



NEWS REPORT

Date: 25 January 2011
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Title: Comprehensive Bill for equal treatment and non-discrimination tabled
Country: Spain
Context
Ground of discrimination: All grounds
Source: Decision of the Council of Ministers
Field: All fields
Legislative provisions: Project of a general reform of anti-discrimination legislation in Spain

Content

Background:

1. Transposition of European anti-discrimination Directives (2000/43, 2000/78, 2002/73 and 2004/113) to Spanish legislation was done in an incomplete, sparse and, in some aspects, inappropriate manner (see L. Cachón, *Report on measures to combat discrimination. Directives 2000/43/EC and 2000/78/EC. Country Report 2009. Spain*). In addition, the current legislation so far proved inadequate and inefficient.
2. In its 2008 electoral programme, the Spanish Socialist Party called for the adoption of a comprehensive Equality Law. Various circumstances had delayed the presentation of the project to the Council of Ministers, but the governmental reform of the Government in October 2010 allowed the Government to adopt the comprehensive equality Bill in January 2011.
3. By contrast with the adoption of the previous legislation, this draft is now being subject to consultations with organisations with a legitimate interest. The draft will be officially circulated around by various State agencies, and then the Bill will return to the Council of Ministers for approval at the end of April 2011 (if all these agencies meet the established deadlines). Then it will be discussed in the Parliament and could be adopted definitively as Law before the end of 2011.



Content: The Bill 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 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, sexual identity and language 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 draft states that *"this Law shall apply in all areas of political, economic, cultural and social life"*, and as in particular it explicitly refers to all fields of Directive 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 discrimination, indirect discrimination, harassment, discrimination by association). The Bill includes also include definition on multiple discrimination ("when they combine or interact various causes of those provided in this law") 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, housing (which means that discrimination is prohibited with regard to the purchase or lease of a dwelling), social services 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.

In Chapter I 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 proposed law legitimates the anti-discrimination organisations' participation to civil, contentious-administrative and social procedures. Public authorities are under the obligation to act in case they have knowledge of an act of discrimination (they must open the administrative proceedings, investigate the circumstances of the case, take appropriate and proportionate measures for the elimination or communicate these facts immediately to the competent administrative body); and provided for the appointment of a special Prosecutor to promote and coordinate the proceedings in this area. 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 "State Strategy for Equal Treatment and Non-discrimination" and affirmative action. In addition, it sets out the duty for public authorities to collect and systematise statistical data so to diagnose the reality of discrimination and the design of new policies.

Title III creates the "Authority for the equal treatment and non-discrimination" (hereinafter "the Authority").

The Authority responds to the characteristics of the equality body provided for in the Directives. It is an independent body (in a consistent manner with the Directives) and the law sets the legal basis for the effective performance of its duties. These include the ones marked 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) will disappear. 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 researches on potential situations of discrimination with the "Authority" at its request. Also, the Law establishes the participation in the "Authority" of organisations with social interests, public administrations and associations for the defense of equal treatment (The form of this participation must 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 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" is foreseen. The Statute governing the "Authority" must be adopted within 6 months.

Internet link source: <http://www.msps.es/normativa/proyectos/home.htm>