



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Spain
Title:	Comprehensive Bill for Equal Treatment and Non-discrimination
Date:	10 December 2018
Expert:	Lorenzo Cachón
Update of news report nr:	1096 (January 2011) and 1246 (December 2011)
<u>Context</u>	
Issue at stake:	Project of a general reform of antidiscrimination legislation in Spain and the creation of an independent "Authority for equal treatment and non-discrimination"
Ground of discrimination:	All grounds
Source:	National Parliament
Field:	All fields

Content

Background: At the beginning of 2011, the Spanish Socialist Government presented an important general Equality Bill (see News Report 1096, 25 January 2011: "Comprehensive Bill for equal treatment and non-discrimination tabled") that sought to fill the existing gaps in anti-discrimination law in Spain. But the decision of the Prime Minister to hold early elections suspended the work of the Parliament and the Bill could not be approved (News Report 1246, 5 December 2011: "Comprehensive Bill for equal treatment and non-discrimination withdrawn"). The conservative Government in power from the end of 2011 to June 2018 did not support this Bill or any of a similar character.

On 10 March 2017 the Socialist Parliamentary Group presented a Bill¹ similar to the Bill of 2011. At that moment however, the new Bill had very little chance of being approved given the opposition of the Conservative Government and majorities in Parliament.

In June 2018, the socialist party came back into the Government after winning the motion of censure against the conservative Government in Parliament. One of the priorities of the new government has been the strengthening of equality policies, as could be seen from the very beginning by the restructuration of the ministerial departments with the creation of a Secretary of Equality directly dependent on the Vice-presidency of the Government.

In the past few months, this Secretary of Equality (and the recently created General Directorate of Equality and Diversity) have promoted in a remarkable way the Bill presented by the socialist group in March 2017 seeking parliamentary support. After the discussion of the 147 amendments that have been submitted (many of them from the socialist group itself to improve the text), the project is about to be voted in the

¹ Proposition of Comprehensive law for equal treatment and non-discrimination (*Proposición de Ley integral para la igualdad de trato y la no discriminación*).

Parliamentary Equality Commission; later it would be considered in the plenary session of the Congress of Deputies first and in the Senate later.

Although the Bill seems to have enough support in Congress to be approved, we must not lose sight of the Government's parliamentary weakness (whose political group is only 84 of the 350 parliamentarians) and the possibility of early general elections due to the current political instability. In addition, the conservative Popular Party group has a majority in the Senate, which could also hinder the approval of the law.

Content of the bill: The Comprehensive Bill for Equal Treatment and Non-discrimination shows three features: it provides guarantees for individuals, as mechanisms to ensure the exercise of rights are introduced; the law is general as it redresses deficiencies and imbalances between various fields; and is comprehensive as it covers all grounds and fields.

The preliminary Title of the Bill covers all grounds set out in Article 14 of the Spanish Constitution (SC). More specifically, it enumerates the grounds covered by European directives (Gender, Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), and also adds Disease and Sexual identity in addition to a generic wording including "any other personal or social condition or circumstance" which reflects the expression "other reasons" contained in the SC. With regard to the fields covered, the Bill explicitly refers to all fields of Directives 2000/43 and 2000/78.

Title I of the Bill contains two chapters. The first chapter provides definitions of all the discrimination concepts in a consistent manner with the Directives (including direct and indirect discrimination, harassment, discrimination by association). The Bill includes and defines multiple discrimination ("when various causes of those provided in this law are combined or interact, generating a specific form of discrimination") and discrimination "by mistake" ("discrimination by mistake is founded on an incorrect assessment of the characteristics of the discriminated person"). The second chapter regulates the prohibition of discrimination in various areas: employment and work (including the obligation for public authorities to ensure respect for equal treatment in access to employment), education, health, social services, housing (discrimination is prohibited with regard to the purchase or lease of a dwelling), and access to goods and services offered to the public (restricting the right of admission). It also governs equal treatment in the field of media and advertising.

Chapter I of Title II establishes measures relating to judicial protection and administrative action against discrimination, offering the possibility for declaration of invalidity, termination, repair, prevention, compensation of material and moral damage. Rules regarding burden of proof are also provided in accordance with the Directives. The Bill legitimates anti-discrimination organisations' participation to civil, administrative and social procedures. Public authorities are under the obligation to act when they have knowledge of an act of discrimination (they must initiate administrative proceedings, investigate the circumstances of the case, take appropriate and proportionate measures for the elimination of discrimination or communicate these possible discriminatory facts immediately to the competent administrative body). Chapter II establishes the authorities' mandate to promote the right to equal treatment and non-discrimination by establishing, for example, the obligation to develop a "National Strategy for Equal Treatment and Non-discrimination" and to develop affirmative action. In addition, it sets out the duty for public authorities to collect and systematize statistical data so to diagnose the reality of discrimination and the design of new policies.

Title III creates the "Authority for equal treatment and non-discrimination" (*Autoridad para la igualdad de trato y no discriminación*) (hereinafter "the Authority"). The Authority fulfils the requirements of the equality body provided for in the Directives. It is an independent body and the law sets the legal basis for the effective performance of its

duties. These include the functions foreseen by the directives but also others, such as mediation, investigation of cases of discrimination on its own initiative, intervention in litigation, training, etc. It will have jurisdiction on all grounds of discrimination. This implies that the two existing bodies (regarding racial and gender discrimination, respectively) will disappear or change its functions (the Disability, Roma and Immigrants bodies will remain as they are consultative bodies). The Head of the Authority will be appointed by the Government for six years and will be unchangeable (except for the specific reasons defined in the law such as resignation, permanent disability, judicial conviction or for non-seriousness in carrying the duties of the office). Public administrations and individuals will have the duty to collaborate in its investigations on potential situations of discrimination with the Authority. The Bill also establishes the participation in the Authority of organizations with social interests, public administrations and associations for the defense of equal treatment. (The form of this participation will be established in the Statute governing the Authority).

Title IV establishes the regime for infractions and sanctions, formerly one of the main breaches of the Directives in Spain as there were sanctions laid down in the field of employment only for racial/ethnic origin and in all fields for gender and disability.

Additional provisions amend various existing legal texts (including various articles of Law 62/2003 of 30 December 2003 transposing Directives 2000/43 and 2000/78). A deadline of three months from the adoption of the Law for the appointment of the Authority for equal treatment and non-discrimination is foreseen. The Statute governing the Authority must be adopted within six months.

Key points of analysis: This Bill is of great importance for at least these reasons:

1. Operates a correct transposition of the two non-discrimination directives;
2. Includes new grounds of protection (such as disease and sexual identity);
3. Includes elements of the proposal for a horizontal directive [COM(2008) 426] (e.g. all the fields being covered, establishment of a body for all the grounds and the definition of multiple discrimination);
4. Creates an equality body (the Authority for equal treatment and non-discrimination) for all grounds and in all fields that is independent, which can be effective and has functions larger than those required by the directives;
5. Sets infractions and sanctions against any discriminatory act;
6. Technically, the Bill is a very good and clear legal text (unlike Law 62/2003).

In the event of a final adoption of this Comprehensive Bill for Equal Treatment and Non-discrimination, Spain will have a clear legislation to combat discrimination in all fields and for all grounds. The new Law and the creation of the Authority for equal treatment and non-discrimination will be very important steps towards the fight for equal treatment and against discrimination.

Internet link source:

http://www.congreso.es/public_oficiales/L12/CONG/BOCG/B/BOCG-12-B-97-1.PDF#page=1.