



DANISH INSTITUTE FOR
HUMAN RIGHTS

COWI

The social situation concerning homophobia and discrimination on grounds of sexual orientation in Spain

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A. A Summary of the Overall Situation of LGBT Persons

- [1]. During the dictatorship of Franco homosexuals were persecuted, and the Catholic Church has traditionally had a strong influence in Spanish society, including opposing LGBT rights. In recent years, however, Spain has seen a number of positive developments in LGBT rights.
- [2]. Major legislative reforms took place during the last administration, implementing not only the EU Directives on equal treatment, but also granting LGBT persons the right to marry (supported by 66 per cent of the population, according to a 2004 survey) and easing access to asylum. Several Autonomous Regions have included the fight against homophobia in their statutes. With regard to specific institutions for the protection of equal treatment and combating discrimination, the *Defensor del Pueblo* [Ombudsman] has a mandate covering discrimination on grounds of sexual orientation; its mandate is, however, limited to Public Authorities.
- [3]. There is little data regarding discrimination on grounds of sexual orientation, but available data show that LGBT persons experience considerable discrimination. A survey showed, for example, that 65 per cent of openly LGBT students have experienced some sort of abuse.

B. The Collection of Data

- [4]. The material for this report has been collected from four sources:
 - A legal country report carried out for this study, written by Teresa Freixes Sanjuán, Francisco Balaguer Callejón and Cristina Elías Méndez.¹
 - A sociological country report reviewing available data on the situation concerning homophobia and discrimination on grounds of sexual orientation in Spain, written by Kerman Calvo.²
 - Data collected through interviews held in Spain with the LGBT NGO *FELGBT* and *El Defensor del Pueblo* [the Ombudsman].

¹ T. Freixes Sanjuán, F. Balaguer Callejón and C. Elías Méndez (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Spain*, FRALEX.

² K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*, Sociological Country Report.

- Data collected through an online questionnaire sent out to the stakeholders mentioned above.

C. Key Findings

C.1. Attitudes Toward LGBT Persons

- [5]. Surveys examining acceptance and attitudes toward homosexuality have been carried out on a European level in 2008 and 2006.
- [6]. The 2008 *Eurobarometer* asked, 'How would you personally feel about having a homosexual (gay man or lesbian woman) as a neighbour?' (1 meaning 'very uncomfortable' and 10 meaning 'very comfortable'). The figure in Spain was 8.6, with an EU average of 7.9. Romania was the lowest with 4.8.³
- [7]. In the 2006 Eurobarometer, attitudes toward same-sex marriage were examined in every Member State. Forty-two per cent of EU citizens agreed that such marriages should be allowed throughout Europe; the figure was 56 per cent in Spain (Netherlands scored the highest with 82 per cent and Romania the lowest with 11 per cent). With regard to adoption, the level of acceptance decreases in the EU and in Spain. Thirty-one per cent of Europeans felt that homosexual couples should be allowed to adopt children throughout Europe; in Spain the figure was 43 per cent (Netherlands scored highest with 69 per cent and Poland and Malta the lowest with 7 per cent).⁴
- [8]. Spaniards consider themselves the members of a friendly, modern society that is positive toward LGBT persons. In 2004, 53 per cent of Spaniards said that Spain was either 'very tolerant' or 'tolerant' toward homosexuals. Public support for same-sex marriage is high in Spain. In 2004, 66 per cent of Spanish respondents said gay and lesbian couples should have the right to marry.⁵
- [9]. The new law on marriage has marked the beginning of a new era. LGBT persons are now more empowered and comfortable showing same-sex relations in public (for example on the street and in the media).⁶ There are openly gay male politicians, TV hosts and athletes.⁷

³ European Commission (2008) *Special Eurobarometer 296. Discrimination in the European Union: Perceptions, Experiences and Attitudes*, chapter 9.

⁴ Eurobarometer 66 (2006), available at: http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_en.pdf, pp. 43-46.

⁵ CIS study number 2568, discussed in Kerman Calvo, 'Ciudadanía Y Minorías Sexuales: La Regulación Del Matrimonio Homosexual En España. Estudios De Progreso'. Madrid: Fundación Alternativas, 2005.

⁶ Field trip meeting with *FELGBT* (Spain, 13 March 2008).

⁷ Field trip meeting with *FELGBT* and *El Defensor del Pueblo* (Spain, 13 March 2008).

C.2. Criminal Law - Hate Crime

- [10]. Hate speech and hate crime are covered by the Spanish penal code. The promotion of discrimination, hatred, violence related to sexual orientation is prohibited, and organisations based on such promotion are illegal. When a crime is committed for reasons of discrimination on grounds of the victim's gender or sexual orientation (among other grounds), this is considered an aggravating circumstance.⁸
- [11]. Violent crime against LGBT persons continues to occur. Most cases reported by the media consist of physical assaults against lesbians and gays in public places. Violent attacks against LGBT social events and gathering places are rare. Most cases of homophobic violence, however, are not reported to the police.⁹
- [12]. Despite requests for specific protocols for action on homophobic violence, Spanish police are still considered ill-equipped to handle homophobic crimes. Specialised units have not been set up, nor have authorities conducted security forces training on LGBT issues.¹⁰

C.3. Freedom of Assembly

- [13]. LGBT organisations do not face obstacles to organising events such as Pride parades or festivals. Protest events, while not frequent, take place in public without police interference.
- [14]. Participation in LGBT activities and demonstrations is considerable in Madrid, with attendance sometimes approaching 1 million. Isolated acts of aggression have been recorded at some of these events, but taking into account the number of participants and the isolated character of the incidents, these cannot be regarded as systematic.¹¹

C.4. Family and Other Social Issues

- [15]. Sociological research on gay and lesbian organisations in Spain shows that achieving equality for same-sex families has been the foremost priority of the LGBT movement since the early 1990s.¹² In 2005 an

8 T. Freixes Sanjuán, F. Balaguer Callejón and C. Elías Méndez (2008) *Legal study on homophobia and discrimination on grounds of sexual orientation in Spain*. FRALEX.

9 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

10 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

11 T. Freixes Sanjuán, F. Balaguer Callejón and C. Elías Méndez (2008) *Legal study on homophobia and discrimination on grounds of sexual orientation in Spain*. FRALEX.

12 Jordi Petit, '25 Años Más. Una Perspectiva Sobre El Pasado, El Presente Y Futuro Del Movimiento De Gays, Lesbianas, Bisexuales Y Transexuales', Barcelona: Icaria: La mirada Esférica, 2003.

amendment of the Civil Code came into effect granting same-sex couples the right to marry. Same-sex couples are thereby granted all the rights of marriage, such as social benefits, designation as spouses, the possibility of adoption, and so on.¹³ The only pending legal problem is the lack of automatic recognition of parenthood in lesbian couples where one is the biological mother, as well as the prohibition on adoption for same-sex unmarried couples.¹⁴

- [16]. There were 4,575 same-sex marriages in 2006 (the first year of full application of the law), 3,190 of which were among males. This represents roughly 2 per cent of the total number of marriages. There are no official statistics on same-sex divorce as yet.
- [17]. One criticism of the current government is that, unlike in other countries, the enactment of the right to marry has not been followed by information campaigns.¹⁵
- [18]. Social policies on housing, education, healthcare and social assistance is the responsibility of the Autonomous Regions.¹⁶ Policies in these fields regarding equal treatment and anti-discrimination are therefore decided at a regional level. All statutes of the Autonomous Regions contain a prohibition of discrimination on grounds of sexual orientation, and the Statutes of Andalusia and Catalonia explicitly mention the fight against homophobia.¹⁷
- [19]. The penal code contains a specific prohibition on the denial of public services or benefits for reasons of sexual orientation (or other discriminatory grounds).¹⁸

C.5. The Labour Market

- [20]. The Law on Fiscal, Administrative and Social Measures of 2003 implements Directive 2000/78/EC, and contains provisions on equal treatment and nondiscrimination in the workplace. Positive measures are allowed to guarantee the principle of equal treatment and nondiscrimination in access to employment, membership or involvement in organisations of workers or employers, working conditions, professional promotion, vocational training and continuing professional development. Positive measures may also

13 T. Freixes Sanjuán, F. Balaguer Callejón and C. Elías Méndez (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Spain*, FRALEX.

14 Field trip meeting with *FELGBT* (Spain, 13 March 2008).

15 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

16 T. Freixes Sanjuán, F. Balaguer Callejón and C. Elías Méndez (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Spain*, FRALEX.

17 T. Freixes Sanjuán, F. Balaguer Callejón and C. Elías Méndez (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Spain*, FRALEX.

18 T. Freixes Sanjuán, F. Balaguer Callejón and C. Elías Méndez (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Spain*, FRALEX.

protect access to self-employment, the exercise of a profession and membership or involvement in professional organisations.¹⁹

- [21]. In a landmark ruling in the area of protection against labour market discrimination, the Constitutional Court recently ruled that the Constitutional safeguard against discrimination also applies to individuals dismissed because of their sexual orientation. The case concerned an Alitalia employee who was severely overworked and then dismissed. The Court ruled that the company's behaviour was solely motivated by the homophobic instincts of the employee's line manager.²⁰
- [22]. Trade unions do not dispute the thesis that homophobia leads to situations of serious discrimination, both in relation to access to employment, work conditions (harassment in particular) and dismissal. Due to the lack of formal complaints against employers on grounds of sexual orientation, this is difficult to substantiate. Only a few complaints have been registered since the 1990s. Because of lack of reliable data on conditions at work for LGBT people, precise evaluations of the consequences of homophobia at the workplace have not been made.²¹

C.6. Education

- [23]. Unfortunately there are no official statistics to report on matters related to LGBT persons and education, but harassment does seem to exist. Reports prepared by the education section of the Madrid-based LGBT group COGAM contain several testimonies of young LGBT persons that have experienced abuse and harassment.
- [24]. COGAM distributed a survey in 14 high schools in Madrid and the Canary Islands, in which 4,600 students took part. Sixty-five per cent of students who had come out publicly had experienced abuse. Thirty per cent of male youths said they were disgusted by homosexuality and 31 per cent said that they would not share a desk with a homosexual person. Only 10 per cent of female students showed a similar level of antagonism against LGBT persons.²²
- [25]. It must be stressed that educational authorities do not seem particularly concerned with the question of homophobia in the classroom. Neither the national Education Ministry, nor the various regional education departments have developed plans to tackle this problem. However, the 2006 Education Law introduced a new subject called 'civic education and human rights'. Respect for minorities,

19 T. Freixes Sanjuán, F. Balaguer Callejón and C. Elías Méndez (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Spain*, FRALEX.

20 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

21 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

22 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

including LGBT persons, will be addressed in the teaching of this subject.²³

C.7. Health Service

- [26]. LGBT groups have made no complaints about maltreatment, discrimination or neglect of the health needs of Spanish LGBT persons. This does not necessarily denote the absence of a problem, but merely indicates the absence of data.²⁴
- [27]. Lesbian access to artificial insemination through the public health system has traditionally been a contentious issue. Lesbian couples have been turned down by health authorities on the ground that they are physically fertile. Though the government did not address the problem in a recent reform of reproduction legislation, an additional clause was added to the law to allow lesbian couples access to in vitro insemination without a previous assessment of fertility.²⁵
- [28]. State policy on AIDS has enjoyed the support of major LGBT groups since the mid 1990s. Health authorities, however, have never provided counselling or other forms of support for HIV patients. Little attention has been paid to issues regarding social stereotypes and discrimination against people with HIV/AIDS.²⁶

C.8. Religion

- [29]. Spanish society is becoming more secularised. Although the number of people who belong to the Catholic Church is still very high (close to 75 per cent of the population), only 16 per cent of Spaniards go to church on a regular basis. Opinion surveys also confirm that Spanish society is increasingly reluctant to align with the Church's view on a host of moral and sexual issues, notably abortion, LGBT rights, pre-marital sex and stem cell research.²⁷
- [30]. The Catholic Church has been actively involved in the debate on LGBT rights, taking a public stand against same-sex marriage and homosexuality. On more than one occasion bishops or church leaders have spoken out against 'homosexual behaviour', comparing

23 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

24 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

25 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

26 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

27 K. Calvo and J. R. Montero, 'Valores Y Religiosidad'. In *'España: Sociedad Y Política En Perspectiva Comparada. Un Análisis De La Primera Ola De La Encuesta Social Europea'*, eds. M. Torcal, S. Pérez-Nievas and L. Morales, 147-70. Valencia: Tirant Lo Blanch, 2005.

homosexuality to diseases or child abuse.²⁸ The church has also organised or participated in demonstrations against same-sex marriage and the introduction of civic education in schools.²⁹

- [31]. Backed by the church, the conservative *Partido Popular* has applied to the Constitutional Court for the unconstitutionality of same-sex marriage, which is still pending. The case does not concern same-sex unions as such, but mainly the use of the word ‘marriage’.³⁰ The Spanish Episcopal Conference has argued that same-sex marriage corrupts the essence of marriage. Spanish bishops are also ‘deeply concerned’ about the possibility that homosexual marriage might cause serious damage to children and teachers.

C.9. Sports

- [32]. In 2007 the Law against Violence, Racism, Xenophobia and Intolerance in Sport came into effect. The law makes a considerable number of direct or indirect references to respect for sexual orientation and the prevention and repression of illegal behaviour.

C.10. Media

- [33]. Spanish media offers generally nuanced coverage on significant political and social LGBT events such as Gay Pride celebrations, judicial rulings and significant laws passed by parliament. Homophobic representations are rare even in the most conservative newspapers. Media outlets which are opposed to homosexual and LGBT rights use a strategy of silence instead of one of abuse.³¹
- [34]. The media once portrayed primarily gay men, but lesbians and transsexuals increasingly feature in fictional and nonfictional accounts of modern-day Spain. Still, for most people the ‘typical’ homosexual is a gay man.³²

C.11. Asylum and Subsidiary Protection

- [35]. The Supreme Court has established that discrimination and persecution on grounds of sexual orientation constitutes a reason for granting asylum. Where asylum is granted, protection can be extended to direct relatives of the refugee, including a spouse or partner with

28 T. Freixes Sanjuán, F. Balaguer Callejón and C. Elías Méndez (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Spain*, FRALEX.

29 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

30 Field trip meeting with *El Defensor del Pueblo* (Spain, 13 March 2008).

31 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

32 Field trip meeting with *FELGBT* (Spain, 13 March 2008).

whom the refugee has a similar relationship of affection and cohabitation.³³ This thus also includes LGBT partners.

- [36]. The number of applications and successful cases are not registered in official statistics. The Spanish immigration authorities have no special guidelines on dealing with asylum seekers or applications regarding persecution on grounds of sexual orientation. LGBT persons often face problems when trying to prove that homophobia is the reason for their flight and asylum request.³⁴
- [37]. The previous government announced plans for a thorough revision of asylum legislation in 2006. The first draft of the new asylum bill recognised sexual orientation and sexual identity as valid grounds for asylum, which should ease some of the problems associated with producing evidence. The bill was not finally introduced in the current Parliament. However, the Spanish Socialist Workers' Party (PSOE) has reiterated this commitment in its manifesto for the 2008 general election.³⁵

C.12. Family Reunification

- [38]. According to the law implementing the EU directives on freedom of movement, an EU citizen can be reunified with his family members. Spanish legislation acknowledges both spouses and legally registered partners as family members, regardless of their sex.³⁶ This is different for third-country nationals, where case law shows a more hesitant approach. New legislation regarding family reunification for third-country nationals is still pending.³⁷
- [39]. There is no data to substantiate any claims to family reunification and LGBT persons. However, it must be noted that the right to marry is not restricted to EU nationals. As a matter of fact, marriages composed of a domestic and a foreigner partner are more common (in comparative terms) in the case of same-sex couples than in the case of opposite-sex couples.³⁸

33 T. Freixes Sanjuán, F. Balaguer Callejón and C. Elías Méndez (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Spain*, FRALEX.

34 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

35 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

36 T. Freixes Sanjuán, F. Balaguer Callejón and C. Elías Méndez (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Spain*, FRALEX.

37 T. Freixes Sanjuán, F. Balaguer Callejón and C. Elías Méndez (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Spain*, FRALEX.

38 K. Calvo (2008) *The situation concerning homophobia and discrimination on grounds of sexual orientation in Spain*. Sociological Country Report.

C.13. Transgender Issues

- [40]. A new law from 2007 provides for the rectification of ones gender in the public registry as well as for change of name. In order to grant such a change of name and sex in the registry, an individual must submit a doctor's certificate stating that the previously registered gender shows a discrepancy with their gender identity, as well as proof of medical treatment for at least two years. This medical treatment does not have to include gender reassignment surgery. If anything hinders such medical treatment, the registry may be changed without the fulfilment of this requirement.³⁹
- [41]. There has been one case before the High Court in Catalonia concerning a discriminatory dismissal of a transgender woman. The court established that the employee had given sufficient facts to at least presume a discriminatory dismissal, and the employer was not able to prove otherwise.⁴⁰

C.14. Multiple Discrimination

- [42]. There is general lack of research in this area.
- [43]. Concerning elderly LGBT persons, new legislation has been adopted to provides compensation for those subject to persecution under Franco's regime. Elderly LGBT persons are considered to still be strongly affected by their history under the regime.⁴¹

D. Good Practice

- [44]. Good practices are described in Annex 1.

39 T. Freixes Sanjuán, F. Balaguer Callejón and C. Elías Méndez (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Spain*, FRALEX.

40 T. Freixes Sanjuán, F. Balaguer Callejón and C. Elías Méndez (2008) *Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation in Spain*, FRALEX.

41 Field trip meeting with *FELGBT* (Spain, 13 March 2008).