination, shall be linked to the Ministry of Equality, through the person in charge of the body, 'without this link affecting its full independence and functional autonomy in any way, and without it being able to receive or accept instructions in the performance of its functions and the exercise of its powers'.

In this regard, the new regulations would comply with the Council Directive (EU) 2024/1499 of 7 May 2024, on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC. According to Article 3 of this Directive, Member States must take measures to ensure that equality bodies are independent and free from external influence and do not seek or take instructions from the Government or any other public or private entity in the performance of their duties and the exercise of their powers.

To comply with this Directive, other provisions of Royal Decree 360/2025 establish specific regulations on the Independent Authority. Royal Decree 360/2025 stipulates that the Ministry of Equality will provide 'the services and administrative support' necessary to ensure that the Independent Authority for Equal Treatment and Non-Discrimination can commence its activities on the date determined for this purpose by order of the head of the Ministry of Equality. In addition, until the Independent Authority for Equal Treatment and Non-Discrimination has its own budget, its activities will be funded from the budgetary provision of the Ministry of Equality. Finally, it should be noted that the Ministry for Digital Transformation and the Civil Service will approve the provisional list of job positions of the Independent Authority for Equal Treatment and Non-Discrimination, which will remain in force until the statute of the Independent Authority for Equal Treatment and Non-Discrimination and the list of job positions have been approved.

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 EUR 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. In 2022, the General State Budget for 2023 was approved through Law 31/2022, of 23 December, on the General State Budget for 2023. In the year 2024, a specific law on the general state budget for 2024 was not passed, but rather an 'extension' of the budget approved in the year 2023 was passed, in the sense that the same amount as for 2023 was also provided for 2024. Finally, the 2024 budget has also been extended to 2025 (this has not had a negative impact on equality bodies, as in 2023 their budget had increased).

The budget of 2024, which has been extended to 2025, includes the objective of promoting the functioning of the Council for the Elimination of Racial or Ethnic Discrimination. The objectives to be fulfilled by this Council are established according to its competences. This objective is included in the budget programme 232D 'Equal treatment and diversity', with the aim of implementing policies that promote equal treatment and non-discrimination, as well as an adequate management of diversity in all areas of life. This programme has been allocated EUR 7 345.72 million;¹⁴⁵ this is a significant allocation for the programme as a whole, although the Council's specific responsibilities in that regard have not been published.

According to Law 15/2022, the Independent Authority for Equal Treatment and Non-Discrimination will prepare a preliminary draft budget annually, which will include the statements of income and expenditure, with the structure determined by the Ministry of Finance and Public Administration, and will submit this proposal to the said Government department for inclusion in the preliminary draft of the General State Budget Law. The amount of the resources is not known.

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

Non-applicable.

The total number of staff of the body

The annual report published by the Council in 2025 regarding 2024 highlights that the service was 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 am to 9 pm, 365 days a year. This budgetary increase has been also reflected in the rise of the number of offices available in the autonomous communities to facilitate face-to-face assistance to victims, in the opening hours of the online team responsible for assisting victims of discrimination via the freephone number 021, and in the specialist technical staff responsible for managing all channels of access to the service, which has had a direct impact on the increase in the number of cases recorded in this annual report¹⁴⁶.

¹⁴⁵ General state budget 2023, <https://www.sepg.pap.hacienda.gob.es/Presup/PGE2023Ley/MaestroTomos/PGE-ROM/TomosSerieRoja.htm>.

¹⁴⁶ Council for the Elimination of Racial or Ethnic Discrimination (2025) *Annual Report 2024*, <https://igualdadynodiscriminacion.igualdad.gob.es/wp-content/uploads/2024/09/Memoria-Anual-de-resultados-Servicio-Asistencia-Victimas-de-discriminacion-racial-y-etnica-2024-pdf-1.pdf>.

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 organisations 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 and fields covered by the designated body

The Council has competence only in relation to the ground of racial or ethnic origin. Under this cause of discrimination, it is responsible for promoting the principle of equal treatment and non-discrimination of persons on the basis of racial or ethnic origin in areas such as education, health, access to benefits, social services, housing, employment, training, etc., and in general in relation to any goods or services.¹⁴⁷

In practice this means that the equality body deals with discrimination against migrants. The Council's priority is discrimination on the grounds of race or ethnicity, whether the victims are migrants or not, although in the past two years, several of its recommendations have addressed specific situations of migrants.

However, the Council will be replaced by the Independent Authority for Equality and Non-Discrimination, although the latter has not yet been set up. 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 or other cases of 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.

The Racial and Ethnic Discrimination Victim Assistance and Guidance Service operates under a contract with the Spanish public administration. The current contract runs from

¹⁴⁷ See the Council's website: <https://igualdadynodiscriminacion.igualdad.gob.es/elConsejo/mision/home.htm>.

2022.¹⁴⁸ In view of the contract's expiry on 23 May 2024, the Secretary of State for Equality and the Eradication of Violence against Women, through the Directorate-General, announced their intention to agree to a 12-month extension, from 24 May 2024 to 23 May 2025.

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

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 'independent assistance to victims', it is necessary to analyse the annual performance report of the Victims of Discrimination Assistance and Guidance Service, which is released every year.

The 2024 *Annual Performance Report on the Victims of Discrimination Assistance and Guidance Service* was published in 2025 by the Council for the Elimination of Racial and Ethnic Discrimination.¹⁴⁹ The annual performance report contains the data and analysis collected by the registered entities in 2024. The 2022 annual report recorded 1 570 cases, the 2023 annual report recorded 2 582 cases, and the 2024 annual report recorded 2 913 cases.

Three main conclusions of the report released in 2025 include:

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. Nonetheless, there is still a problem of underreporting. The main reasons 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. Given 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 anti-discrimination legislation persists.

Law 15/2022 expressly states that the Independent Authority will ensure the independent provision of specialised assistance and guidance services to persons who may have suffered discrimination. These services will include the reception and processing of

¹⁴⁸ Council for the Elimination of Racial and Ethnic Discrimination (2024) *Memoria anual de resultados del Servicio de asistencia y orientación a víctimas de discriminación 2024 (2024 Annual Performance Report of the Victims of Discrimination Assistance and Counselling Service)*, available at: <https://igualdadynodiscriminacion.igualdad.gob.es/wp-content/uploads/2024/09/Memoria-Anual-de-resultados-Servicio-Asistencia-Victimas-de-discriminacion-racial-y-etnica-2024-pdf-1.pdf>.

¹⁴⁹ Council for the Elimination of Racial or Ethnic Discrimination (2025) <https://igualdadynodiscriminacion.igualdad.gob.es/wp-content/uploads/2024/09/Memoria-Anual-de-resultados-Servicio-Asistencia-Victimas-de-discriminacion-racial-y-etnica-2024-pdf-1.pdf>.

complaints or claims from victims and mediation and conciliation activities as well as the exercise of legal action (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-2024*.¹⁵⁰ As stated in the report itself, in 2024, the proportion of people using negative or pejorative adjectives increased by 4 percentage points (p.p.) to almost 63 % of people. It adds that the groups with the highest perceptions of an unfavourable image continue to be the Roma and the Arab and Amazigh/North African non-Arab populations.

Finally, the report concludes that the work carried out by organisations and public institutions fighting discrimination is still not very well known, in fact the report states that the proportion of the population reporting that they know entities or services working in the field of support for people experiencing discrimination on the basis of their ethnic or racial origin is decreasing. However, it has to be said that according to another report of the Council of the Elimination of Racial and Ethnic Discrimination, its work (specifically the work of the Council) with victims of discrimination has increased in 2024 (see below 7.10). 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.

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 (half of whose members are Government representatives).

The Council has not adopted a management plan in 2025 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 proposed 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; disseminate the activities, studies and reports that it carries out; and produce an 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 particular, this provision states that the Council shall promote measures which contribute to the elimination of discrimination against persons on grounds of racial or

¹⁵⁰ See Council for the Elimination of Racial and Ethnic Discrimination (2024), *Executive Summary: Potential Victims' perception of discrimination based on racial or ethnic origin*, (in English) available at: <https://igualdadynodiscriminacion.igualdad.gob.es/estudiopercepcion2024/>.

ethnic origin, 'making, where appropriate, recommendations on any matter relating to such discrimination'.

In addition, Royal Decree 1262/2007, which regulates the composition, competences and operating regime of the Council for the Promotion of Equal Treatment and Non-Discrimination of Persons on the Grounds of Racial or Ethnic Origin, 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 2025, the Council for the Elimination of Racial or Ethnic Discrimination made various statements, including on the rise in hate speech and xenophobic violence in Torre Pacheco (Autonomous Community of Murcia). According to the Council, in response to events that took place in towns such as Torre Pacheco in 2025, the Council issued a CEDRE statement on escalating incitement to hatred and xenophobic violence. In that town, it was believed that a migrant had committed a crime, and a section of the local population and others from outside the town mobilised to persecute migrants. The Council states that it condemns all serious and despicable criminal acts that have taken place in the municipality of Torre Pacheco, in the Region of Murcia, and agrees on the need for redress and the punishment of those responsible, but emphasises that criminalising an entire group and causing public alarm by stoking fear and spreading misinformation that fuels the perception of migration as a danger is unjust and highly damaging to society as a whole.¹⁵¹

In accordance with Law 15/2022, the Independent Authority may carry out these actions and also 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

The Council's functions include activity to 'promote informative, awareness-raising and training activities and any other activities 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; and establishing mechanisms for collaboration and cooperation with other bodies, entities and high-level institutions for the defence of human rights. It can be understood to have the power 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 implement an action plan of its competences or collaborative actions with other entities.

The author of this report believes that from 2023, and during 2025, 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.

¹⁵¹ See: <https://igualdadynodiscriminacion.igualdad.gob.es/wp-content/uploads/2025/06/COMUNICADO-CEDRE-ANTE-LA-ESCALADA-ODIO-15072025.pdf>.

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;
- 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,¹⁵² Spain's anti-discrimination body was the least well known in the entire EU; as such, its potential for anti-discrimination action is limited. 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 (section 7.6). In this sense, it may bring legal action for the defence of rights relating to 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.

In Spain, there is no separate quasi-judicial body to decide on discrimination cases.

However, Law 15/2022 provides for the establishment of the Independent Authority for Equal Treatment and Non-discrimination, which will eventually replace the Council, and will have the power to initiate investigations into the existence of possible situations of

¹⁵² FRA (2017), *Second European Union Minorities and Discrimination Survey, Main results*.

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. However, the Council has created a Network for Assistance and Guidance to Victims of Racial or Ethnic Discrimination, which is implemented by several organisations with proven experience in the field 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 the conciliation and mediation actions of the network is included in the Council's Annual Performance Report, published in 2025. This report shows that individually, out of a total of 5 197 actions carried out (reports, legal advice, complaints, etc.), mediation was carried out in 153 cases and conciliation in 29 cases. In collective cases, the Council carried out 25 conciliations and 105 mediations¹⁵³ (see section 7.10).

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 will 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. 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 ECRI Recommendation 11 (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).

The Council's annual performance report for 2024 was published in 2025: *Complaints addressed by the network in 2024, disaggregated by ethnic or racial origin of the victim and by field of discrimination*.

¹⁵³ See: CEDRE (2025) *Network of Centres of Assistance for Victims of Racial or Ethnic Discrimination - Annual performance report 2024*: <https://igualdadynodiscriminacion.igualdad.gob.es/wp-content/uploads/2024/09/Memoria-Anual-de-resultados-Servicio-Asistencia-Victimas-de-discriminacion-racial-y-etnica-2024-pdf-1.pdf>.

The table shows the cases initiated and resolved by the Council:

Source: (CEDRE): Network of Centres of Assistance for Victims of Racial or Ethnic Discrimination - Annual performance report 2024 (this data was published in July 2025).¹⁵⁴

	2021	2022	2023	2024
<i>Total</i>	<i>860</i>	<i>1570</i>	<i>2582</i>	<i>2.913</i>
Individual	528	1084	2077	2343
Collective	332	471 (+15 pending qualification)	484 (+ 21 pending qualification)	413 (+ 57 pending qualification)

According to the report, 1 570 cases were recorded in the 2022 annual report, 2 582 cases in the 2023 annual report, and 2 913 cases in the current 2024 annual report. Consequently, there has been a considerable increase in the number of cases recorded by the Council Service, especially since 2022, which is when, according to the Council, the budget for running the Service was increased. This budget has made it possible to maintain the material and human resources needed to provide specialised assistance and advice from experts and technicians to victims of racial or ethnic discrimination.

The report also notes that the victims in the cases handled are most frequently found in the 26–35 and 36–45 age groups, representing a total of 1 181 (41 %) cases. The report also highlights that there are cases of discrimination affecting an even younger population, specifically those under the age of 18, with a total of 270 cases. This is a cause for concern, as these cases occur in areas where minors are often involved, such as education, public spaces, sport and access to work experience. With regard to the sex/gender of the victim, in 1 418 (49 %) reported cases, the victims of discrimination were women, and in 1 038 (36 %) cases, they were men. In terms of the population group of the victims, the groups most frequently assisted by the Council Service are Latin Americans (1 005), followed by people of African descent (428), Arabs (346), Roma (343), Berbers (84), East Asians (24) and South Asians (17).

However, regardless of these figures, the report also concludes that all progress aside, underreporting remains a significant problem. The main reasons continue to be the victim's lack of perception of discrimination, as well as a lack of knowledge of their rights, a lack of awareness of safe reporting mechanisms, low expectations that their complaint will be successful, mistrust in the institutions, language barriers, assimilation of ethnic discrimination as characteristic of the group or collective to which they belong, etc. Furthermore, victims may fear further victimisation or reprisals, as well as feelings of humiliation or shame.

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
<i>Total</i>	<i>2.343</i>	<i>531</i>
<i>Field of discrimination-</i>		
Access to goods/services	608	52
Employment (private)	330	67
Housing	221	51
Health	289	30

¹⁵⁴ See: CEDRE (2025) *Network of Centres of Assistance for Victims of Racial or Ethnic Discrimination - Annual performance report 2024*: <https://igualdadynodiscriminacion.igualdad.gob.es/wp-content/uploads/2024/09/Memoria-Anual-de-resultados-Servicio-Asistencia-Victimas-de-discriminacion-racial-y-etnica-2024-pdf-1.pdf>.

Public spaces	144	58
Education	189	35
Internet and social media	35	126
Access to justice	51	18
Security (private security)	62	23

* 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: CEDRE (2025) Network of Centres of Assistance for Victims of Racial or Ethnic Discrimination - Annual performance report 2024, (this data was published in July 2025).¹⁵⁵

According to the report, in the area of access to public and private goods and services, the Council's Victim Assistance Service recorded a total of 660 cases, of which 352 affected women, 279 affected men, and the rest are not broken down by gender (either because the victims did not want to disclose this information or because, in the case of an undetermined collective case, the data is not broken down by sex/gender). In the private sphere, the most common cases occur in respect of access to restaurants, bars, nightclubs and other leisure centres (60 cases) where people are prevented from entering and denied access simply because they belong to a particular population or ethnic group, often by invoking the right of admission without objective justification. Another very common case is excessive surveillance of women in shopping centres and supermarkets (36 cases), where security guards watch them insistently, even accusing them, without evidence, of shoplifting.

Concerning workplace issues, cases of racial or ethnic discrimination include situations in which job candidates are excluded from the hiring process when it becomes apparent (based on appearance, surname, area or neighbourhood of residence, or accent) that they belong to one of the population groups more frequently affected by racial discrimination, such as Roma people and migrants. There have also been reports of interviews including questions on ethnic origin, interviewers directly asking whether or not the candidate is Roma, or asking about nationality in the case of migrants, and rejecting the candidate based on their response.

Finally, it should be noted that with regard to housing, the Council Service has recorded a total of 278 incidents, of which 145 affected women and 94 affected men. The most common cases reported in this area are barriers to renting, where no population group is excluded a priori, but where, once the applicant has contacted the advertiser, estate agent or owner, they are refused the right to rent the property. In some cases, the estate agency has acknowledged that it is the property owners who make the final decision not to rent to foreign nationals. According to the report, this situation could constitute a case of 'inducement, order or instruction to discriminate' under Comprehensive Law 15/2022 of 12 July on equal treatment and non-discrimination. It should be noted that, in accordance with Article 40 of Law 15/2022, the Independent Authority must, in coordination with the relevant bodies of the General State Administration responsible for periodic reports and statistics, promote studies on equal treatment and non-discrimination, as well as on the historical forms of structural discrimination suffered by the groups this law aims to protect, design and maintain a barometer on equal treatment and non-discrimination based on a system of indicators, and disseminate the activities, studies and reports it produces.

¹⁵⁵ See: CEDRE (2025) *Network of Centres of Assistance for Victims of Racial or Ethnic Discrimination - Annual performance report 2024*, <https://igualdadynodiscriminacion.igualdad.gob.es/wp-content/uploads/2024/09/Memoria-Anual-de-resultados-Servicio-Asistencia-Victimas-de-discriminacion-racial-y-etnica-2024-pdf-1.pdf>.

b) Equality data collection

Law 62/2003 regulating the Council does not provide for 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 is a collaborative organisation: in accordance with Article 44 of Law 15/2022, the Independent Authority for Equal Treatment and Non-Discrimination will provide any assistance requested of it by the Spanish Parliament, the courts, the Public Prosecutor's Office, the Ombudsman and public authorities. This duty of cooperation and sharing of 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 an exclusive issue for it. In other words, in the Council's work on discrimination on grounds of racial or ethnic origin, the Roma appear to be one of the most affected and much attention is devoted to them in these reports, but the Roma as such are not a priority above other groups.¹⁵⁶

Among the members of the Council, there are two Spanish Roma organisations, the Fundación Secretariado Gitano and the Unión Romani, which are very active associations in this field. 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 2025, the Fundación Secretariado Gitano published its 18th annual report on discrimination and the Roma community (it should be noted that 2025 marked the 600th anniversary of the presence of the Roma people in Spain).¹⁵⁷ The report notes that the number of complaints has increased, reflecting greater awareness among the Roma population of the problem of discrimination. On the other hand, the report also warns that it is very common for these people to simply report the facts, refusing to take action to protect or restore their violated rights, especially if such action involves initiating complex administrative or judicial proceedings. The report also states that the delay in creating the Independent Authority for Equal Treatment and Non-Discrimination has meant that administrative channels have so far proved ineffective and that penalties imposed for racial discrimination in Spain are practically non-existent.

The Fundación Secretariado Gitano make a series of proposals and recommendations to improve the response to discrimination and anti-Gypsyism: the effective application of the Comprehensive Law for Equal Treatment and Non-Discrimination approved in July 2022, above all with respect to the application of the sanctions system by the relevant authorities and the creation of the Independent Authority, which the law provides for in its Section III; training in the new Comprehensive Law for Equal Treatment and Non-Discrimination for all the key actors in this field, including the judiciary, prosecutors, legal professionals and state security services; the application of anti-Gypsyism as an aggravating circumstance, which was introduced to the Penal Code in 2022 (Article 22.4) through the Comprehensive Law for Equal Treatment and Non-Discrimination, for crimes against Roma

¹⁵⁶ See all the Council's news at: <https://igualdadynodiscriminacion.igualdad.gob.es/>.

¹⁵⁷ Fundación Secretariado Gitano (2025) *Discrimination and the Roma Community*, <https://informesdiscriminacion.gitanos.org/sites/default/files/2025%20INFORME%20ANUAL%20VERSION%20ON%20LINE%20OK%20FINAL.pdf>.

people that have an anti-Roma component;¹⁵⁸ the effective application and continuous revision of the Strategic Framework for Citizenship and Inclusion against Xenophobia 2021-2027; and the establishment and provision with sufficient resources of specialised programmes of complete support for Roma women, above all those in the most vulnerable situations, with a view to empowering them to exercise their rights in the face of intersectional discrimination.

¹⁵⁸ In 2022, an aggravating circumstance was introduced in the Spanish Penal Code consisting of committing the crime on racist, antisemitic or anti-Roma grounds, regardless of whether such conditions or circumstances are actually present in the person involved; the proposal of the Fundación Secretariado Gitano would consist of expressly including an aggravating circumstance in cases of crime against a Roma person if the motivation was anti-Roma.

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)

It cannot be said that there have been major campaigns to spread awareness of the anti-discrimination rules that have had significant effects. However, in the opinion of the author of this report, based on the increase in complaints to the Council's Racial or Ethnic Discrimination Victim Assistance and Guidance Service, there has been a marked improvement in anti-discrimination awareness, especially in areas such as gender, disability and sexual orientation.

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.

In 2025, the Spanish Ministry of Equality continued the anti-racism week (which was launched in 2021) to mark the International Day for the Elimination of Racial Discrimination.¹⁵⁹ Within the context of 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.¹⁶⁰ As previously mentioned, 2025 marked the 600th anniversary of the arrival of the Roma people in Spain, and as a result, the Government declared 2025 the 'Year of the Roma People in Spain' in order to recognise and celebrate the profound cultural, social and linguistic mark that the Roma people have left on the country, without neglecting the necessary reflection on the historical and current challenges that still persist.

To mark this Day, in 2025, the Council for the Elimination of Racial or Ethnic Discrimination and the Spanish Ministry of Equality published a report entitled 'The Impact of Racism in Spain 2024'.¹⁶¹ This study points out that the increase in the proportion of people who say that either they or a close family member have suffered some form of discrimination (rising from 31 % to 33 % compared to the previous edition of the report in 2020). The main reasons for discrimination show a decrease in experiences motivated by religious beliefs and cultural customs, but an increase in those related to skin colour or physical features (highlighting the ethnic and racial component of discrimination), as shown by data indicating that this factor has gained significance in recent years with the rise of racial hate speech.

- 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)

¹⁵⁹ See: Government of Spain (2021) '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.igualdad.gob.es/ministerio/dgigualdadtrato/iv-semana-antirracista/>.

¹⁶⁰ See: Government of Spain (2025) '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*, March 2025, available at: https://www.igualdad.gob.es/wp-content/uploads/2025_Declaracion-institucional-con-motivo-del-Dia-Internacional-para-la-Eliminacion-de-la-Discriminacion-Racial.pdf.

¹⁶¹ See: Council for the Elimination of Racial or Ethnic Discrimination (2025) *El impacto del racismo en España* (Perception of discrimination based on racial or ethnic origin by its potential victims in 2024), https://igualdadynodiscriminacion.igualdad.gob.es/wp-content/uploads/2025/03/El_impacto_del_racismo_en_Espana_Accesible.pdf.

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 and their social inclusion (RDL 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.¹⁶²

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 legislation has changed this tradition and responsibility for dealing with all religious issues has 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). 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 the Presidency), it would be easier to coordinate policies related to the exercise of this fundamental right of religious freedom.¹⁶³ In 2023, an agreement was reached by the Government to equalise the tax regime for all religious denominations; the agreement remained in force in 2025.¹⁶⁴

- 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.

With regard to collective bargaining (Article 10), Law 15/2022 provides that the public authorities 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

¹⁶² This body is regulated by Royal Decree 3/2006 of 16 January 2006 on the composition, competences and procedural rules of the Forum for the Social Integration of Immigrants.

¹⁶³ 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>.

¹⁶⁴ See: Government of Spain (2023) 'Ministry of the Presidency reaches agreement to equalise the tax regime for all religious denominations' <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/mpresidencia14/Paginas/2023/250423-acuerdo-regimen-fiscal-confesiones.aspx>.

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.

During 2023, the Resolution of 19 May 2023 of the Directorate General for Labour was adopted, registering and publishing the Fifth Agreement for Employment and Collective Bargaining (which is still in force in 2025). This agreement set out the criteria to serve as guidelines at the various levels of collective bargaining in Spain. The Agreement states that the different actors involved in collective bargaining processes should be made more aware of the elements to be incorporated for the inclusion, non-discrimination and accessibility of persons with disabilities in the workplace. It also calls for the integration and non-discrimination of the LGTBI collective in workplaces through specific measures, in accordance with the provisions of Article 15(1) of 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.

d) Addressing the situation of Roma and Travellers

The National Roma Council has been appointed at a national level specifically to address Roma issues.

In 2021, the Spanish Government (the Ministry of Social Rights and 2030 Agenda) adopted the *National Strategy for the Inclusion of the Roma population in Spain 2021-2030*.¹⁶⁵ In 2023, the Spanish Government adopted the first operational plan for the implementation of the strategy in 2023-2026.¹⁶⁶

The operational plan includes the actions and measures to eliminate barriers and build the necessary environment to ensure equality, social inclusion, and participation of the Roma population. The main added value of this operational plan focuses on:

- Emphasising cross-cutting issues and introducing guarantees so that universal policies and/or strategies incorporate positive actions under a criterion of equity for groups in situations of vulnerability (including part of the Roma population) who are in a disadvantaged situation to access and enjoy the rights and public services enjoyed by the general population.
- In those areas where higher levels of inequality are identified between the Roma population and the general population, specific or 'targeted measures' will be taken, following the principle of 'specific, but not exclusive, measures' for the Roma population. These 'targeted measures' are measures aimed at compensating for inequalities and focus on multi-annual measures that can be financed by the European Social Fund Plus, the European Regional Development Fund or other European funds.

¹⁶⁵ For further information see section 9.2, below.

¹⁶⁶ Spanish Government (2023) 'First operational plan 2023-2026', https://www.mdsocialesa2030.gob.es/derechos-sociales/poblacion-gitana/docs/estrategia_nacional/po_23_26/PLAN_OPERATIVO_2023-2026.pdf.

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. According to Article 26 (titled 'Nullity of full right'): 'Provisions, acts, or clauses of legal transactions that constitute or cause discrimination on the grounds of any of the reasons provided in the first paragraph of Article 2 of this shall be null and void'.

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. 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 any natural or legal person who causes discrimination must 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

9.1 Coordination at the governmental 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). The Ministry of Equality, on the other hand, is responsible for transposing Directive 2024/1499.

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 LGBTBI Rights (see Royal Decree 455/2020 of 10 March 2020,¹⁶⁷ by which the basic 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 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 belief, 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 structure, states that it is responsible for proposing and implementing Government policies in social

¹⁶⁷ Royal Decree 455/2020 of 10 March 2020, <https://www.boe.es/buscar/act.php?id=BOE-A-2020-3515>.

rights and social welfare, family, diversity, child protection, social cohesion, care for dependent or persons with disabilities, adolescents and youth, and animal protection. 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, 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.

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, Andalucía, Aragón and Cantabria.¹⁶⁸ 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 and Law 13/2025 of 29 December on the rights of LGBTI people and the eradication of LGBTI-phobia).¹⁶⁹

9.2 National Strategies and action plans

The following national strategies or action plans (mainly governmental) were approved in 2024 or earlier but are still in force and were deployed in 2025.

Model of care in the community

In June 2024, the Spanish Government adopted the state strategy for a 'New model of care in the community. A process of deinstitutionalisation (2024-2030)'. The strategy aims to revamp the long-term care model for people; its target groups are mainly people in need of support and care, especially people with disabilities, elderly people in a situation of dependency, children, adolescents in the protection system, young people who have gone through the protection system and homeless people. The strategy is also designed

¹⁶⁸ 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 Andalucía (*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 Aragón (*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>.

¹⁶⁹ Law 19/2020 of 30 December on equal treatment and non-discrimination, <https://www.boe.es/buscar/act.php?id=BOE-A-2021-1663>., and Law 13/2025: <https://www.boe.es/ccaa/dogc/2025/9574/f00001-00048.pdf>.

to support the families of these people, as well as workers in the care and support sector and the people they care for. The strategy aims to move from a model of care based on 'institutions' (residential homes, etc.) to a model of support based in the community where the person lives and within families, (i.e. services and support are provided in the person's immediate environment, centred on the person's wishes, decisions and preferences).

The strategy invokes the principle of intersectionality as it aims to eliminate any kind of discrimination in the provision of care: stating that intersectionality

'is understood in this context as the situation in which the same person may suffer discrimination as a result of multiple social categories that converge simultaneously, such as gender, socio-economic class, disability, place of origin, among other factors. Adopting an intersectional approach helps to articulate measures taking into account factors that impact on people's lives and the exercise of their rights in different ways, i.e. belonging to a vulnerable population group that faces other vulnerabilities at the same time, such as: gender, disability, LGBTIQ+ status, socio-economic class, educational level, being born in another country, among other factors that can increase vulnerability and discrimination'.

Comprehensive strategy against racism

On 4 November 2011 the Spanish Government approved the 'Comprehensive strategy against racism, discrimination, xenophobia and related intolerance' (see comments on this strategy in the 2022 edition of the European Equality Law Network report).¹⁷⁰ This strategy has been replaced by the *Strategic Framework for Citizenship and Inclusion, against Racism and Xenophobia (2023-2027)*,¹⁷¹ approved by the Spanish Government on 4 July 2023. To implement the strategic framework, the Government opened a consultation channel for civil society to make proposals. In fact, in its document, the Government thanked all institutions of the state, regional, and local administration, the General Council of the Judiciary, the General Prosecutor's Office, the Ombudsman, EU and international organisations, immigrant organisations, and other civil society organisations, universities, social agents, other bodies and institutions, experts, girls, boys, and adolescents, and citizens who have made suggestions and proposals for the construction, definition and improvement of the framework.

According to its introductory chapter, the framework is the result of the Government's commitment to continue moving towards a society where the inclusion of all people who are residents in Spain is ensured, focusing especially on people of foreign origin. It should be underlined that the strategy focuses on discrimination based on racial or ethnic origin, as well as on xenophobia and related forms of intolerance. It also has a chapter on policies to be undertaken, guidelines and tactical objectives, in which commitments are made to protect and promote human rights in Spanish territory; to include the intersectional perspective in order to bear in mind at all times how the intersection of discrimination is something specific that requires a particular approach in which various factors are recognised (intersection of gender, ethnicity, origin, sexual orientation or identity, age, disability, etc.); to ensure that the perspective of equality and equality between men and women, and between men and women and the environment, are taken into account in the strategy; and finally, to ensure that the gender equality and equity perspective is mainstreamed in all policies, at all levels and at all stages. In relation to religion, the strategy includes a series of specific objectives to improve the capacity of people working

¹⁷⁰ European network of legal experts in gender equality and non-discrimination (2023) *Country report on non-discrimination: Spain 2022*, pp.108-110, <https://www.equalitylaw.eu/downloads/5761-spain-country-report-non-discrimination-2022-1-57-mb>.

¹⁷¹ Spanish Government (2023) *Marco Estratégico de Ciudadanía e Inclusión, contra el Racismo y la Xenofobia (2023-2027)*, https://www.inclusion.gob.es/oberaxe/ficheros/documentos/MarcoEstrategicoCiudadaniaInclusionContraRacismoXenofobia_REV.pdf.

in local councils to identify and act in situations of intolerance and discrimination on religious grounds.

In general, it prioritises the population of foreign origin in the challenges and objectives to be achieved through the framework. The strategic framework also provides a comprehensive, voluntary and flexible proposal for action to guide the public policies of the state, regional and local administrations, as well as the actions of civil society and all the stakeholders who have something to contribute to the 'integration of people of foreign origin with a focus on an intercultural model; and on the prevention of racism, xenophobia and other related forms of intolerance'. The strategy follows the parameters of Law 15/2022 as it covers all types of discrimination regulated by this Law.

Intersectional discrimination is incorporated as one of the perspectives of the strategic framework, which refers to situations in which different types of discrimination converge simultaneously (for example, the intersection of gender and ethnicity). It is not about 'adding up' the types of discrimination, but rather understanding how their intersection is something specific needing a particular approach that acknowledges those diverse factors.

The strategic framework covers four basic principles. First, despite being addressed to the general population, the strategic framework focuses specifically on the foreign-born population and on some groups particularly affected by discrimination and intolerance, such as migrant women, unaccompanied children and adolescents, African people and people of African descent, people of Asian, Roma or other ethnic origin, people with different religious beliefs or practices, LGTBQ+ people, and people with disabilities. Secondly, based on the fact that the Council of Europe's European Commission against Racism and Intolerance (ECRI) holds that all human beings belong to one and the same race, 'the human race', the strategic framework refers to racial or ethnic discrimination, but not to 'race'. The third basic principle of the strategic framework is that it embraces the notion of structural racism, the impact of which can be as deep and damaging as individual racism. Finally, the strategic framework's fourth basic principle is its commitment to a multi-level and multi-sectoral approach with the involvement of different administrations and multiple stakeholders, considering civil society organisations and other relevant actors as an essential element to drive policies and to promote a coordinated governance framework.

On this basis, the strategic framework outlines the main challenges for integration policies:

1. The need to eliminate the social and ethnic inequality gap that exists in Spain, and which is found mainly in working-class neighbourhoods.
2. Managing the growing ethnic diversity from an intercultural perspective. For this challenge, the strategic framework once again highlights the need to achieve mutual understanding and peaceful coexistence between different people, addressing the diversity found in some areas and, especially, in working-class neighbourhoods.
3. Ensuring the adequate social integration of the children of foreign nationals. This challenge points to the need to support the integration pathways of the children of foreign parents so that they do not replicate or inherit the social conditions of their parents.
4. Promoting a model of reception for migrants.
5. Promoting the inclusion of the whole population in the different areas of participation of the local community: in politics, associations, sports, etc. with a universalist approach to participation, which fosters social and political involvement in the local community, and the sharing of their demands and needs.

6. Strengthening coordination and governance systems for integration policies, i.e. reinforcing coordination between the different actors that are involved and working in developing them.

The strategic framework is divided into two parts: the first part outlines the situation and describes the normative and strategic context related to inclusion and integration, racism, xenophobia and other associated forms of intolerance.

The second part describes the strategic framework's objective, the principles on which it is based, the perspectives it takes into account (human rights, children's rights, gender and intersectionality), and the six proposed sets of policies, which refer to core areas for migrant inclusion and for combating discrimination: 1) legal-administrative framework; 2) humanitarian care, international protection, temporary protection, statelessness and reintegration; 3) active inclusion in employment, education and training, health, social services, housing and territory, sport and culture, leisure and free time, and others. 4) participation and social coexistence; 5) prevention, awareness raising and interventions against racism, xenophobia and other related forms of intolerance; 6) care and reparation for victims of racism, xenophobia and related forms of intolerance, and for victims of trafficking and sexual exploitation. Each section contains lines of action (a total of 23) and the tactical objectives defined for each of them.

The document concludes by referring to the governance and monitoring system of the strategic framework. It describes the governance mechanisms, composition and functions. The actions envisaged for the monitoring and evaluation of the strategic framework are also described. Finally, the indicators identified for the tactical objectives are included. Implementation is currently underway, and we await the publication of the results of the measures taken.

Actions to combat hate crimes

In 2025, the Spanish Government adopted the Third Action Plan (2025-2028) to combat hate crimes, which applies to all aspects of discrimination, with particular reference to racism, xenophobia, LGBTI-phobia and other forms of intolerance.¹⁷² The Third Action Plan will remain in force until 2028.

This Action Plan is structured around six lines of action, which build on the previous plans to improve the way victims of hate crimes are treated and supported. Training and awareness raising also remain a key focus. The lines of action, determined by objectives to be achieved through a series of measures to be implemented, are as follows:

- Line of Action 1: improve support for victims of hate crimes and make them more aware of the resources available to them. These include the police and security forces, as well as other public and private institutions.
- Line of Action 2: prevention of hate crimes and hate speech.
- Line of Action 3: continue to train, raise awareness and foster understanding among members of the security forces in the fight against hate crimes, especially among new recruits.
- Line of Action 4: encourage participation, collaboration and activities with third sector organisations aimed at continuous improvement in the fight against hate crimes.
- Line of Action 5: develop a system for monitoring and coordinating investigations into hate crimes, as well as generating knowledge that can be used to prevent and combat such crimes.

¹⁷² Spanish Government (2025) *III Plan de Acción de Lucha contra los Delitos de Odio (Third action plan to combat hate crimes)*, <https://www.inclusion.gob.es/web/oberaxe/w/el-ministerio-del-interior-pone-en-marcha-el-iii-plan-de-accion-2025-2028-para-luchar-contra-los-delitos-de-odio>.

- Line of Action 6: improve personal and/or material resources in the Spanish National Police's violent extremism and hate teams and the Civil Guard's hate crime response teams, creating central operational structures specialised in the prosecution of hate crimes.

With regard to hate speech online or on social media, 2025 has also been a groundbreaking year thanks to the work carried out by the Spanish Observatory on Racism and Xenophobia (OBERAXE), which reports to the Secretary of State for Migration of the Spanish Ministry of Inclusion, Social Security and Migration. OBERAXE monitors hate speech on social media.¹⁷³ Thus, it was announced that in 2025, the results of this monitoring work would begin to be published for the first time in real time (with data obtained over the last 30 days in relation to hate speech on social media). In November, the Spanish Government produced a report¹⁷⁴ confirming that 779 198 racist and xenophobic posts had been recorded in 2025. In response to the action taken by OBERAXE and the Spanish Government, 51 % of the hateful content detected was removed by the platforms, although the data varies depending on the platform: TikTok led the way in content removal, with a rate of 79 %, followed by X, which reached 65 %; Facebook removed 59 % of the reported content, while YouTube removed 28 %. Instagram had the lowest rate, with 25 % of content removed. The report also notes an increase in hostility towards people from North Africa, as well as messages that dehumanise migrants.

Disability 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 and still in the implementation phase during 2025).¹⁷⁵ 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 fact, the strategy document states that an intersectionality working group was involved in the development of the strategy, although discrimination on the basis of intersectionality is not mentioned in the document. 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 and types of discrimination and oppression 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

¹⁷³ See: OBERAXE, 'Monitoring hate speech online', <https://www.inclusion.gob.es/web/oberaxe/discurso-de-odio>.

¹⁷⁴ See: OBERAXE (2025) 'For the first time, main social media platforms remove more than 50 % of messages reported for racist and xenophobic content', press release, 22 December 2025, <https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/inclusion/paginas/2025/221225-informe-oberaxe-redes.aspx>.

¹⁷⁵ Spanish Government (2022) 'Spanish Strategy on Disability 2022-2030: For access and enjoyment of the human rights of persons with disabilities', https://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2022/refc20220503_cr.aspx#disapacidad.

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 and antidiscrimination policies and strategies to monitor their full implementation; and create mechanisms for legal redress and compensation.

National plan for the implementation of the European Strategy to Combat Antisemitism

On 31 January 2023, the Spanish Government adopted the national plan for the implementation of the European Strategy to Combat Antisemitism¹⁷⁶ (which runs until 2030). This national plan notes the Observatory against Antisemitism's¹⁷⁷ publication of its *Report on Antisemitism in Spain 2020-2021*,¹⁷⁸ in which it highlighted that during this period, 13 attacks on property and graffiti, 5 media attacks and 9 incidents in the form of hate speech were recorded, citing, as an example, attacks on networks during the COVID-19 pandemic. According to the report, antisemitic acts in Spain are mostly carried out in the online environment and on social networks, where countless examples of antisemitic discourse can be found. However, during 2020-2021 there were several incidents of vandalism, many of which were referred to the courts.

The national plan for the implementation of the European Strategy to Combat Antisemitism begins by stating that Spain shares the objectives of the European Union strategy, which are basically to standardise and improve resources and measures to combat antisemitism and to promote the conditions for Jewish individuals and communities to live in Spain in accordance with their beliefs and traditions within the framework of the Spanish legal system.

With this premise, the purpose of the national plan for the implementation of the European Strategy to Combat Antisemitism is to evaluate, together with the different bodies and entities involved in the fight against antisemitism, the measures that already exist and the need to add further actions or improve some of the existing ones, either because they are included in the European strategy or because they are Spain's own initiatives.

The national plan is divided into the following parts:

- The first corresponds to a brief introduction to the European strategy and its implementation in Spain.
- The second section is devoted to the Spanish context, based on three aspects: 1) the regulatory framework which covers it and which includes the main Spanish legislation applicable in this area; 2) the social framework, referring not only to the presence of Jews in Spain, both historically and in the present, but also to the perception of antisemitism in Spain; 3) the institutional framework that includes the main institutions with powers or functions related to the fight against antisemitism and the right of Jewish individuals and communities to live according to their beliefs and traditions.
- The third is the plan's content, structured around the three core areas that make up the EU strategy, distinguishing in each of them both the actions that have already been implemented in Spain and the measures that the plan intends to implement: 1) preventing and combating all forms of antisemitism; 2) safeguarding the right of Jewish individuals and communities to live in accordance with their beliefs and traditions; 3) education, research and remembrance.

¹⁷⁶ Spanish Government (2023) 'National plan for the implementation of the European Strategy to Combat Antisemitism', <https://www.lamoncloa.gob.es/consejodeministros/resumenes/Documents/2023/310123-PlanNacionalAntisemitismo.pdf>.

¹⁷⁷ See: <https://observatorioantisemitismo.fcje.org/>.

¹⁷⁸ Observatory against Antisemitism (2023) 'Report on antisemitism in Spain 2020-21', <https://observatorioantisemitismo.fcje.org/wp-content/uploads/2023/01/Informe-2020-2021-1-1.pdf>.

- The fourth section concerns the governance of the plan

From the document as a whole, and for the purposes of this report, it should be noted that within the framework of the measures on preventing and combating all forms of antisemitism, a line of action against antisemitic discrimination has been provided.

Various measures have been included in this line of action to combat antisemitic discrimination. These include working with the Independent Authority for Equal Treatment and Non-Discrimination to encourage the reporting of incidents of antisemitic discrimination and collecting the necessary data on victims to improve the support provided to them.

They also include coordinating the contents of the plan with the Spanish state strategy for equal treatment and non-discrimination, as well as optimising measures and resources. In particular, use is made of the channels of communication and coordination established with the autonomous communities.

The measures also include developing and publishing a good practice guide for the management of religious diversity in the workplace. Finally, it should be borne in mind that the intersectionality perspective is not explicitly or directly included in the document.

Strategy for the Social Inclusion of Trans People (November 2025).

In 2025, the Spanish Government adopted two strategies of particular relevance: the Strategy for the Social Inclusion of Trans People (November 2025), in force until 2028; and the State Strategy for Equal Treatment and Non-Discrimination of LGBTI People, which was conceived with the aim of serving as the principal instrument for territorial cooperation to promote and develop the policies set out in Act 4/2023. It constitutes a roadmap for the different public administrations, with the collaboration of the private sector and civil society.

The State Strategy for Equal Treatment and Non-Discrimination of LGBTI People¹⁷⁹ sets out the basic guiding principles for action in the field of non-discrimination, as well as measures aimed at preventing and eliminating discrimination. It also sets out information, awareness-raising and training initiatives, with particular emphasis on the prevention of anti-LGTBI violence.

The guiding principle are:

1. Recognition of personhood: Every person has the right to construct a self-definition in relation to their body, and their sexual orientation and identity.
2. Non-discrimination: All persons are born free and equal in dignity and rights, irrespective of the sexual orientation, sexual identity and gender expression they manifest, or of their sex characteristics, as well as irrespective of their sexual orientation.
3. Physical integrity and personal security: Every person has the right to life, liberty and security of person, as well as to moral integrity and dignity, irrespective of the sexual identity or gender expression they manifest, or of their sex characteristics.
4. Privacy: All persons have the right to privacy, without arbitrary or unlawful interference in their private life, including the right to choose whether or not to disclose their own identity and sexual orientation or sex characteristics.
5. Equal opportunities: Every person has the right to the fulfilment of the economic, social and cultural rights indispensable to their dignity and to the free development of their personality.

¹⁷⁹ See: State Strategy for Equal Treatment and Non-Discrimination of LGBTI People, <https://www.igualdad.gob.es/wp-content/uploads/2026/02/LGTBI-5-febrero.pdf>.

10 CURRENT BEST PRACTICES

Best practice under Royal Decree-Law 6/2023

It is also interesting to highlight the second additional provision of Royal Decree-Law 6/2023, entitled: 'Accessibility to electronic services in the sphere of the Administration of Justice'. This provision states that administrations with powers in the field of justice must guarantee that all citizens who interact with the administration of justice can access electronic services under equal conditions, irrespective of their personal circumstances, means or knowledge, paying special attention to the elderly and people with some kind of disability.

Best practice regarding the coordinating prosecutor for discrimination crimes

It is also worth mentioning that Law 15/2022 modified the Organic Statute of the Public Prosecutor's Office, and incorporated section 2*bis* into Article 20, creating the post of coordinating prosecutor for hate and discrimination crimes, which has been unanimously welcomed by experts.¹⁸⁰ The functions of the specialised prosecutor have been incorporated into the Organic Statute in detail, and which, in summary, are: to carry out pre-trial investigation procedures and to intervene directly in those criminal proceedings of particular importance, as determined by the State Prosecutor General; to supervise and coordinate the work of the provincial sections; to coordinate the criteria for action of the Prosecutor General's Office; to supervise and coordinate the work of the provincial sections; to coordinate the criteria for action of the provincial sections; to supervise the work of the provincial sections; and to coordinate the work of the provincial sections; coordinating the criteria for action of the various prosecutor's offices in matters of hate crimes and discrimination; and preparing a six-monthly report on the procedures followed and actions carried out by the specialists for submission to the State Prosecutor General, who will send it to the Board of Chamber Prosecutors of the Supreme Court and to the Prosecutorial Council. The results of its activities during 2025 are published in the Prosecutor General's Annual Report (discussed above in section 6.1.c: 'Report submitted by the Public Prosecutor's Office to the Government' (2025)). In 2025, its contribution to the implementation of the Spanish Government's Third Action Plan against Hate Crime was of particular note, focusing on prioritising support for victims of such crimes, as well as preventing and combating online hate speech.¹⁸¹

Best practice based on Strategy on Disability 2022-2030 on the practice of data collection

In addition, 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 author of this report considers as best practice the commitment 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; review legislation and antidiscrimination policies and strategies to monitor their full implementation; and create mechanisms for legal redress and compensation. It should be noted that these commitments are being implemented by the State Disability Observatory, which issues statements to draw attention to these issues. The Observatory has a website

¹⁸⁰ See: https://www.fiscal.es/memorias/memoria2023/FISCALIA_SITE/index.html.

¹⁸¹ See: Spanish Government (2025) *III Plan de Acción de Lucha contra los Delitos de Odio (Third action plan to combat hate crimes)*, https://www.interior.gob.es/opencms/pdf/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones-descargables/seguridad-ciudadana/3_plan-accion-delitos-odio_126250364_pdfWEB.pdf.

¹⁸² Spanish Government (2022) 'Spanish Strategy on Disability 2022-2030: For access and enjoyment of the human rights of persons with disabilities'.

where it publishes a concise overview of the key characteristics of people with disabilities and their families.¹⁸³

Best practice on hate crimes: promotion of training courses

In 2025, the Spanish Government adopted the third action plan to combat hate crimes,¹⁸⁴ which replaces the second plan. Regarding the second plan, the author of this report considered as best practice the commitment to 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. The third action plan builds on the main outcomes of the previous plan, with particular emphasis on strengthening training and raising awareness regarding hate crimes and discrimination. The results report notes that various courses and forums have been organised by police forces, universities, and other organisations and civil society groups. Nevertheless, the author of this report considers it necessary to monitor the main objectives of the third plan, particularly with regard to victim protection and the fight against online crime.

Best practices regarding artificial intelligence and digital rights.

Regarding the use of artificial intelligence (AI)¹⁸⁵ to improve the effective implementation of the national legislation transposing the directives, there have been some actions of note, including the work of the Spanish Artificial Intelligence Advisory Council, created in 2020.¹⁸⁶ 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.

In December 2025, the Spanish Government convened the annual meeting of the Advisory Council on Artificial Intelligence, which addressed issues such as the development of digital sovereignty to ensure national control over emerging technologies, the creation of public narratives to shape social perceptions of AI, and the implementation of measures to protect children from the risks posed by this technology.¹⁸⁷

In 2020, a charter of digital rights was drawn up by the Spanish Government and was submitted for public consultation. The final text resulting from this process was subsequently published.¹⁸⁸ In July 2021, the Spanish Government officially launched the Digital Rights Charter.¹⁸⁹

¹⁸³ See: State Disability Observatory, <https://observatoriodeladiscapacidad.info/noticias>.

¹⁸⁴ Spanish Government (2022) *III Plan de Acción de Lucha contra los Delitos de Odio*, https://www.interior.gob.es/opencms/pdf/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones-descargables/seguridad-ciudadana/3_plan-accion-delitos-odio_126250364_pdfWEB.pdf.

¹⁸⁵ Article 3.1 of Regulation (EU) 2024/1689 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act): 'AI system' means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

¹⁸⁶ Order ETD/670/2020 of 8 July 2020, creating and regulating the Artificial Intelligence Advisory Council.

¹⁸⁷ See: Ministry of Digital Transformation and the Civil Service (2025), 'Government convenes AI Advisory Council to promote ethical and inclusive development of technology', 10 December 2025, <https://digital.gob.es/comunicacion/notas-prensa/mtdfp/2025/12/2025-12-10>.

¹⁸⁸ Digital Rights Charter: https://portal.mineco.gob.es/RecursosArticulo/mineco/ministerio/participacion_publica/audiencia/ficheros/SEDIACartaDerechosDigitales.pdf.

¹⁸⁹ Spanish Government: (2021) '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

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 on-going reflection at European level and, in doing so, leading 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, and 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 is 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, and 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.

There is a specific measure on artificial intelligence concerning the use of algorithms at work, in the context 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 Decree-Law (RDL) 2/2015 of 23 October 2015 to guarantee the labour rights of people dedicated to delivery in the field of digital platforms, is relevant here. 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.

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 is also of interest in relation to 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,

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.

identifiable and discriminatory bias should be eliminated in the information-gathering phase.¹⁹⁰

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 provided. 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 elderly persons.

In 2025, the Spanish Data Protection Agency (AEPD) conducted an analysis of the scope and powers of this authority in application of Article 5 of Regulation 2024/1689 on Artificial Intelligence (RIA). As provided for in Article 113 of this Regulation, a series of sections came into force on 2 August 2025, including the supervisory and penalty regime for prohibited artificial intelligence systems (Article 5). Prohibited systems include those for real-time remote biometric identification in public spaces. In this regard, the Spanish Data Protection Agency (AEPD) warned that, although the Spanish AI law has not yet been approved, it is the competent authority in matters of personal data protection, which includes, under its supervision and control, any processing carried out using artificial intelligence. Therefore, although this is not a direct application of the AI Regulation, the AEPD can monitor and take action against the processing of personal data carried out using prohibited systems, insofar as they affect the right to data protection.

Furthermore, in 2025, the Spanish Council of Ministers published the draft Bill for the Proper Use and Governance of Artificial Intelligence,¹⁹² which develops the penalty and governance regime provided for in EU Regulation 2024/1689. In 2025, no further good practice could be identified that relates to the use of AI to improve the effective implementation of national legislation transposing the directives.

Public support plans for Roma (racial or ethnic origin in all fields)

In 2025, the Spanish Government approved the Action Plan for Improving the Employability of the Roma Population 2025-2028. This is a public employment strategy in favour of the Roma population in Spain. This plan is a specific targeting measure aimed at guaranteeing equal opportunities and the full exercise of rights for the Roma population. It falls within the mandate established in Law 3/2023 of 28 February on Employment, which recognises the Roma population as one of the 'priority groups' (Article 50) and, consequently, the plan seeks to develop measures that provide a response adapted to the situation of serious inequality and discrimination facing this group. The plan is structured around 12 measures that generate differentiated employment action and special attention

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>.

¹⁹¹ Resolution of 17 March 2021, published in: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-500.

¹⁹² See: Secretary of State for Digitalisation and Artificial Intelligence, <https://avance.digital.gob.es/layouts/15/HttpHandlerParticipacionPublicaAnexos.ashx?k=19128>.

for this group. These 12 measures have two strands: first, the provision by Public Employment Services of personalised career guidance services that provide the target audience with comprehensive, high-quality and inclusive guidance; and secondly, the guaranteed provision of specific services (personalised itineraries with individualised and continuous support, training and acquisition of professional skills, advice on self-employment and entrepreneurship, etc.) tailored to improve the employability and access to decent, quality employment of the target group.

In the fight against racism and discrimination against the Roma population, the *Roma Strategic Framework for Equality, Inclusion and Participation 2021-2030* is interesting because it implies 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 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.

Access to information and communication by deaf

Law 27/2007 on recognising sign languages and speech aid systems recognises Spanish Sign Language as the language of those persons who are deaf 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 persons who are Deaf, hearing impaired or deafblind. This Law, apparently the first of its kind in Europe, responds to a long-standing demand from Spanish associations representing deaf, hearing-impaired and deafblind persons. Its aim is to facilitate access to information and communication by deaf persons, considering their heterogeneity and their specific needs.

Positive impact of the National Disability Council in 2025

The National Disability Council was established by the General Law on the Rights of Persons with Disabilities and their social inclusion (RDL 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.¹⁹³ The council has played an important role in the formulation of the Spanish legislation on disability (see section 8.1 above).

During 2025, the Council has been particularly active and regularly updates its website with information on its activities, particularly its initiatives for programmes for persons with disabilities and details of programmes or regulations introduced by the Spanish Government, as well as news of interest to persons with disabilities: guides, support services, etc.¹⁹⁴

¹⁹³ The work of the Council, through one of the Council's service providers, the Spanish Documentation Centre, produces interesting reports; the most recent reports are on persons deprived of their liberty or mental health. See: <https://www.cedid.es/>.

¹⁹⁴ See: National Disability Council, latest news, <https://www.rpdiscapacidad.gob.es/rpd/noticias.htm?termino=&desde=&hasta=&offset=10>.

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 LGBTI people in general: Andalusia, the Balearic Islands, Catalonia, the Valencian Community and Navarre. For example, Catalan Law 11/2014 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 established 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 contributed 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 had 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. Furthermore, in 2025, the 2014 Catalan Law was replaced by Law 13/2025 (adopted on 29 December 2025), which has incorporated and expanded the content of Law 11/2014. The new Law extends the areas in which the mainstreaming of an LGBTI perspective must be implemented, for example in the fields of leisure and housing. It also mainstreams, on a cross-cutting basis, the guarantee of the rights of trans persons, and includes the right to the free self-determination of gender identity and gender expression. The Law further deepens the rights of intersex persons.

According to the Law, this entails clearly establishing the due diligence responsibility of all public authorities, with effective prevention and protection mechanisms; an integrated model of assistance and recovery aimed at providing reparation for persons who have suffered discrimination or violence; measures ensuring non-repetition; the strengthening of services responsible for providing such assistance and recovery; and the mandatory training of staff of public administrations and political institutions on LGBTI rights.

It has also been considered necessary to strengthen the duties of all actors within Catalonia's private sector, as LGBTI rights must be guaranteed in all spheres of life. Finally, the Law has reinforced its intersectional approach in the actions of public administrations concerning the protection of LGBTI persons and in relation to sanctioning procedures.

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 ISSUES¹⁹⁶

11.1 Potential breaches of the directives at the national level

- The absence of an express statutory provision obliging the public administration to provide reasonable accommodation when a civil servant has a permanent incapacity, and the absence of a statutory provision specifically laying down the provision of reasonable accommodation to civil servants with disabilities (who have acquired that status while already in employment), prior to termination of the employment relationship, may be contrary to Article 5 of Directive 2000/78 or reduce the effectiveness of this provision of the Directive. These statements are made in the light of recent judgments of the CJEU on reasonable accommodation¹⁹⁷

11.2 Other issues of concern

- Failure to meet the statutory deadline for the establishment of the Independent Authority for Equal Treatment and Non-discrimination to replace the Council for the Elimination of Discrimination on the Grounds of Racial or Ethnic Origin.
- The work carried out by organisations and public institutions fighting discrimination is still not very well known, including that of the Council for the Elimination of Racial or Ethnic Discrimination, although on the positive side, it should be noted that in 2025 its work with victims of discrimination has increased.
- 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. This is one of the important factors explaining the low level of reporting in the area of discrimination.
- There is a need 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.
- There is a need 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.
- The progress on equality in the fields of disability or sexual orientation 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 is difficult to resolve because the international agreement between the Holy See and Spain signed in 1976, just before the 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 make demands in accordance with its faith or doctrine (however, a dismissal of a teacher of religion for not fulfilling these requirements in his or her private life could be declared null and void).

¹⁹⁶ The assessments and views expressed in both sections 11.1 and 11.2 reflect the author's opinion.

¹⁹⁷ Mainly *Judgment of CJEU of 18 January 2024, Ca Na Negreta, C-631/22*, and *judgement of 11 September 2025, in Case C-5/24 [Pauni]*

12 LATEST DEVELOPMENTS IN 2025

12.1 Legislative amendments

It is worth noting that Royal Legislative Decree 2/2015 of 23 October, approving the consolidated text of the Workers' Statute (*Estatuto de los Trabajadores*), was amended in 2025 by Law 2/2025 of 29 April (this 2025 Law also amends the General Social Security Act in matters relating to permanent incapacity).

Specifically, Article 49 of the Workers' Statute has been amended. Prior to the 2025 reform, this provision stated that the employer could terminate the contract on the grounds of 'the worker's severe incapacity or total or absolute permanent incapacity'.

Under the new Law 2/2025, the company may terminate the employment contract upon a declaration of severe incapacity, absolute permanent incapacity, or total permanent incapacity of the employee, where it is not possible to implement reasonable adjustments because they would impose an excessive burden on the company; where there is no vacant and available job position consistent with the employee's professional profile and compatible with the employee's new circumstances; or where, despite the existence of such a possibility, the employee refuses the duly proposed job change.

The new Article 49(1)(n) provides that, in order to determine whether the burden is excessive, particular account must be taken of the cost of the adaptation measures in relation to the company's size, financial resources, economic situation, and total turnover. The burden will not be regarded as excessive where it is sufficiently alleviated by public measures, aid or subsidies.

Furthermore, the statutory provision adds that, in companies employing fewer than 25 employees, the burden will be considered excessive where the cost of adapting the job position – without taking into account any portion that may be covered by public aid or subsidies – exceeds the higher of the following two amounts:

3. The compensation that would correspond be paid to the employee in the event of unfair dismissal.
4. Six months of the salary of the employee requesting the adaptation.

Article 49 further provides that the employee has 10 calendar days from the date on which they are notified of the decision classifying the permanent incapacity in any of the degrees referred to in the first paragraph of subparagraph (n), in order to notify the company in writing of their wish to maintain the employment relationship.

The new legislation also states that the company has a maximum period of three months, counted from the date on which it is notified of the decision classifying the permanent incapacity, to carry out the reasonable adjustments or the change of job position. Where the adjustment entails an excessive burden or where there is no vacant job position, the company has the same period to proceed with the termination of the contract. The decision must be reasoned and must be communicated in writing to the employee.

Finally, the statutory provision establishes that the occupational risk prevention services will determine – pursuant to the applicable regulations and following consultation with the employees' representatives in occupational risk prevention matters – the scope and characteristics of the adjustment measures, including those relating to the training, information, and health monitoring of the employee, and will identify job positions compatible with the employee's new circumstances.

12.2 Case law

Relevant discrimination ground(s): Disability–Reasonable accommodation–Unfit worker, who is not a person with a disability (but application of the grounds of disability to the case law).

Name of the court: Supreme Court

Date of decision: 22 December 2025

Reference number: Judicial Appeal 3965/2024

ECLI reference:

Link: <https://www.poderjudicial.es/search/indexAN.jsp>

Brief summary:

The occupational risk prevention service engaged by a company declared one of its employees 'Unfit' (*No Apta*). After receiving that notification, the company, relying on that declaration, dismissed the employee on objective grounds, namely on the basis of the employee's subsequent lack of fitness (*'ineptitud sobrevenida'*) to perform her job. The dismissed employee brought a claim before the courts, arguing that the company could not lawfully dismiss her without first attempting to adapt her position.

According to the Spanish Supreme Court, when an occupational risk prevention service informs the employer of a subsequent lack of fitness to perform the employee's job, the company must instruct the affected employee to cease performing duties in that position in order to avoid any risk arising from carrying out the work. However, compliance with that occupational safety obligation does not mean that the employer may automatically terminate the employment contract for subsequent lack of fitness solely on the basis of the prevention service's conclusions.

Of particular interest is the Supreme Court's holding that the purpose of the prevention service's declaration is merely informative, and that the employer must substantiate additional elements capable of evidencing the employee's lack of fitness to perform her work (all the more so where the employee has not been declared to be in a situation of permanent incapacity to carry out her job). In addition, the Supreme Court states that where the employer has a declaration of 'unfit' and decides to dismiss the employee, it must prove that, prior to taking that decision, it either implemented reasonable accommodations in the job in order to enable the employee to remain in her position, or offered her another position suitable and adapted to her circumstances – thus allowing her to retain her employment – and that, despite those measures, continuation of the employment relationship was not possible; or, alternatively, that it did not take such measures because they would have entailed a disproportionate (undue) burden for the company.

Relevant discrimination ground(s): Disability

Name of the court: High Court of Justice of the Autonomous Community of Galicia (A Coruña)

Date of decision: 9 September 2025

Reference number: Judicial Appeal 2069/2025

ECLI reference:

Link:

https://www.poderjudicial.es/stfls/TRIBUNALES%20SUPERIORES%20DE%20JUSTICIA/TSJ%20Galicia/DOCUMENTOS%20DE%20INTERES/RSU%202069-25_anonimizada.pdf

Brief summary:

The claimant had been employed by a bank since the year 2000; in January 2020, she was granted a suspension of her employment contract due to temporary incapacity arising from common disease (major depressive disorder); in January 2022, the Social Security Administration did not recognise a permanent incapacity in relation to her job. The claimant challenged that administrative decision before a court, which, in 2024, recognised a permanent total incapacity for her usual occupation, based on the depressive disorder

and a distal fracture sustained in 2021: in any event, the claimant had returned to work at the bank in 2023. Upon her reinstatement, an appraisal of her job performance and a health examination were conducted. The performance appraisal rated her technical competencies positively, and the occupational health report concluded she was fit to work with restrictions, specifying that she should not perform customer-facing tasks; following the 2024 judgment recognising her permanent incapacity, the claimant requested an adaptation of her job position. The employer responded by notifying her of her dismissal.

The claimant challenged her dismissal before the competent labour court, which declared the dismissal null and void and ordered the bank: (i) to reinstate the claimant immediately in a position adapted to her health circumstances following the pertinent reasonable accommodations, and (ii) to pay compensation of EUR 30 000 on the grounds of discrimination based on disability. The bank appealed that judgment before the High Court of Justice of the Autonomous Community of Galicia, which affirmed the decision of the labour court. The Court recalled that, under international and Spanish case law, the failure to provide reasonable accommodation in the case of persons with disabilities constitutes discrimination on that ground. The Court noted that, at the time the events occurred, the 2025 reform of the Workers' Statute, which provides that an employment contract may not be automatically terminated upon recognition of a situation of permanent incapacity and that the employer must first provide reasonable accommodation, had not yet been enacted. Nevertheless, the Court emphasised that, even before that legislative reform, international norms (the Convention on the Rights of Persons with Disabilities) and the judicial decisions interpreting them already established the obligation to provide reasonable accommodation. Consequently, the absence of reasonable accommodation in respect of the claimant's job amounted to discrimination on grounds of disability.

The Court further found that it was proven that the bank could have implemented an adaptation of the job prior to the dismissal but failed to do so. When the claimant's temporary incapacity ended in 2023, she returned to work with: (i) a performance appraisal and (ii) a health report which assessed her technical competencies positively and found her fit for work with restrictions, indicating she should not perform customer-facing tasks. In this regard, the Court declared that the bank had ample time to adequately adapt the position, both from the standpoint of the claimant's health and in terms of the bank's performance requirements.

The appeal was dismissed. The judgment of the labour court declaring the dismissal null and void, ordering immediate reinstatement in an adapted position following reasonable accommodation, and awarding EUR 30 000 in compensation for discrimination on grounds of disability, was confirmed.

Relevant discrimination ground(s): Ethnic or racial grounds

Name of the court: High Court of Justice of the Autonomous Community of the Basque Country (Bilbao)

Date of decision: 8 April 2025

Reference number: Judicial Appeal 254/2025

ECLI reference:

Link: <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Noticias-Judiciales/El-TSJPV-estima-procedente-el-despido-de-una-camarera-por-proferir-un-insulto-racista-a-un-companero-de-trabajo>.

Brief summary:

The facts addressed in the judgment are as follows: a female worker was hired in 2018 by a hotel in San Sebastián to work as a waitress. At around 1 pm on 28 December 2023, the waitress was serving orders at the hotel bar together with a female colleague, and at a given moment she called the attention of a male colleague of Senegalese origin, who was also working as a waiter attending the tables, because he had made a work-related mistake. When the male colleague turned to continue with his work, the claimant said aloud a highly pejorative insult for black people, a remark that was heard by the female

colleague, who reported what had occurred to the floor manager. The manager in turn reported it by email to the head of human resources, who, after holding a meeting with claimant and her two concerned colleagues, decided to initiate disciplinary proceedings against the claimant for the ill-treatment of the male colleague. On 18 January 2024, the company served the claimant with a letter of disciplinary dismissal on various grounds relating to her attitude towards her co-workers, and in particular towards the male colleague concerned. In particular, the hotel notified the claimant of the dismissal for verbal or physical ill-treatment, abuse of authority, and a serious lack of respect and consideration towards co-workers. Challenging the dismissal, the dismissed worker brought a claim before the labour court, which concluded that the worker had gravely offended her male co-worker. For the court of first instance, that behaviour constituted a breach effectively classified as a very serious offence punishable by dismissal under the collective bargaining agreement applicable to the employment relationship and under the Workers' Statute. The judge concluded that, given the context in which the insult occurred, without any provocation by the victim and being in any case 'a racist insult with no justification whatsoever', dismissal was a proportionate and appropriate measure. The court found that the claimant's behaviour infringed the victim's dignity and was 'clearly discriminatory'. According to the court, it is not possible to minimise or relativise the worker's behaviour, all the more so when the male co-worker himself downplayed it because, as he explained, 'he has long been accustomed to other people insulting him in that way'. For the court, this statement evidences the absolute need to eradicate these intolerable behaviours, without it being possible to downplay their significance, and much less for the employer to overlook them.

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ANNEX 1: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Spain
Date: 1 January 2026

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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