

**SPAIN**

Most questions require a reply based on the following codification:

a. Yes, already done <input type="checkbox"/>	b. Yes, work is in progress <input type="checkbox"/>	c. We intend to work on this <input type="checkbox"/>	d. Position non determined <input type="checkbox"/>	e. No <input type="checkbox"/>
--	---	---	--	--------------------------------

**Section I – Implementation and dissemination of the Recommendation**

1. How would you assess the status of implementation of the Recommendation in your country?

Fully satisfactory ☒ Adequate ☐ Insufficient ☐ Absent ☐

Please explain your reply.

The Spanish Constitution and the rest of the Spanish legal system guarantee equal treatment and non-discrimination of individuals. Consequently, generally speaking, the content of the Recommendation may be considered to be satisfactorily implemented.

Given that Second Section 29 of the Questionnaire raises questions about the implementation of specific provisions (replied to below), it is necessary to first briefly examine the clauses in the Spanish Constitution that fight discrimination and protect LGBT rights.

Article **1.1** of the **Constitution** refers to the primary values on which social co-existence should rest: freedom, justice, equality and political pluralism.

**Article 14** of the Constitution proclaims the equality of all Spanish citizens in law, “*without any discrimination whatsoever prevailing on the grounds of birth, race, sex, opinion or other personal or social condition or circumstance*”. This non-discrimination clause does not contain an exhaustive list of discrimination causes, which is why it has been interpreted as indirectly including discrimination on the grounds of sexual orientation and discrimination on the grounds of gender identity.

As regards discrimination on the grounds of sexual orientation, it is unanimously believed to be covered by the terms “*personal condition or circumstance*”. The foregoing was upheld by the Spanish Constitutional Court (**Constitutional Court Judgment 41/2006**, of 13 February), along the lines of Strasbourg case-law (amongst others, Judgment of the European Court of Human Rights in case *L. and V. v. Austria*, of 9 January 2003). Furthermore, the principle of non-discrimination on the grounds of sexual orientation has been incorporated into several provisions of Spanish law.

On the other hand, as will be seen, it is less common for these provisions to explicitly refer to discrimination on the grounds of gender identity.

Furthermore, **Article 18.1** guarantees “*the right to one’s honour, privacy and family life and self-image*” and, therefore, protects all private and consented sexual acts, as derived from the case-law laid down by the European Court of Human Rights (*Smith and Grady v. United Kingdom*, of 27 December 1999).

In turn, non-discrimination is linked to personal dignity which, according to **Article 10.1** of the Constitution, is one of the pillars of political order and social peace. In this regard personal dignity,

as defined by the Constitutional Court in **Judgment 53/1985**, of 11 April, must be interpreted as “*a spiritual and moral value inherent to an individual, specifically manifested in a conscious and responsible self-determination of one’s life, entailing an expected respect from others*”, as well as the rights to a free development of one’s personality, health, psycho-physical integrity, intimacy and self-image, amongst others.

Finally, according to **Article 9.2**, “*the public powers must promote the necessary conditions to ensure that individual and collective freedom and equality are real and effective; to remove any obstacles that prevent or hinder their effectiveness and ensure the participation of all citizens in political, cultural and social life*”. This precept has triggered positive actions, directed at offsetting any specific disadvantageous situation suffered by a certain group. In fact, this precept has constituted the grounds for designing and implementing non-discrimination policies and actions by the Spanish public administration, in order to guarantee the effective enjoyment of human rights by everyone irrespective of their sexual orientation or gender identity.

2. Has a review been carried out of existing legislative and other measures which could result directly or indirectly in sexual orientation or gender identity discrimination?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please explain and, if appropriate, provide examples of any such measures found:

As analysed in point one, the public powers are subject to a constitutional mandate to promote equality and non-discrimination amongst individuals. This necessarily means that any legislative or other measure should remove any discrimination based on sexual orientation or gender identity.

In this regard, the Spanish Government has shown a commitment towards upholding Human Rights held by lesbians, gays, bisexuals and transsexuals, as declared in the recent Resolution adopted by the Council of Ministers on 11 May 2012, which approved the “**Government Declaration on the International Day against Homophobia and Transphobia**”, to be held next 17 May”.

This institutional declaration has confirmed the Government’s total commitment “*to defend equality as a fundamental human right and capital democratic value*”, gathered in the Universal Declaration of Human Rights, International Covenant of Civil and Political Rights, International Covenants of Economic, Social and Cultural Rights, and Article 14 of the Spanish Constitution.

Said Declaration refers to homophobia and transphobia as two absolutely intolerable forms of discrimination, which demand increased effort to uphold equality.

It also points out that “*aware of the need to continue making progress in this field, the Government will continue to adopt the necessary measures to guarantee that everybody is able to effectively enjoy Human Rights in conditions of equality and non-discrimination, providing prevention and protection against homophobia and transphobia, to defend equality and personal dignity as primary assets to be safeguarded in any society*”.

- Are there measures in place to redress any such discrimination?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

Within the General State Administration there is no specific management centre to promote equal treatment and non-discrimination of individuals on the grounds of sexual orientation or gender identity only; the fight against LGBT discrimination is promoted with integral and transversal policies for equal treatment and non-discrimination on any discriminatory grounds, in which various management centres are involved.

In particular, the **General Directorate for Equal Opportunities**, Ministry of Health, Social Services and Equality, is entrusted with the following tasks, without prejudice to the competences of other bodies:

1. Promoting and developing the transversal application of the principle of equal treatment and non-discrimination.
2. Designing, planning and coordinating, in each case, any steps and measures which, within the scope of the General State Administration, help promote equal treatment and non-discrimination, collaborating in the matter with autonomous communities and other public and private entities.
3. Drafting reports and studies, analysing and appraising statistics, in matters affecting equal treatment and non-discrimination, as well as their distribution and exchange with other ministerial departments and public or private bodies, whether international, national, autonomous or local.
4. Drawing up initiatives and activities for social awareness, information, education, participation and any others required to promote equal treatment and non-discrimination.
5. Promoting measures aimed at assisting and protecting the victims of discrimination, without prejudice to the competences of other ministerial departments.
6. Proposing cooperation instruments when designing the content of courses to train Administration staff in charge of areas related to equal treatment and non-discrimination.
7. Promoting, preparing and participating in regulatory measures in matters entrusted to the General Directorate.

3. Have legislative and other measures against discrimination on grounds of sexual orientation or gender identity been adopted and implemented since the adoption of CM Recommendation 2010(5) (including the possible establishment of national action plans, the inclusion of the Recommendation in existing plans, or the creation of cross-sectoral working groups for its implementation)?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If appropriate, please provide examples of measures adopted or in preparation.

**The Spanish legal system has not needed significant reforms** to conform to the content of the Recommendation as most of the provisions that guarantee non-discrimination on the grounds of sexual orientation or gender identity existed prior to the Recommendation of reference.

Nevertheless, as indicated in the foregoing point, the **General Directorate for Equal Opportunities**, without prejudice to the competences of other management centres, encourages, prepares and participates in new regulatory and other measures in order to guarantee non-discrimination on the grounds of sexual orientation or gender identity.

The latest instruments for public policy planning, which integrate principles, actions or measures to promote equal treatment and non-discrimination on the grounds of sexual orientation or gender, include an **Integral Strategy against Racism, Racial Discrimination, Xenophobia and other related forms of Intolerance** and the **2013-2016 Master Plan for Spanish Cooperation**.

SPAIN

4. Are there measures in place to collect and analyse relevant data on discrimination on grounds of sexual orientation?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on discrimination on grounds of gender identity?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Are there measures in place to collect and analyse relevant data on hate crimes and hate-oriented incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices:

The General Directorate for Equal Opportunities is working on a project entitled “**Spain’s Discrimination Map**”, the general objective of which is to discover the perceptions of society and any victims of discrimination, as well as making progress in the systematic collection of official data on the application of legal non-discrimination provisions, in the criminal, civil, employment and administrative fields. This project covers the main reasons for discrimination, including sexual orientation and gender identity.

The initial outcome of this project is a **Secondary Source Study**, co-financed by the European Social Fund, which diagnoses the current status of discrimination based on a critical analysis of studies on the case, published to date. Furthermore, it proposes recommendations to improve awareness of discrimination as a phenomenon in Spain.

On the other hand, an example of good practice is the creation in October 2009 of a Special Service for Hate Crimes and Discrimination, at the Provincial Prosecution Office of Barcelona, followed by the Provincial Prosecution Offices of Madrid, Valencia and Málaga. The **2010 Annual Report of the Service for Hate Crimes and Discrimination, Provincial Prosecution Office of Barcelona**, provides information on hate crimes and homophobic and transphobic incidents in Catalonia.

5. Do effective legal remedies for victims of sexual orientation or gender identity discrimination exist (including sanctions for infringements and adequate reparation for victims)?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place to raise awareness and facilitate access of victims to such remedies?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Organic Act of 23 November 1995, of the **Criminal Code**, introduces in **Articles 510-512** a series of offences to offer protection against the most serious forms of discrimination (enticed hatred, refusal of public and private benefits and services) for various reasons, to include sexual orientation. Furthermore, Article **22.4** foresees as an aggravating circumstance if crimes are committed due to sexual orientation or identity.

In turn, **Act 62/2003, of 30 December, on Fiscal, Administrative and Social Measures**, explicitly introduced in labour laws a worker's right to not be discriminated on the grounds of sexual orientation, in employment and occupation matters.

Likewise, of interest is **Royal Legislative Decree 5/2000, of 4 August, on infractions and sanctions in social matters**. This information is examined further in point 26 below.

Finally, reference should be made to the sanctioning regime foreseen in **Act 19/2007, of 11 July, to fight violence, racism, xenophobia and intolerance in sports**. This information is examined further in point 33 below.

6. Which obstacles, if any, have been encountered in the implementation of the Recommendation?

7. Has the Recommendation, including its Appendix, been translated in all your national languages?  
 a. ☒ X b. ☐ c. ☐ d. ☐ e. ☐

The Recommendation has been translated into (Castilian) Spanish, the official State language. It is available on the Council of Europe website:

[http://www.coe.int/t/dg4/lgbt/default\\_en.asp](http://www.coe.int/t/dg4/lgbt/default_en.asp)

We are not aware of its translation into other co-official languages in certain Autonomous Communities.

8. Which steps have been taken to ensure dissemination of the Recommendation and its Appendix as widely as possible?

## Section II – Implementation of the specific provisions in the Appendix

### I. Right to life, security and protection from violence

9. Are there measures in place to ensure an effective, prompt and impartial investigation into alleged cases of crimes and other incidents, where the sexual orientation or gender identity of the victim is reasonably suspected to have constituted a motive for the perpetrator?  
 a. ☒ X b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

In October 2009, the Provincial Prosecution Office of Barcelona created a **Special Service for Hate Crimes and Discrimination**, followed by the Provincial Prosecution Offices of Madrid, Valencia and Málaga. The purpose of these Offices is to coordinate the activity of member prosecutors of the Prosecution Office in any criminal facts committed for discriminatory reasons, in order to guarantee that the State Prosecution Office acts consistently when interpreting and applying the law. Prosecutors are also provided with greater doctrinal and case-law tools with which to fight discrimination, gathering and providing any information, documentation and recommendations issued by international pro-human rights bodies, as well as case-law on the principle of equal treatment and non-discrimination.

SPAIN

10. Are there measures in place to ensure that a bias motive related to sexual orientation may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that a bias motive related to gender identity may be taken into account as an aggravating circumstance?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Article **22.4** of the 1995 **Criminal Code** contemplates an aggravating factor based on discrimination, applicable to crimes committed on the grounds of sexual orientation or identity, amongst other reasons.

11. Are appropriate measures taken to ensure that victims and witnesses of sexual orientation- or gender identity-related hate crimes and incidents are encouraged to report them?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

12. Do training programmes and procedures exist to ensure that the police, judiciary and prison officials possess the knowledge and skills to identify such crimes and incidents and provide victims and witnesses with adequate assistance and support?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

As indicated in point 9 above, in October 2009 the Provincial Prosecution Office of Barcelona created a **Special Service for Hate Crimes and Discrimination**, followed by the Provincial Prosecution Offices of Madrid, Valencia and Málaga. Their tasks include the provision to prosecutors of greater doctrinal and case-law tools to fight discrimination, by gathering and making available any information, documentation and recommendations issued by international pro-human rights bodies, as well as case-law on the principle of equal treatment and non-discrimination.

Furthermore, other formative actions have been implemented by the **General Directorate for Equal Opportunities** and the Spanish Observatory for Racism and Xenophobia (**OBERAXE**), pertaining to the Ministry of Employment and Social Security.

The activities in which the former has participated include the “Plural society and pro-active policy” Seminar (2012), taught to local police agents in Madrid.

In turn, OBERAXE’s formative actions include a training course for police agents entitled “Training to identify and record racist incidents”, further to the European FIRIR project, and publication of the “Support manual for the training of security forces and corps when identifying and recording racist or xenophobic incidents”.

13. Are there specific measures in place to ensure the safety and dignity of lesbian, gay, bisexual and transgender persons in prison or in other ways deprived of their liberty, in accordance with paragraph 4 of the Appendix to the Recommendation?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Without prejudice to any better opinion reached by the General Secretariat for Penitentiaries of the Home Office, you are hereby informed as follows:**

**Article 4** of Royal Decree 190/1996, of 9 February, which approves the **Penitentiary Regulations** that develop and implement General Penitentiary Organic Act 1/1979, of 26 September (LOGP), provides that *“all penitentiary activity will be exercised with respect for a prisoner’s individual personality and legitimate rights and interests, not affected by the relevant punishment, to the exclusion of any discrimination whatsoever on the grounds of race, sex, religion, opinion, nationality or other personal or social condition or circumstance”*. In this respect, as analysed in point 1 above, sexual orientation and gender identity may amount to grounds of discrimination forbidden by the terms *“any other personal or social condition or circumstance”*.

In fact, the special vulnerability of transsexual women in penitentiaries has encouraged the adoption of specific protection measures. Thus, **Instruction 7/2006, of 9 March, issued by the General Directorate of Penitentiaries on the penitentiary integration of transsexual women** establishes certain positive actions to arrange the imprisonment of transsexual interns, further to an internal separation which, on the grounds of sex, is established in Article 16 of General Penitentiary Organic Act 1/1979, of 26 September. In this respect, according to the provisions established in section one of Instruction One, *“transsexuals whose official sex identity does not match their psycho-social gender identity, may apply for acknowledgement by the Penitentiary Administration for the purpose of internal separation referred to in Article 16 of Organic Act 1/1979, of 26 September.”*

This procedure is a result of the particular risks to which transsexual women are specifically exposed, when sharing private spaces with other female interns subject to imprisonment.

Other good practices include the publication in 2010 of the **Code of Ethics of the General Secretariat of Penitentiaries and Autonomous Body for Penitentiary Work and Training for Employment** ([http://www.institucionpenitenciaria.es/web/portal/datos/descargables/publicaciones/Codigo\\_Deontologico.pdf](http://www.institucionpenitenciaria.es/web/portal/datos/descargables/publicaciones/Codigo_Deontologico.pdf)). Article 3 states that the conduct of all penitentiary staff should conform to the following governing principles, amongst others: *“fairness, non-discrimination on the grounds of birth, racial or ethnic origin, gender, sex, sexual orientation, religion or convictions, opinions, disability, age, or other personal or social circumstance”*. Furthermore, Article 13 indicates that *“in employment relations, penitentiary staff will treat all persons in a civil, adequate and respectful manner, and will avoid any conduct that may cause discrimination, contempt, humiliation or harassment. In particular, all discrimination will be avoided on the grounds of birth, racial or ethnic origin, gender, sex, sexual orientation, religion or convictions, opinions, disability, age or other personal or social circumstance, including ultra vires conduct and the use of expressions or behaviour that are degrading or have a sexual connotation.”*

14. Have appropriate measures been taken to combat all forms of “hate speech” against lesbian, gay, bisexual or transgender persons, in accordance with Article 10 of the European Convention on Human Rights and with paragraph 6 of the Appendix to the Recommendation ?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, have specific measures been taken to raise awareness of public authorities/ institutions of their responsibility to refrain from statements which may reasonably be understood as legitimising hatred or discrimination against lesbian, gay, bisexual or transgender persons?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Amongst other discriminatory offences the 1995 **Criminal Code** contemplates enticed discrimination, hatred or violence against groups. Thus, in accordance with **Article 510.1**, *“any persons enticing discrimination, hatred or violence against groups or associations, for racist or anti-Semitic reasons or others related to ideology, religion or beliefs, family situation, membership to an ethnic group or race, national origin, sex, sexual orientation, illness or disability, will be punished with one to three years’ imprisonment and a fine of between six and twelve months.”*

In accordance with **Article 510.2** *“the same punishment will be imposed on those persons who, aware of its falsehood or reckless disrespect for the truth, were to disseminate slanderous information about groups or associations in relation to ideology, religion or beliefs, membership to an ethnic group or race, national origin, sex, sexual orientation, illness or disability.”*

Other good practices include the creation, at the Provincial Prosecution Office of Barcelona, in October 2009, of a **Special Service for Hate Crimes and Discrimination**, followed by the Provincial Prosecution Offices of Madrid, Valencia and Málaga.

Reference may also be made to other actions for education and information, discussion and participation, launched by the General Directorate for Equal Opportunities (and the former General Directorate for Equal Treatment of Workers and to Fight Discrimination). Of interest is the **Local Comprehensive Action Plan to Fight Discrimination** (2010-2011), fruit of the joint effort made with the Spanish Federation of Municipalities and Provinces (FEMP), which has concluded with the publication of a “Methodological proposal to fight discrimination at a local level” (2012).

Likewise, we should mention the “todoimas: 2012 Forum for Equal Treatment and Non-Discrimination” project, co-financed by the European Commission as part of the PROGRESS 2010 plan. “todoimas” provided a forum for debate and participation of various public administrations and third sector entities in order to distribute awareness of anti-discriminatory regulations, and to locate and promote good practices.

## **II. Freedom of association**

15. Are there measures in place to ensure that freedom of association (including access to public funding available for non-governmental organisations) can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If any, please provide examples of limitations or exceptions to the guarantees set out in Paragraphs 9 and 10 of the appendix to the Recommendation and indicate whether any measure to review or lift such limitations or exceptions is in preparation:

**Article 22.1 of the Spanish Constitution** acknowledges a right of free association. Following recognition of this right, this same article specifies some components of its legal regime: any associations incorporated further to this article should be recorded at a Registry for publicity purposes only; secret and para-military associations will be forbidden; any associations that pursue objectives or that use means classified as crimes will be illegal; and, finally, associations may only be dissolved or their activity suspended by virtue of a reasoned court resolution.



This right of free association enjoys **special protection under the Constitution**; apart from being protected by regulatory guarantees to ensure constitutionality, direct effectiveness and respect for its essential content, it is also protected by the reservation of certain matters to the law and the unchangeable nature of the Constitution, subject to a particularity: the reservation established for implementation is made in favour of organic laws, and any reform involves the stricter review procedure foreseen in Article 168. Furthermore, as regards the jurisdictional defence regime, it is protected under Article 53.2 by a remedy of judicial review and appeal to uphold fundamental human rights, brought before the Constitutional Court. In turn, the Ombudsman also ensures that this particularly protected fundamental right is upheld and fulfilled.

Article 4.5 of **Organic Act 1/2002, of 22 March, regulating the Right of Association**, provides that *“the public powers will not provide any type of help to associations entailing an admission process or operating system that discriminates members on the grounds of birth, race, sex, religion, opinion or other personal or social condition or circumstance.”*

Furthermore, amongst other sources of public funding available for non-governmental social entities and organisations, the Ministry of Health, Social Services and Equality makes a yearly announcement for the granting of **subsidies to entities that launch cooperation and social volunteership plans, charged to applicable Personal Income Tax (I.R.P.F.)**.

Furthermore, the Ministry each year announces the granting of **General Regime subsidies** related to the Area of Social Services, Family and Childhood, in order to support state activity as regards associations and foundations, bearing the cost of maintaining and operating the relevant entities in order to ensure that they have the necessary means to achieve their objectives.

Several LGBT pro-human rights entities and organisations have received subsidies as a result of these announcements, including other subsidies announced by various ministerial departments and other public administrations.

In this regard, please note that pursuant to the provisions established in **General Subsidy Act 38/2003, of November 17, and Royal Decree 887/2006, of 21 July, approving the Regulations** of said Act, these announcements and other subsidies must conform to the principles of equality and non-discrimination, amongst others.

16. Are there specific measures in place to effectively protect defenders of human rights of lesbian, gay, bisexual and transgender persons against hostility and aggression, including when allegedly committed by state agents, in accordance with the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Article 22.4** of the 1995 **Criminal Code** foresees a discriminatory aggravating factor applicable to any crimes committed for racist or anti-Semitic reasons, or other discrimination related to the victim's ideology, religion or beliefs, ethnic origin, race or nation to which he/she belongs, sex, sexual orientation or identity, illness or disability.

Apart from this generic aggravating factor, there are a series of “specific” crimes that classify the most serious forms of discrimination:

- Evil threats to a group amounting to a crime if aimed at frightening an ethnic, cultural or religious group or certain social groups (**Art. 170.1**).
- Torture, if committed for any reason based on any form of discrimination (**Art. 174**).
- A discrimination offence in a working environment (**Art. 314**).
- The aforementioned crime to entice hatred, violence and discrimination (**Art. 510**).
- Offences based on a refusal of benefits, either from public services or professional/business activities, on the grounds of discrimination related to one's ideology, religion or beliefs, membership of an ethnic group or race, national origin, sex, sexual orientation, family situation, illness or disability (**Arts. 511 and 512**).
- **Article 515.5** of the Criminal Code punishes illegal associations *"that encourage discrimination, hatred or violence against persons, groups or associations on the grounds of ideology, religion or beliefs, membership of all or some of its associates to an ethnic group, race or nation, sex, sexual orientation, family situation, illness or disability, or that entice the foregoing."*

17. Have measures been taken to ensure that non-governmental organisations defending the rights of human rights of lesbian, gay, bisexual and transgender persons are appropriately consulted on the adoption and implementation of measures that may have an impact on the human rights of these persons?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

First of all, please note that **Article 105** of the **Constitution** guarantees the hearing of all citizens, either directly or through organisations and associations recognised by law, when drawing up administrative provisions that affect them.

Furthermore, an example of good practice is the **State Council of Non-Governmental Organisations for Social Action**. This consultative body, ascribed to the General State Administration through the Ministry of Health, Social Services and Equality, has been established as a meeting point and centre for advice, participation and dialogue between association movements and the General State Administration.

Its main objective is to encourage the participation of non-profit organisations in the drafting of social policies. In order to achieve this purpose, the Council provides advice and proposes measures in favour of society's most vulnerable groups.

As a result, apart from member representatives of the General State Administration, it has representatives of various social entities, including the State Federation of Lesbians, Gays, Transsexuals and Bisexuals (FELGTB).

### **III. Freedom of expression and peaceful assembly**

18. Are there measures in place to ensure that freedom of expression, including freedom to receive and impart information on subjects dealing with sexual orientation or gender identity, can be enjoyed without discrimination on grounds of sexual orientation or gender identity?
- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Are there measures in place to ensure that freedom of peaceful assembly can be enjoyed without discrimination on grounds of sexual orientation or gender identity?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If specific limitations or exceptions regarding such freedoms are in place, please provide examples and indicate whether any measure to review or lift such measures is in preparation:

**Article 20.1** of the **Constitution** acknowledges and protects the right to express and freely broadcast one's thoughts, ideas and opinions by mouth, in writing or other means of reproduction. This article foresees both a guarantee and a limit: the exercise of this right may not be restricted by any type of prior censure (**Article 20.2**), and must in any case uphold the rights recognised in Title I of the Constitution, to particularly include the right to one's honour, privacy, self-image and protection of adolescents and children (**Article 20.4**). The article ends with a specific guarantee of the right to information, given that publications, recordings and other means of information may only be confiscated by virtue of a court resolution (**Article 20.5**), and a reservation in favour of the law to regulate the structure and parliamentary control of all media dependent on the State; this law will, in any case, guarantee access thereto by significant social and political groups and must respect Spain's social and linguistic pluralism (**Art. 20.3**).

In turn, **Article 21.1** acknowledges a right of peaceful and unarmed assembly, and provides that the exercise of this right will not require any prior authorisation, except in the event of a meeting held in public thoroughfares and demonstrations, in which case the relevant authorities must be previously notified; the latter may only forbid this if there are founded reasons of disruption of the public order, endangering persons or goods.

In the same way as the right to free association, analysed in point 15 above, the rights of expression and peaceful assembly enjoy **special protection under the Constitution**; apart from being protected by regulatory guarantees to ensure their constitutionality, direct effectiveness and respect for their essential content, they are also subject to a reservation in favour of the law and the unchangeable nature of the Constitution, albeit subject to a particularity: this reservation for their implementation must be executed through organic law and any reform must follow the stricter review procedure foreseen in Article 168. Moreover, as regards jurisdictional defence, Article 53.2 provides protection under the remedy of judicial review and appeals to uphold fundamental human rights brought before the Constitutional Court. In turn, the Ombudsman will also ensure that both fundamental and particularly protected rights are upheld and fulfilled.

As regards the freedom to receive and distribute information, **Article 18 of General Act 7/2010, of 31 March, on Audiovisual Communication** forbids *"any commercial communication that hinders human dignity or encourages discrimination on the grounds of sex, race or ethnic origin, nationality, religion or beliefs, disability, age or sexual orientation"*. Furthermore, **Article 4.2** provides that *"audiovisual communication may never entice hatred or discrimination on the grounds of gender or other personal or social circumstance and must uphold human dignity and constitutional values, focusing in particular on the eradication of conduct that is conducive to unequal conditions for women."*

19. Do law enforcement authorities take appropriate measures to protect participants in peaceful demonstrations in favour of the human rights of lesbian, gay, bisexual and transgender persons?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Yes, according to the provisions established in **Organic Act 2/86, of 13 March, on State Security Forces and Corps**, and as explained in points 1 and 2 above.

**IV. Right to respect for private and family life**

20. Have measures been taken to ensure that criminal law provisions which, because of their wording or scope, may lead to a discriminatory application with respect to sexual orientation or gender identity are either repealed, amended or applied in a manner which is compatible with the principle of non-discrimination?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Spanish law, and the Spanish Criminal Code in particular, forbids any such discriminatory provisions or practice, as analysed in points 1, 2 and 16 above.

21. Are there measures in place to ensure that personal data referring to a person's sexual orientation or gender identity are not collected, stored or otherwise used, except where this is necessary for the performance of specific, lawful and legitimate purposes, and that existing records that do not comply with this principle are destroyed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples of exceptions to this principle, if any:

**Article 7 of Act 15/1999, of 13 December, on Data Protection**, foresees a reinforced protection regime for "specially protected data". In this regard, any personal data that refer to one's sex life may only be collected, processed and assigned, for general interest reasons, if so established by law or if the affected party expressly agrees.

Notwithstanding the foregoing, said data may be processed if such processing is necessary for medical prevention or diagnosis, the provision of medical care or treatments, or the management of health care services, as long as such data processing is carried out by a health care professional who is subject to a duty of professional secrecy or by another person likewise subject to an equivalent duty of confidentiality.

Likewise, any files created solely to store personal data on one's sex life are forbidden.

22. Are appropriate measures available to guarantee full legal recognition of a person's gender reassignment in all areas of life in accordance with the provisions of paragraph 21 of the appendix to the Recommendation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Have prior requirements for legal recognition of a gender reassignment been reviewed in order to remove any abusive requirements?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Act 3/2007, of 15 March, regulating changes in registry records as regards gender** regulates the necessary requirement to be eligible for a registration change as to one's sex at the Registry Office, as well as a change of name in order to be consistent with the gender claimed.

**Article 4** regulates the necessary requirements to proceed with a registration change:

*"1. A registration change in one's gender will be agreed once the applicant has accredited:*

*a) A diagnosed gender dysphoria.*

*Compliance with this requirement will be ascertained with a report issued by a doctor or clinical psychologist, licensed in Spain or whose qualifications have been recognised or certified in Spain, including a reference to:*

*1. The existence of discordance between the morphological sex or physiological gender initially registered and the gender identity felt by the applicant or his/her psychosocial sex; such discordance must be constant and persistent.*

*2. The absence of any personality disorders that could have a determining effect on the existence of the discordance indicated above.*

*b) The applicant has received medical treatment for at least two years in order to adjust his/her physical characteristics to those of the sex claimed. Accreditation of compliance with this requirement will be made with a report issued by an associate doctor, in charge of the treatment, or, otherwise, with a report issued by a specialised forensic doctor.*

*2. In order to grant a registration change as regards a person's sex it will not be necessary for the medical treatment received to have included gender reassignment surgery. The medical treatment referred to in b) above will not be a necessary requirement for the granting of a registration change if there are health or age-based reasons that prevent a follow-up thereof and a medical certificate to confirm this."*

Consequently, it will not be previously necessary to have undergone sexual reassignment surgery, which would entail forced sterilization. Nor is it necessary for the interested party to be unmarried.

23. Once gender reassignment has been completed and legally recognised, is the right of a transgender person to marry a person of the sex opposite to their reassigned sex effectively guaranteed?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Upon the registration change of a person's sex, the person in question may adjust this gender reference to his/her real situation in all official documents and, therefore, exercise all rights inherent to his/her new status. Nevertheless, the foregoing has limited effects on marriage given that, irrespective of completion of the gender reassignment process, an application may be made for a sex registration change and, furthermore, if this sex registration change application is not made, Spain acknowledges the right to marry between persons of the same sex.

24. Where national legislation recognises registered same-sex partnerships, are their legal status, rights and obligations equivalent to those of heterosexual couples in a comparable situation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If national legislation does not recognise nor confer rights to registered same-sex partnerships and unmarried couples, has the possibility been considered to provide same-sex couples with legal or other means to address the practical problems related to this fact in their lives?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please provide examples:

**Act 13/2005, of 1 July, amending the Civil Code as regards the right to marry**, allows persons of the same or different sex to marry, with full equality in relation to all rights and obligations.

Question two is not considered relevant.

25. Are there measures in place to ensure that decisions regarding parental responsibility and adoption of a child are taken primarily in the child's best interest, as well as without discrimination based on sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Act 13/2005, of 1 July, amending the Civil Code as regards the right to marry**, foresees single marital effects in all fields, irrespective of the spouses' sex, including the possibility of participating in adoption proceedings.

The single article of Act 13/2005, section seven, rewords **Article 175.4 of the Civil Code**, which hereinafter reads as follows: *"nobody may be adopted by more than one person, unless the adoption is carried out jointly or successively by both spouses. A marriage held subsequent to an adoption will entitle the spouse to adopt his/her consort's children. If the adopting parent dies, or if the adopting parent is subject to the exclusion foreseen in Article 179, the adoptee may be readopted"*.

The interest of a minor adoptee by a same-sex or different-sex married couple is upheld further to the provisions established in Article 39.2 of the Constitution: *"likewise, the public powers will guarantee the integral protection of all children, who will be equal in law irrespective of their fathers or mothers, regardless of their civil status. The law will allow fatherhood investigation"*.

As indicated in **Constitutional Court Judgment 198/2012**, this interest is protected in each specific case depending on the examination conducted on potential adopting parents, irrespective of their sexual orientation; therefore, the duty to provide integral protection to children, derived from Article 39.2 of the Constitution, is not affected by the fact that homosexuals are allowed or prevented from adopting, either individually or jointly along with their spouse.

### **V. Employment**

26. Does legislation prohibit discrimination in employment in the public and private sector on grounds of sexual orientation?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Does legislation prohibit discrimination in employment in the public and private sector on grounds of gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

i) Access to employment

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

ii) Promotion, dismissals, pay and other working conditions

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iii) Prevention and punishment of harassment

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

iv) Protection of privacy of transgender persons

(in accordance with paragraph 30 of the Appendix to the Recommendation)

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Act 62/2003, of 30 December, on Tax, Administrative and Social Measures**, which implemented into Spanish law Directive 2000/78 EC, expressly introduced, in **Article 34**, a worker's right to not be discriminated on the grounds of sexual orientation in a job application, membership, participation in trade union and employer organisations, working conditions, professional promotion, constant and occupational professional training, access to freelance work and professional practice, and incorporation and participation in any organisation whose members practice a certain job.

In turn, **Article 35** allows specific measures to be adopted aimed at preventing or offsetting the disadvantages suffered by certain groups in employment situations to ensure full equality on the grounds of sexual orientation.

Furthermore, **Article 36** provides that in all civil jurisdiction and contentious-administrative proceedings where the applicant's allegations indicate the existence of founded signs of discrimination on the grounds of sexual orientation, in employment situations, the respondent must provide a sufficiently proven, objective and reasonable justification of the measures adopted and their proportionality.

The principle of workers' equality and non-discrimination on the grounds of sexual orientation or gender identity is currently embodied as a worker's right in Royal Legislative Decree 1/1995, of 24 March, approving the consolidated version of the **Workers Statute**.

**Article 4.2.c)** of the Workers Statute foresees a worker's right to not be directly or indirectly discriminated when applying for a job or, once employed, for reasons, amongst others, of sexual orientation, gender or sexual condition. Furthermore, **point e)** foresees a right to one's privacy and due respect to a worker's dignity, including protection against harassment on the grounds of sexual orientation, sexual harassment and gender-based harassment.

In turn, **Article 16.2** provides that all public or private employment agencies should guarantee, in their scope of action, the principle of equality in job applications, without any direct or indirect discrimination on the grounds of sex, sexual orientation or sexual condition, amongst other reasons.

Furthermore, **Article 17** foresees the principle of non-discrimination in employment relations. **Section 1** provides that all regulatory precepts, CBA clauses, individual agreements and unilateral decisions taken by an employer will be deemed null and void, including remuneration, working hours and other employment conditions, if they entail direct or indirect unfavourable discrimination in the work place on the grounds of sex, social status, sexual orientation or condition, amongst other reasons. Likewise, all discrimination orders will be null and void, including any employer decisions that entail unfavourable treatment for workers in reaction to a claim made in the company or in relation to an administrative or judicial action to demand compliance with the principle of equal treatment and non-discrimination.

Moreover, **Article 54.2.g)** provides that sexual harassment, or based on the grounds of sex or sexual orientation, suffered by an employer or persons working in the company will amount to a contractual breach.

Consistent with the foregoing, **Royal Legislative Decree 5/2000, of 4 August, on infractions and sanctions in social matters** foresees a very serious infraction in the case of any direct or indirect discrimination on the grounds of sex, social condition or sexual orientation, sexual harassment or harassment on the grounds of sex or sexual orientation (**Article 8, sections 12, 13 and 13.bis**)); any decisions adopted further to the Act, regarding workers' involvement in European corporations and cooperatives, which contain or entail any type of unfavourable direct or indirect discrimination on the grounds of age or disability, or which are favourable or unfavourable on the grounds of sex or sexual orientation (**Article 10.bis).2.d**)); the request for personal data in any selection process or imposing conditions, through advertising, distribution or otherwise, constituting favourable or unfavourable discrimination when applying for a job on the grounds of sex, sexual orientation or sexual condition (**Article 16.2**). In addition to the sanctions foreseen in these infractions (the amount of which is defined in **Article 40**), the Act includes a set of accessory sanctions (**Articles 46 and 46.bis**)).

In relation to the specific field of public employment, **Act 7/2007, of 12 April, on the Basic Statute of Civil Servants** provides, in **Article 14**, that a civil servant will be entitled to respect for his/her privacy, sexual orientation, self-image and dignity at work, particularly against any sexual harassment or on the grounds of sex, or moral and labour harassment (**section h**)), and the right to not be discriminated on the grounds of sexual orientation or other personal or social condition or circumstance (**section j**)).

Moreover, in accordance with **Article 53.4**, the conduct of civil servants will be based on their respect for fundamental human rights and public freedoms, avoiding any activity that could entail discrimination on the grounds of sex, sexual orientation or other personal or social condition or circumstance.

In turn, **Article 95** provides that any action entailing discrimination on the grounds of sexual orientation, sex or other personal or social condition or circumstance, including harassment on the grounds of sexual orientation and moral, sexual and sex-related harassment, will amount to very serious disciplinary offences.

In relation to effective protection of the right to privacy of transsexuals in employment situations, this is guaranteed by **Act 15/1999, of 13 December, on Data Protection**, in the terms described in point 21 above.

Good practices in employment and occupational matters include the fact that the Ministry of Health, Social Services and Equality, through the State Secretariat for Social Services and Equality, and the Foundation for Diversity (FpD), intend to sign on 5 February 2013 a Collaboration Agreement in order to promote, broadcast and implement **Spain's Diversity Charter** and other initiatives related to diversity management.

The Diversity Charter, promoted by the European Commission, represents a commitment text (charter/code) that is voluntarily signed by companies and institutions to encourage adhesion to



fundamental principles of equality and respect to everyone's right to be included, irrespective of sexual orientation, in work situations and society, amongst others. These companies and institutions acknowledge the benefits derived from the inclusion of cultural, demographic and social diversity in their organisation and undertake to implement specific policies to encourage prejudice-free work surroundings as regards employment, training and promotion, including non-discrimination against vulnerable groups.

### **VI. Education**

27. Are there appropriate legislative and other measures, addressed to educational staff and pupils, to ensure that the right to education can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, taking into due account the over-riding interests of the child and the rights of parents regarding education of their children?

a. ☐ b. ☒X c. ☐ d. ☐ e. ☐

If so, are there measures in place concerning in particular:

- i) Anti-discrimination training or support and teaching aids

a. ☐ b. ☒X c. ☐ d. ☐ e. ☐

- ii) Information, protection and support for pupils and students

a. ☐ b. ☒X c. ☐ d. ☐ e. ☐

- iii) Objective information on sexual orientation and gender identity in school curricula ?

a. ☐ b. ☐X c. ☒ d. ☐ e. ☐

- iv) School equality and safety policies and action plans

a. ☐ b. ☐X c. ☒ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Without prejudice to any better opinion reached by the competent bodies of the Ministry of Education, Culture and Sports, you are hereby informed as follows:**

Article 84 of Organic Act 2/2006, of 3 May, on Education, regarding student admittance, provides that: "In no event will discrimination exist on the grounds of birth, race, sex, religion, opinion or other personal or social condition or circumstance."

Good practices include the creation, by means of Royal Decree 2757/2007, of 23 February, of the **State Observatory for School Life**, in order to improve coexistence at educational centres.

Likewise, reference should be made to the **Master Plan for school life and improved safety (2007-2012)**, the object of which is to improve school life and safety in prevention terms. To do this, members of the National Police Corps, Civil Guard and local police forces hold meetings at schools with principals, teachers and parents and chat with the students about relevant safety issues as a group, including the risk to school life derived from racist and xenophobic conduct and bullying.

### **VII. Health**

28. Are there appropriate measures in place to ensure that the highest attainable standard of health can be effectively enjoyed without discrimination on grounds of sexual orientation or gender identity, in accordance with the provisions of Paragraph 33 of the Appendix to the Recommendation?

a. ☒X b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Without prejudice to any better opinion reached by the General Secretariat for Health and Consumers, you are hereby informed as follows:**

**Article 10 of General Health Act 14/1986, of 25 April**, foresees patients' rights, to include the following amongst others:

*"Everybody holds the following rights before different public health administrations:*

- 1. Respect for one's personality, human dignity and privacy, without discrimination on the grounds of race or ethnic origin, on the grounds of gender and sexual orientation, disability or other personal or social circumstance.*
- 2. To receive information on eligible health services and the necessary requirements to use the same. This information must be provided in adequate form, following the rules inherent to a friendly-design principle, in order to be accessible and understood by handicapped persons.*
- 3. That all information remain confidential, related to his/her procedure and hospitalization at public and private health institutions that collaborate with the public system."*

In turn, **Basic Act 41/2002, of 14 November, regulating patient autonomy and rights and obligations as regards information and clinical documentation** also includes patients' rights in **Article 2**. Amongst other basic principles, it includes: *"1. Human dignity, respect for free autonomy and intimacy will guide any activity aimed at obtaining, using, filing, safeguarding and transferring information and clinical documentation".* In addition, it provides that *"2. Any activity in the field of health will generally require the prior consent of all patients or users. This consent, obtained after the patient has been adequately informed, will be provided in writing in the events foreseen in the Act."*

Consequently, both rules start off with respect for personal dignity, as well as a non-discrimination principle. No express reference is made amongst non-discrimination grounds to sexual orientation. However, as analysed in point 1 above, we presume that this non-discrimination cause is subsumed in Article 10 of the General Health Act.

29. Has homosexuality been removed from the national classification of diseases?

- a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

30. Are there measures in place to ensure that transgender persons have effective access to appropriate gender reassignment services?

- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

If there are limitations to the costs covered by health insurance for gender reassignment, please explain:

**Without prejudice to any better opinion reached by the General Secretariat for Health and Consumers, you are hereby informed as follows:**

This management centre is aware that gender identity units exist in four Autonomous Communities, which provide comprehensive gender reassignment treatment in Spain: Catalonia (Hospital Clínic - Barcelona), the Basque Country (Hospital de Cruces - Bilbao), Autonomous Community of Madrid (Hospital Ramón y Cajal - Madrid) and Andalusia (Hospital Carlos Haya - Málaga). Furthermore, there are gender units that provide multi-task non-surgical gender reassignment treatment in other Autonomous Communities, which redirect patients to the four units indicated in order to receive this surgery.

**VIII. Housing**

31. Are measures taken to ensure access to adequate housing can be effectively and equally enjoyed by all persons, without discrimination on grounds of sexual orientation or gender identity, that protection is provided against discriminatory evictions, and that equal rights are guaranteed in respect of ownership of land and other property,?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Without prejudice to any better opinion reached by the State Secretariat for Infrastructures, Transport and Housing (Ministry of Development), you are hereby informed as follows:**

**Royal Legislative Decree 2/2008, of 20 June, approving the consolidated version of the Land Act,** provides in **Article 4** that all citizens will be entitled to the following, amongst others: *“to enjoy decent, adequate and accessible housing, conceived further to a friendly-design principle, to act as a home, free of noise or any other polluting immissions whatsoever that exceed the maximum thresholds foreseen in applicable law, in an adequate environment and landscape”, and to “access, in non-discriminatory conditions with universal accessibility, the use of all public services and collective equipment open to public use, in accordance with the law regulating the activity in question”.*

Please see points 1 and 2 above.

32. With respect to the risk of homelessness faced by lesbian, gay, bisexual and transgender persons, in particular young persons and children, are measures taken to ensure that the relevant social services are provided without discrimination on grounds of sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Please see point 1 and 2 above.

**IX. Sports**

33. Have measures (including awareness-raising measures) been taken to tackle discrimination on grounds of sexual orientation or gender identity (including the use of discriminatory insults) in sports and in connection with sports events?

a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

Without prejudice to any better opinion reached by the Higher Sports Council, the following relevant regulations are significant:

**Article 2 of Act 19/2007, of 11 July, to fight violence, racism, xenophobia and intolerance in sports** classifies the following as racist, xenophobic or intolerant acts in sports:

- *“in any acts which, publicly or intended to be broadly distributed, as a result of holding a race, competition or sports event, or in a forthcoming event, an individual or legal entity issues declarations or transfers information whereby a person or group is threatened, insulted or humiliated on the*

*grounds of racial, ethnic, geographical or social origin, or on the grounds of religion, convictions, disability, age or sexual orientation”,*

*- “any acts which, as a result of holding a race, competition or sports event, or in a forthcoming event, or on sports grounds, their surroundings or means of public transport that may be used to travel thereto, entail harassment, this referring to any unwanted conduct related to racial or ethnic, geographical or social origin, as well as religion or convictions, disability, age or a person’s sexual orientation, aimed at or resulting in an affront against his/her dignity and an intimidating, humiliating or offensive situation”,*

*- “any declarations, gestures or insults made on sports grounds as a result of holding sports events, their surroundings or means of public transport that may be used to travel thereto, entailing manifestly degrading treatment of any person on the grounds of racial, ethnic, geographical or social origin, as well as on the grounds of religion, convictions, disability, age, sex or sexual orientation, including any that entice hatred amongst persons and groups or are seriously detrimental to the rights, freedoms and values proclaimed in the Constitution.”*

*- “the playing, on sports grounds further to sports events, their surroundings or means of public transport that may be used to travel thereto, of chants, sounds or messages, and the exhibition of signs, flags, symbols or others, containing degrading or intimidating messages for any person on the grounds of racial, ethnic, geographical or social origin, religion, convictions, disability, age, sex or sexual orientation, as well as any that entice hatred amongst persons and groups or are seriously detrimental to the rights, freedoms and values proclaimed in the Constitution.”*

In turn, **Article 6** prevents at the entrance to sports grounds *“the entry, exhibition or creation of signs, flags, symbols or other messages that entice violence or whereby a person or group may feel threatened, insulted or humiliated on the grounds of racial or ethnic origin, religion or convictions, disability, age, sex or sexual orientation”*.

Moreover, according to **Article 23.1.c)**, a very serious infraction will arise in the event of *“broadcasting by technical, material, computer or technological means, related to sports information or activities, contents that encourage or back up violence, or that entice, encourage or support violent or terrorist, xenophobic or intolerant conduct on the grounds of religion, ideology, sexual orientation or other personal or social circumstance, or which amount to manifest contempt for the participants of the competition or sports event or the victims of terrorism and their relatives”*; according to **Article 34.1.c)** *“any active participation in violent, racist, xenophobic or intolerant acts, or which encourage this type of behaviour in sports. For the purposes of this article, active participation will exist in any case in the event of declarations, gestures, insults and other conduct entailing humiliation of a person or group on the grounds of racial or ethnic origin, religion, convictions, disability, age, sex or sexual orientation.”*

Furthermore, according to **Article 35.a)**, a serious infraction will arise in the event of *“conduct and acts of contempt or disregard of a person or group in relation to racial or ethnic origin, religion, convictions, disability, age, sex or sexual orientation, as well as any other personal or social condition or circumstance”*.

As a result of committing these infractions, the economic sanctions foreseen in **Article 24** of the Act may be imposed, including a prohibition to access sports grounds (**Article 25**).

In addition, **Article 20** foresees the creation of a State Commission to fight Violence, Racism, Xenophobia and Intolerance in Sports. This is a collegiate body in charge of drawing up and

implementing active policies to fight violence and intolerance and to avoid racist and xenophobic practice in sports. The Commission is regulated by **Royal Decree 748/2008, of 9 May, regulating the State Commission to fight violence, racism, xenophobia and intolerance in sports.**

Finally, we refer to **Royal Decree 203/2010, of 26 February, approving Regulations to prevent violence, racism, xenophobia and intolerance in sports.**

### **X. Right to seek asylum**

34. In cases where your country has an international obligation in this respect, may a well-founded fear of persecution based on sexual orientation or gender identity be recognised as a valid ground for the granting of refugee status and asylum under your national law?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

**Article 3 of Act 12/2009, of 30 October, regulating the right of asylum and subsidiary protection** provides that refugee status will be may be recognised in favour of any individual if based on founded fears of being prosecuted, amongst other reasons, for belonging to a certain social group, gender or sexual orientation.

According to **Article 7.1.e)**, when appraising the reasons for prosecution, the term “certain social group” will include “a group based on a common sexual orientation or identity characteristic, and/or age, without this alone entailing the application of this article”.

35. Does your country ensure that asylum seekers are not sent to a country where their life or freedom would be threatened because of their sexual orientation or gender identity?

a. ☒ b. ☐ c. ☐ d. ☐ e. ☐

Please indicate the measures and, if appropriate, provide examples of good practices in this area:

### **XI. National Human Rights Structures**

36. Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of sexual orientation?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

Are National Human Rights Structures (equality bodies, ombudsperson, and national human rights institutions) clearly mandated to address discrimination on grounds of gender identity?

a. ☐ b. ☐ c. ☐ d. ☒ e. ☐

If so please explain and indicate in particular, if appropriate, what possibilities of intervention are included in their mandate, including in particular with respect to discrimination on multiple grounds:

There is no independent equality body that specifically assists discrimination victims on the grounds of sexual orientation or gender identity.

Nevertheless, the **Ombudsman**, high commissioner of Parliament, foreseen in **Article 54 of the Constitution**, implementing **Organic Act 3/1981**, is entrusted with the protection and defence of fundamental human citizen rights and public freedoms. He also ensures that the Public

Administration acts in accordance with the provisions of Article 103.1 of the Constitution, i.e. to objectively serve the general interests and act in accordance with the principles of effectiveness, hierarchy, deconcentration and coordination, with full subjection to regulations and the law, expressly forbidding any arbitrariness.

The Ombudsman will be competent over all bodies and authorities of the General State Administration, Administrations of Autonomous Communities and of Local Administrations. He may also act in relation to any parties acting as agents or collaborators of any of these Administrations to fulfil or execute public purposes or services.

The Ombudsman is entitled to file appeals of unconstitutionality and to protect fundamental human rights, in accordance with the provisions established in the Constitution and in Organic Act of the Constitutional Court 2/1979, of 3 October.

Likewise, he will exercise the competences inherent to the National Device to Prevent Torture (MNP) in Spain, pursuant to the Single Final Provision introduced into Organic Act 3/1981 of the Ombudsman by Organic Act 1/2009, of 3 November.

## **XII. Discrimination on multiple grounds**

37. Are there measures in place to ensure that the provisions of national law prohibiting or preventing discrimination also protect against discrimination on multiple grounds, including on grounds of sexual orientation or gender identity?
- a. ☐ b. ☒ c. ☐ d. ☐ e. ☐

The Preamble of **Organic Act 3/2007, of 22 March, on the effective equality of men and women** pays particular attention to double-discrimination situations and the unique difficulties suffered by women in particularly vulnerable situations, to include lesbians or transsexual women. Specifically, Article 20, in order to render effective the provisions contained in the Act and to ensure the effective integration, from a gender perspective, in ordinary activity, states that all public powers, when drawing up their studies and statistics, will *“design and introduce the necessary indicators and devices to provide awareness of the effects of other variables that may generate multiple discrimination situations in their various fields of activity.”*

Furthermore, discrimination on multiple grounds also includes certain relevant instruments for public policy planning, such as an **Integral Strategy against Racism, Racial Discrimination, Xenophobia and other related forms of Intolerance** and the **2013-2016 Master Plan for Spanish Cooperation**.

## **Section III - Follow-up**

38. Which measures by the Council of Europe would you recommend to ensure that member states are guided in their national legislation and practice by the principles set out in the Recommendation and in its Appendix?

New periodic examinations on the extent to which the Recommendation has been implemented; the adoption of new recommendations on specific topics (e.g. those indicated in point 39); the issue

of new publications or studies, such as the Council of Europe’s “Discrimination on the grounds of sex and gender identity in Europe” report (2011); and the exchange of good practices.

39. Should the Council of Europe continue examining periodically the implementation of this Recommendation? If so, should such examination in future concentrate on specific issues, and which specific issues would you recommend examining in that case?

Spain is fulfilling its constitutional mandate, the Recommendation of reference and other provisions and recommendations issued by the EU and other international bodies in non-discrimination matters on the grounds of sexual orientation and gender identity. At the present time, Spain has become one of the most law-abiding countries in relation to effective enjoyment of human rights by LGBTs, and its laws are some of the world’s most advanced.

Notwithstanding the foregoing, we think it is necessary for this Recommendation to continue to be implemented by all the States belonging to the Council of Europe. We would suggest the following topics as the most relevant:

- specific discrimination of transsexuals;
- enticement to hatred and discrimination, particularly through means of communication and the Internet;
- respect for one’s private and family life to include, in particular, a legal recognition of gender reassignment and civil unions or marriage between same-sex couples, as well as non-discrimination on the grounds of sexual orientation or identity in adoption procedures;
- discrimination in the field of education, to particularly include LGBT bullying at school, which directly increases suicide rates amongst LGBT adolescents.

40. Are there any issues on which the Recommendation and its Appendix should be revised or completed? If so, please indicate them.

It could be stricter on the matters indicated in point 39.