

SPAIN - SOGI LEGISLATION COUNTRY REPORT
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Please note: This document was prepared by law students and highlights publicly-accessible information about legislation available at the time it was prepared. It is not exhaustive, nor is it updated on a regular basis. The information provided here is not a substitute for legal advice or legal assistance, and the International Human Rights program at the University of Toronto Faculty of Law cannot provide such advice or assistance.

Summary

The age of consent in the [Criminal Code](#) is the same for same-sex and opposite-sex sexual activity.

The [Constitution](#) does not explicitly prohibit discrimination on grounds of sexual orientation or gender identity (Section 14 guarantees that “Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance”). However, the equality clause is open-ended, and so could be read to include sexual orientation and gender identity.

The [Criminal Code](#) criminalizes discrimination in the provision of public services, professional or business activities, and employment.

The [Criminal Code](#) prohibits discrimination, hate, or violence demonstrated toward groups or associations on the basis of “sexual preference.” The Code also criminalizes the distribution of “defamatory information on groups or associations” in relation to “sexual preference” and the promotion of discrimination, hate, or violence toward individuals or groups on the basis of sexual preference.

Under the [Civil Code](#), same-sex couples are allowed to marry and their marriages have identical “requirements and effects” as those of heterosexual marriages.

The adoption law in the [Civil Code](#) is framed in gender- and orientation-neutral terms to allow same-sex couples to adopt.

[Law 3/2007](#) permits individuals to change their gender or name to reflect their gender identity in the Civil Registrar. To change one’s gender, the individual must have a diagnosis

of gender dysphoria and show proof of medical treatment for at least two years “to adapt his/her physical characteristics to those corresponding to the claimed sex,” although gender reassignment surgery is not a prerequisite for a diagnosis of gender dysphoria.

[Law 14/2006 of 26 May](#) permits a woman of any sexual orientation to “receive or use” assisted human reproductive technologies.

[Law 5/1984 of 26 March \[Right to Asylum and Refugee Status\]](#) (amended by Law 9/1994 of 19 May) permits the extension of asylum to the same-sex “spouse” of the refugee, or “the partner with whom the individual has a similar relationship of affection and cohabitation.”

Legal Provisions

LAWS GOVERNING SAME-SEX SEXUAL ACTIVITY

[Spanish Criminal Code, 1995 \(Codigo Penal\)](#): Sets the age of consent at 13 for both same-sex and opposite-sex sexual activity (Organic Law 11/1999 of 30 April).

Article 183: States that the age of consent is thirteen years for both same-sex and opposite-sex sexual activities.

<http://www.mjusticia.gob.es/cs/Satellite/es/1215198252168/DetalleInformacion.html>

ANTI-DISCRIMINATION LAWS

[Spanish Criminal Code, 1995 \(Codigo Penal\)](#): Criminalizes discrimination based on sexual orientation in provision of public services, professional or business activities, and employment. Provocation of discrimination, hate, or violence on the basis of sexual orientation is criminalized, as is distribution of material defaming groups on the basis of sexual orientation. Homophobic or transphobic motivation is considered an aggravating circumstance in the commission of crimes. References to “sexual preference” or “sexual orientation or identity” include transsexual people.

See Teresa Freixes Sanjuan, Francisco Balaguer Callejon, Cristina Elias Mendez, “Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation – Spain,” 2008 (http://fra.europa.eu/sites/default/files/fra_uploads/1353-LGBT-2010_thematic-study_ES.pdf).

Article 22: This provision makes homophobic or transphobic motivation an “aggravating circumstance” in the committal of crimes.

Section 4: “Committing the offence for racist or anti-Semitic reasons, or another kind of discrimination related to ideology, religion or belief of the victim, ethnicity, race or nation to which he belongs, his gender, sexual orientation or identity, illness suffered or disability.”

Article 314: Prohibits “serious discrimination” in the sectors of public or private employment on the basis of “sexual preference.” “Those who commit a serious discrimination in public or private employment, against any person due to his ideology, religion or belief, belonging to an ethnic group, race or nation, gender, sexual preference, family situation, illness or handicap [...] and who do not reinstate him to the situation of equality before the law after an administrative demand or punishment, compensating the financial damage arising therefrom, shall be punished with a sentence of imprisonment of six months to two years or a fine from twelve to twenty- four months.”

Article 510: Prohibits discrimination, hate or violence demonstrated toward groups or associations on the basis of gender or “sexual preference.” This provision also criminalizes the distribution of “defamatory information on groups or associations” in relation to “sexual preference” or gender.

Section 1: “Those who provoke discrimination, hate or violence against groups or associations due to racist, anti-Semitic reasons or any other related to ideology, religion or belief, family situation, belonging to an ethnic group or race, national origin, gender, sexual preference, illness or handicap, shall be punished with a sentence of imprisonment from one to three years and a fine from six to twelve months.”

Section 2: “Those who, with knowledge of its falseness or reckless disregard for the truth, were to distribute defamatory information on groups or associations in relation to their ideology, religion or belief, belonging an ethnic group or race, national origin, gender sex, sexual preference, illness or handicap shall be punished with the same penalty.”

Article 511: prohibits discrimination on the basis of “sexual preference” in public services. This provision allocates significant penalties to those in charge of public services who “refuse a person” or “an association, foundation, society or corporation” to an entitled service on the basis of “sexual preference.” Civil servants who commit the above acts face heavier penalties.

Section 1: “A sentence of imprisonment of six months to two years and a fine of twelve to twenty- four months and special barring from public employment and office for a term from one to three years shall be incurred by private individuals in charge of a public service who refuse a person a service to which he is entitled due to his ideology, religion or belief, belonging to an ethnic group or race, national origin, gender, sexual preference, family situation, illness or handicap.”

Section 2: “The same penalties shall be applicable when the acts are committed against an association, foundation, society or corporation, or against its members due to their ideology, religion or belief, belonging all or some of its members to an ethnic group or race, national origin, gender, sexual preference, family situation, illness or handicap.”

Section 3: “Civil servants who commit any of the acts foreseen in this Article shall incur the same penalties in the upper half and that of special barring from public employment and office for a term of two to four years.”

Article 512: Criminalizes discrimination based on “sexual preference” that results in the denial of an entitled service in the “exercise of professional or business activities.” Significant penalties are attached to this crime.

“Those who, in the exercise of their professional or business activities, were to deny a person a service to which he is entitled due to his ideology, religion or belief, his belonging to an ethnic group, race or nation, his gender, sexual preference, family situation, illness or handicap, shall incur the punishment of special barring from exercise of profession, trade, industry or commerce, for a term of one to four years.”

Article 515: Criminalizes the promotion of discrimination, hatred or violence demonstrated toward individuals, groups or associations on the basis of gender or “sexual preference.”

Section 5: “Those that promote discrimination, hate or violence against persons, groups or associations due to their ideology, religion or belief, their members or any of them belonging to an ethnic group, race or nation, their gender, sexual preference, family situation, illness or handicap, or incite to do so.”

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LEGAL RECOGNITION OF SAME-SEX RELATIONSHIPS

[Spanish Civil Code, 1966 \(Codigo Civil\):](#)

Article 44: Provides that same-sex marriage will have identical “requirements and effects” as heterosexual marriage. (Ley 13/2005, de 1 de julio, por la que se modifica el Código Civil en materia de derecho a contraer matrimonio).

“Men and women are entitled to marry in accordance with the provisions of this Code. Marriage shall have the same requirements and effects when both prospective spouses are of the same or different genders.”

ACCESS TO REPRODUCTIVE TECHNOLOGY, ADOPTION, AND PARENTING

Law 14/2006 of 26 May: Permits a woman of any sexual orientation to “receive or use” assisted human reproductive technologies.

Article 6(1): “Any woman over 18 years of age and with full legal capacity shall be able to receive or use the techniques [of assisted human reproduction] regulated by this Law, provided she has given her written consent in a free conscious and expressed manner. The woman shall be able to use or receive the techniques regulated in this Law regardless of her marital status and sexual orientation.”

<http://www.catedraderechoygenomahumano.es/images/novedades/SpanishLawonBiomedicalResearchEnglish.pdf>

Spanish Civil Code, 1966 (Codigo Civil): Does not confine adoption to opposite-sex couples.

Article 175(1): “Adoption shall require that the prospective adoptive parent is older than 25. In an adoption by both spouses, it will be sufficient for one of them to have reached such age. In any event, the prospective adoptive parents must be at least fourteen years older than the adoptee.”

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GENDER CHANGE RECOGNITION LAW

Law 3/2007, “The Rectification of the Mentions of the Gender in Registries”

[Rectificación registral de la mención relativa al sexo de las personas]: Outlines the requirements for changing one’s gender entry and/or name to reflect gender identity in the Civil Registrar. To change one’s gender, the individual must have a diagnosis of gender dysphoria and show proof of medical treatment for at least two years. A diagnosis of gender dysphoria requires a doctor or clinical psychological to affirm the existence of a “stab[le] and “persisten[t]” discrepancy between the sex and the gender identity of the individual and to confirm “the absence of personality dysfunctions that could decisively influence the existence” of this discrepancy. The individual must also submit proof of having been medically treated for at least two years “to adapt his/her physical characteristics to those corresponding to the claimed sex,” although gender reassignment surgery is not a prerequisite for a diagnosis of gender dysphoria.

Article 1(1): “Any person of Spanish nationality who is over 18 years of age and has the required legal capacity may request the rectification of the gender entry in the Register. The rectification of the gender will bear the change of the individual’s name, so that it is coherent with the registered gender.”

Section 199 of the Spanish [Civil Code](#) states that “No one may be declared [legally] incapable save pursuant to a court judgment pursuant to the causes set forth in the Law.” Causes for incapacitation include “physical or mental illnesses or deficiencies which prevent a person from governing himself” (Section 200).

Article 4: Stipulates that to change one’s gender, the individual must provide a diagnosis of gender dysphoria and proof of having been “medically treated” for at least two years. This provision does not make gender reassignment surgery necessary to change one’s gender.

1. “The rectification of the gender recorded in the register shall be accepted provided the applicant proves:

a) A diagnosis of gender dysphoria.

To prove this requirement a report must be submitted from a doctor or clinical psychologist who is a member of a Spanish professional association and whose qualifications have been recognised or accredited in Spain. The report shall refer to:

1. The existence of a discrepancy between the morphological sex or the initially registered physiological gender and the gender identity or psychosocial sex felt by the applicant, as well as the stability and persistence of this dissonance.

2. The absence of personality dysfunctions that could decisively influence the existence of the dissonance referred to in the previous point.

b) That s/he has been medically treated for at least two years to adapt his/her physical characteristics to those corresponding to the claimed sex. The proof of this requirement shall be made by means of the practicing doctor’s report under whose direction the treatment has been carried out or, in its absence, by means of a report by a forensic surgeon.

2. It shall not be necessary for the rectification of the Register for the medical treatment to include gender reassignment surgery. The medical treatment referred to in 1(b) above shall not be a necessary requirement for the rectification of the register if reasons of health or age, certified by a doctor, hinder that treatment.”

http://fra.europa.eu/sites/default/files/fra_uploads/1353-LGBT-2010_thematic-study_ES.pdf

IMMIGRATION AND REFUGEE LAW

[Law 5/1984 of 26 March \[Right to Asylum and Refugee Status\]](#) (amended by **Law 9/1994 of 19 May): Uses gender- and orientation- neutral language to permit the extension of asylum to the same-sex “spouse” of the refugee, or “the partner with whom the individual has a similar relationship of affection and cohabitation.”**

Article 10.1: “Asylum will also be extended to the direct relatives in the ascending line and direct descendants and to the refugee’s spouse, or to the partner with whom the individual has a similar relationship of affection and cohabitation, except in cases of legal or de facto separation, divorce, majority of age or family independence, in which the status of each member of the family shall be separately assessed.”

http://fra.europa.eu/sites/default/files/fra_uploads/1353-LGBT-2010_thematic-study_ES.pdf

<http://www.refworld.org/docid/3de23dee4.html>