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Transgender EU law

A review of Spanish, Italian, Belgian and
Maltese trans law and its efficacy

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To my parents for their unconditional love.
To my five great pillars: Nuria, Naydenova, Bet, Susi and Leti
for always be willing to listen and help.
And to Mike, for perfecting my writing skills.

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Abbreviations

EU	European union
WHO	World Health Organization
ICD	International Classification of Diseases and Related health problems
ECRI	European Commission against Racism and Intolerance
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender, Intersexual, Queer, etc.
CoE or EC	Council of Europe, European Council
CJEU	Court of Justice of the European Union
ECHR	European Convention on Human Rights
ECSR	European Committee on Social Rights
ECtHR	European Court of Human Rights
LO or OL	Organic Law (<i>Ley Orgánica</i>)
Art.	Article
Pg.	Page
CE	<i>Constitución Española</i>
CC	Civil Code
FELGTB	Federación Estatal de Lesbianas, Gais, Trans y Bisexuales
IEWM	Institute for the Equality of Women and Men

2. Introduction

It is known that rights for LGBTQ+ collective are improving, and we all know about the “love is love” regardless of the gender motto. However, we often forget about the “T” (transgender) on LGBTQ+, as it is something not well known and far more complex as it involves a biological element that has been and still is used as a way to discriminate said group.

One of my main objectives in this work is trying to find out what are the real problematics that transgender people find in their life and examine the help or lack thereof of the current established legal protections. To obtain this information I will rely on the testimony, provided via interviews, of different associations and “real people”. Another objective is to learn a bit more about the legislation in that area and find out if, as is often said by more conservative people, transgender legislation produces legal insecurity on the state’s legal framework. My “study subject” are only four countries (due to paper’s length and time restrictions), Malta, since I’m aware transgender legislation is really advanced there; Belgium as it was the country this past school semester I did my Erasmus+ in; Spain because it is my country; and Italy, because even though it is a very similar country to Spain they are far behind in that aspect and I would like to have the example of a more conservative country.

First of all, I am going to do an approximation to the term transgender, finding out both the historical context and what the term implies biologically. Therefore, I will research the data on discrimination in the study countries and as all of them are member states of the European Union (from now on EU), the EU legislation in this area. Secondly, I am reviewing each country legal framework in this area and some significant case law, I will also analyze the actual transgender needs. Finally, with all that information I will compare the different legal frameworks, case law, testimonies, etc. in order to get my conclusion.

3. “Transgender”, the term

It seems like transgender people have appeared in the last's years, and actually the term is quite new as it was coined by the psychiatrist John F. Oliven in 1965 in his work ‘Sexual Hygiene and Pathology’, where he says that the term transsexualism (a German term coined by Magnus Hirschfeld, which was the one used at that time) “is misleading; actually, ‘transgenderism’ is meant, because sexuality is not a major factor in primary transvestism”.¹

It is important to point out that it is not the same gender non-conformity and gender dysphoria. The term “gender non-conforming” is used to describe “individuals whose gender identity, role, or expression differs from what is normative for their assigned sex at birth given culture and historical period”². While “gender dysphoria” refers to “discomfort or distress that is caused by a discrepancy between a person’s gender identity and that person’s sex assigned at birth (and the associated gender role and/or primary and secondary sex characteristics)”³. And transgender is usually used to describe “all these individuals whose gender identity differs from the assigned sex at birth, transgender males that were assigned as female at birth, and transgender females that were assigned as males”⁴, but not all gender non-conforming people experience gender-dysphoria. As a Spanish native speaker, I must add that in Spanish there are words that refer only to the sex “macho/hembra” or to the gender “hombre/mujer”, which is something really interesting as it makes it easier to differ. Conversely people whose gender identity is the same as the sex it was assigned at birth is called “cisgender”.

For people that experience gender dysphoria there is treatment available. “Treatment is usually individualized: What helps one person alleviate gender dysphoria might be very different from what helps another person. This process may or may not involve a change in gender expression or body modifications. Medical treatment options include, for example, feminization or masculinization of the body through hormone therapy and/or surgery, which are effective in alleviating gender dysphoria and are medically necessary

¹ Oliven, J. F. (1965). *Sexual hygiene and pathology: a manual for the physician and the professions*. Pg.514

² E. Coleman, W. B.-K. (2012). Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People, Version 7. *International Journal of Transgenderism*, 165-232.

³ Ail Knudson, J. G. (2018). Identity recognition statement of the world professional association for transgender health. *International Journal of Transgenderism* , 355-356.

⁴ Guy T’Sjoen, J. A. (2018). Endocrinology of Transgender Medicine. *Endocrine reviews*, 97-117.

for many people. Gender identities and expressions are diverse, and hormones and surgery are just two of many options available to assist people with achieving comfort with self and identity.”⁵

The World Health Organization (from now on WHO) in 2011 in the International Classification of Diseases and Related health problems (from now on ICD-11) removed from their list of “Mental and behavioral disorders” transgenderism or as they used to call it “transsexualism”, “gender identity disorder of children”, “gender incongruence of adolescence and adulthood” or even “gender incongruence of childhood”. Now transgenderism is labelled as “conditions related to sexual health” (World Health Organization, s.f.)⁶, that means that is not considered a mental illness anymore.

4. Historical context and evolution:

4.1. Ancient references

Transgenderism has existed for long time, one of the firsts written references of the existence are dated in the third century before Christ, in the text of the Kama-Sutra where appeared a “third gender”⁷ that they called “hijra” and nowadays those they still exist and the Indian legislation accepts them. There is a similar case with the “muxes”, a term used in Zapotec cultures of Oaxaca to “a person that at birth was assigned as male that assumes some “female roles”, it is considered a third gender”⁸. Also, even though not as explicit, it is interesting to take a look on the Ancient Greece, even though the society at that time had clear the difference between women and men and their roles (caused by Plathon and Aristotil), Athena (the Goddess of war) is portrayed with a masculine appearance, or the Tiresias myth, the story of a man that “while having a walk through the forest saw two snakes having sex and hit the female one which transformed him into a woman and eight years later he met again with the snakes hit them both and turned back into a man”⁹ (obviously as any other Greek myth there are different versions of the story).

⁵ Gender Dysphoria. (2022, february). *Mayo Clinic*. Retrieved from <https://www.mayoclinic.org/diseases-conditions/gender-dysphoria/diagnosis-treatment/drc-20475262?p=1>

⁶ World Health Organization. (n.d.). *World Health Organization for Europe*. Retrieved from <https://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/who-europe-brief-transgender-health-in-the-context-of-icd-11>

⁷ Nanda, S. (1986). The Hijras of India: Cultural and Individual Dimensions of an Institutionalized Third Gender Role. *Jornal of Homosexuality*, 34-54.

⁸ Mirandé, A. (2017). *Behind the mask : gender hybridity in a Zapotec community*. Tucson : The University of Arizona Press. Pg. 26 and 70.

⁹ Brisson, L. (1976). *Mythe de Tirésias*. Leiden: E.J. Brill. Pg. 20-64

4.2. Historical evolution of transgender rights

In 1966 was founded the Beaumont Society (on the name of Chevalier d'Eoun de Beaumont) a social support group, which said at that time that “transgender people are entitled to be treated with dignity and respect in all aspects of their lives by family, friends and the wider non-transgender community, including businesses and services”.¹⁰ At that time the only court that had dealt with that paradigm was the British case of 1970 *Corbett vs. Corbett*, in which Arthur Corbett wanted to divorce April Corbett but British divorce law at that time required proof of adultery or cruelty and either of these had happened, so Arthur used the premise that they never been married (the marriage was null) since Ashley was registered as a boy in her birth certificate.¹¹

The first international Gender Dysphoria Association was founded by Dr Harry Benjamin in 1979, who was one of the first physicians to work with gender dysphoric persons.¹²

But its wasn't until 1980s, when the ECtHR began dealing with “potential trans rights”. “The early cases quickly developed a common structure: Transgender applicants would turn to the European Commission on Human Rights which was, back then, the primary addressee for applications before reaching the Court. The Commission would side with the applicants and argue in favor of a right to legal gender recognition—but upon referral, the Court would take a different view, holding that Corbett's biological essentialism was in accordance with the Convention and even making use of the essentialist perspective itself. The upshot was that trans rights were not recognized as a part of European human rights law. Despite repeated assurances that the ECtHR would continue to monitor the situation, as well as increasingly numerous and vehement dissenting opinions on the part of some judges, this remained the status quo for almost two decades.”¹³

In 2002 came the big change when Christine Goodwin (a trans woman) applied for changing her status, and it was refused. However, in this case the ECtHR declared that this was a “conflict between social reality and law [...] which places the transsexual in an anomalous position, in which he or she may experience feelings of vulnerability,

¹⁰ Inner Temple Library. (2018). *Transgender law: a short history*. Pg. 2

¹¹ High Court of Justice, *Corbett v. Corbett* (otherwise Ashley), All E.R. 2 (1970).

¹² Inner Temple Library. (2018). *Transgender law: a short history*. Pg.3

¹³ Theilen, J. T. (2016). *The Long Road to Recognition: Transgender Rights and Transgender Reality in Europe*. De Gruyter: Gerhard Schreiber. Pg. 3-4.

humiliation and anxiety”¹⁴, so the Court ruled that there had been a violation of the article 8 ECHR (right to private life). From that moment on “All European States are under a legal obligation to provide legal gender recognition to trans persons. As of 2016, only a handful of States in south-eastern Europe fail to do so, and the situation in those States could be challenged before the ECtHR”.

5. European Union non-discrimination trans law

European non-discrimination law is made up of various sources. The law of the Council of Europe (CoE) and the European Union (EU). “Although both are different systems that operate separately, there are links between them like the Court of Justice of the European Union (CJEU) refers to the European Convention on Human Rights (ECHR) and the European Social Charter (ESC) as it interprets the EU law, and the European Court of Human Rights (ECtHR) and the European Committee on Social Rights (ECSR) refer to EU legislation and the CJEU case law.”¹⁵

The European Union adopts the definition of Yogyakarta Principles (2007) of gender identity: “each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms”.

There is no specific provision in EU law against discrimination on grounds of a person’s gender identity or gender expression.¹⁶ Instead, it is only partially covered by the principle of equal treatment for men and women as it can be seen in the case of P vs. S and Cornwall County Council¹⁷. In that case, the CJEU held that the scope of the principle of equal treatment for men and women could not be confined to the prohibition since that a person is one sex or the other. Accordingly, the ground of sex encompasses discrimination against and individual because he/she “intends to undergo or has undergone, gender reassignment surgery”. Therefore, the ground of sex as construed under EU law currently protects gender identity only in a narrow sense.

¹⁴ ECtHR, *Goodwin*, para. 77.

¹⁵ Council of Europe: European Court of Human Rights (2018). *Handbook on European non-discrimination law*. Luxembourg: Publications Office of the European Union. Pgs. 16-17.

¹⁶ Council of Europe: European Court of Human Rights (2018). *Handbook on European non-discrimination law*. Luxembourg: Publications Office of the European Union. Pgs. 172.

¹⁷ CJEU, C-13/94, P vs. S and Cornwall County Council, 30 April 1996

Under the ECHR, gender identity is interpreted more widely. As the ECtHR has held that the Article 14 of the Convention¹⁸ also covers gender identity related questions. The ECtHR said in the case *Sousa Goucha vs. Portugal*¹⁹ that “gender and sexual orientation are two distinctive and intimate characteristics [...]. Any confusion between the two will therefore constitute an attack on one’s reputation capable of attaining a sufficient level of seriousness for touching upon such an intimate characteristic of a person”.

And under CoE law, the Istanbul Convention prohibits discrimination based on sexual orientation and gender identity. The European Commission against Racism and Intolerance (ECRI) as can be seen in the point 9 of the information document on the fifth monitoring cycle (28 September 2012), has started to monitor LGTBI-related issues in Council of Europe member states.

There are five directives covering four areas of law that specifically mention “gender reassignment”, “gender identity” or “gender expression”.

The Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, include transgender people. This Directive applies, as it says in the article 3, “to all persons who provide goods and services, which are available to the public irrespective of the person concerned as regards both the public and private sectors including public bodies”, and the article continues excluding from the scope of application the content of media and advertising, education, matters of employment and occupation, and private and family life. The Directive includes access to goods and services provided in shops, restaurants, bars, hotels and other venues selling good or providing services; insurance (this includes access to insurance and not having to pay higher premium because the persons is trans); health services, such as health insurance and healthcare; housing and accommodation; transportation, both public and private such as taxis; sport facilities (including gyms); goods and services through the internet; and public services for which a payment/fee is required (for example, the passport).

¹⁸ Article 14: The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

¹⁹ ECtHR, *Sousa Goucha v. Portugal*, No. 70434/12, 22 March 2016, para. 27.

This Directive (2004/113/EC) covers different types of discrimination such as direct discrimination²⁰, indirect discrimination²¹, harassment²², sexual harassment²³, instruction to discriminate and third-party harassment. Each type would be: for direct discrimination, that a trans person that has booked a hotel room over the phone when he/she/it arrives her/his/their access is refused; for indirect discrimination, a health-insurance company that sends regular reminders for Pap tests only to those customers who are legally registered as female; for harassment, that while a trans person is eating at a restaurant, the service staff make transphobic jokes pointing repeatedly at their table; for sexual harassment, a trans person at the gym overhears staff commenting on their body and discussing whether they would have sex with them; and to instruction to discriminate, the manager of an STU clinic instructs staff not to provide services to trans people.

The Directive 2006/54/EC implementing the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, includes transgender people (recital 3)²⁴. The Directive scopes direct or indirect discrimination in the public or private sectors including public bodies, in relation to access²⁵, training²⁶,

²⁰ Article 2 (a) Directive 2004/113/EC defines direct discrimination as: “where one person is treated less favorably, on grounds of sex, than another is, has been or would be treated in a comparable situation”.

²¹ Article 2 (b) Directive 2004/113/EC defines indirect discrimination as: “where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”.

²² Article 2 (c) Directive 2004/113/EC defines harassment as: “where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment”.

²³ Article 2 (d) Directive 2004/113/EC defines sexual harassment as: “where any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment”.

²⁴ Recital 3 Directive 2006/54/EC “The Court of Justice has held that the scope of the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one or other sex. In view of its purpose and the nature of the rights which it seeks to safeguard, it also applies to discrimination arising from the gender reassignment of a person”.

²⁵ Article 14.1 (a) Directive 2006/54/EC “conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion”.

²⁶ Article 14.1 (b) Directive 2006/54/EC “Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience”.

conditions²⁷, unions and professional organizations²⁸ and social security²⁹. It is relevant that in particular this Directive has importance for transgender people as it makes illegal to dismiss a trans worker because they are undergoing, will undergo or have undergone gender reassignment treatment³⁰; the protection against discrimination also applies to partners of workers, so that discrimination against a trans worker's partner or the trans partner of a worker is illegal, e.g. in widow(er)s' benefits or family allowances³¹; and though regarding sickness and invalidity leave and benefits, there have not yet been any judgments that clarify the rights of trans people in this complex area, under certain circumstances sickness leave and benefits should cover a trans worker's absence due to medical treatment related to gender reassignment in the same way as other (not trans-specific) medical treatments are covered and invalidity benefits should cover the case of permanent incapacitation as a consequence of gender reassignment surgery.

This Directive (2006/54/EC) covers different types of discrimination such as direct discrimination, indirect discrimination, harassment, sexual harassment and instruction to discriminate. Each type would be: for direct discrimination, that a trans lawyer is refused membership in an Advocacy School; for indirect discrimination, that a trans man's application for a position as a fire-fighter is refused because the health-assessment policy for new recruits requires male police officers to have at least one functioning testicle; for harassment, that at a training on customer relationships, the trainer criticizes a trans employee's voice and outfit as off-putting to costumers; for sexual harassment, that during a job interview, the interviewer keeps looking at a trans woman's chest and asks questions about gender reassignment surgery; for instruction to discriminate, that after an

²⁷ Article 14.1 (c) Directive 2006/54/EC "Employment and working conditions, including dismissals, as well as pay". And Article 4 Directive 2006/54/EC "For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated. In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex."

²⁸ Article 14.1 (d) Directive 2006/54/EC "Membership of, and involvement in, an organization of workers or employers, or any organization whose members carry on a particular profession, including the benefits provided for by such organizations".

²⁹ Article 7.1 Directive 2006/54/EC "Discrimination in the access to, conditions of and benefits paid through occupational social security schemes, including pensions, sickness, invalidity, industrial accidents and professional diseases and unemployment benefits, as well as all other »occupational social security schemes which provide for other social benefits, in cash or in kind, and in particular survivors' benefits and family allowances".

³⁰ CJEU, C-13/94, P vs. S and Cornwall County Council, 30 April 1996.

³¹ K.B v. NHS Pensions Agency (2004), in which the ECJ ruled that because under national law it was impossible for trans people to marry, the fact that one employer's widow(er)s' pension scheme was only accessible to married people constituted discrimination. In the specific case, a cis female employee was unable to marry her trans male partner and therefore unable to qualify for the pension scheme.

employee comes out as a trans man, a manager sends an email to several employees asking them to report if the person tries to use the men’s bathroom and to tell them not to do so.

It is also relevant that in *Coleman v. Attridge Law* (2008), the ECJ ruled that discrimination by association is unlawful in the workplace. In this specific case, the court found that Sharon Coleman had been harassed and discriminated against by her employer because she had a disabled son. This could perfectly apply to an employee being discriminated because of their association with a trans person, though there have not been any rulings specifically about discrimination by association with transgender people.

The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, to ensure that “victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings and that they are treated respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority”³². The directive adds that all victims must be treated without discrimination of any kind, including on the grounds of gender, gender identity and gender expression³³.

This Directive establishes different rights for victims such as the right to understand and to be understood³⁴, the right to receive information from the first contact with a competent authority³⁵, the right of victims when making a complaint³⁶, the right to receive information about their case³⁷, the right to interpretation and translation³⁸, the right to

³² Article 1.1

³³ Recital 9: “Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.”

³⁴ Article 3

³⁵ Article 4

³⁶ Article 5

³⁷ Article 6

³⁸ Article 7

access victim support services³⁹, and the right to support from victim support services⁴⁰, the right to be heard⁴¹, the rights in the event of a decision not to prosecute⁴², the right to safeguards in the context of restorative justice services⁴³, the right to legal aid⁴⁴, right to reimbursement of expenses⁴⁵, the right to the return of property⁴⁶, the right to decision on compensation from the offender in the course of criminal proceedings⁴⁷, the rights of victims resident in another Member State⁴⁸, the right to protection⁴⁹, the right to avoid contact between victim and offender⁵⁰, the right to protection of victims during criminal investigations⁵¹, the right to protection of privacy⁵², the right to individual assessment of victims to identify specific protection needs⁵³, the right to protection of victims with specific protection needs during criminal proceedings⁵⁴, right to protection of child victims during criminal proceedings⁵⁵.

In addition to the aforementioned rights, the directive establishes that there must be an individual risk evaluation in order to “identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings [...] due to their particular vulnerability to secondary and repeat victimization, to intimidation and to retaliation”⁵⁶. “This, of course, must include protecting the victim from secondary and repeat victimization by the police and other who interact with the victim during criminal proceedings”⁵⁷. That evaluation must consider the personal characteristics of the victim, the type or nature of the crime, and the circumstances of the crime such as: the gender identity and gender expression of the victim; whether it was a hate or bias-motivated crime or a crime with a discriminatory motive, including transphobic bias, hate or discrimination; and whether the victim was

³⁹ Article 8

⁴⁰ Article 9

⁴¹ Article 10

⁴² Article 11

⁴³ Article 12

⁴⁴ Article 13

⁴⁵ Article 14

⁴⁶ Article 15

⁴⁷ Article 16

⁴⁸ Article 17

⁴⁹ Article 18

⁵⁰ Article 19

⁵¹ Article 20

⁵² Article 21

⁵³ Article 22

⁵⁴ Article 23

⁵⁵ Article 24

⁵⁶ Article 22.1

⁵⁷ TGEU, (2015). *TGEU's Activist's Guide on Trans People's Rights under EU Law*. Berlin. pg 11.

subjected to gender-based violence which the directive defines as “violence that is directed against a person because of that person’s gender, gender identity or gender expression or that affects persons of a particular gender disproportionately”⁵⁸.

Furthermore, the evaluation must identify specific protection needs and special protection and support measures to be taken, including: Specialist support services, such as shelters or interim accommodation and targeted support for victims of gender-based and sexual violence, including trauma support and counselling⁵⁹; interviews must be carried out in suitable premises by trained professionals who have to be of the same sex as the victim, if they wish⁶⁰ (it is not mentioned the possibility that the victim could be non-binary, so they are excluded); and to take measures to avoid the victim having visual contact with the offender, to prevent unnecessary questioning related to the victim’s private life, and to conduct the court hearing without public⁶¹.

The Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of national protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted. This Directive in the article 10 (d) establishes that “gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such group”⁶², this would mean a person that is being persecuted for their gender identity can qualify as their gender as they are part of a “particular social group”. It also says establishes that “for the purposes of defining a particular social group, issues arising from an applicant’s gender, including gender identity and sexual orientation, which may be related to certain legal traditions and customs, resulting in for example genital mutilation, forced sterilisation or forced Abortion, should be given due consideration in so far as they are related to the applicant’s well-founded fear of persecution”⁶³

In the same theme we found the Common Procedures Directive 2013/32/EU for granting and withdrawing international protection, in which the recital 29 specifies that “Member States should endeavour to identify applicants in need of special procedural guarantees

⁵⁸ Recital 17

⁵⁹ Article 9.3

⁶⁰ Article 23.2

⁶¹ Article 23.2

⁶² Article 10 (d)

⁶³ Recital 30

before a first instance decision is taken”⁶⁴ (before that it explains that gender identity may be considered needed of special procedure), and continues explaining that “those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection”⁶⁵. And the recital 30 adds that “where adequate support cannot be provided to an applicant in need of special procedural guarantees in the framework of accelerated or border procedures, such an applicant should be exempted from those procedures”⁶⁶. About interview procedures, the article 10.3 (d) establishes that “the personnel examining applications and taking decisions have the possibility to seek advice, whenever necessary, from experts on particular issues, such as medical, cultural, religious, child-related or gender issues”⁶⁷, also the article 15.3 explains that “the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant’s cultural origin, gender, sexual orientation, gender identity or vulnerability”⁶⁸. In relation with privacy and consent the article 11.3 relating the article 7.2 establishes that the decisions need to be solved without disclosing the gender identity of the applicant to other people⁶⁹.

6. Legal certainty and others anti-trans law opinions

Legal certainty can be defined as a “requirement of accessibility and predictability of the law, so that those affected by the law can reasonably anticipate the consequences of their actions”⁷⁰. Also, as “the quality of the legal order that produces certainty and trust on the citizenship about what law is in every moment and about what will be in the future”⁷¹ and that “it establishes that civic climate of confidence in the legal order, based on reasonable guidelines of foreseeability, which is a presupposition and function of the rule of law and it presupposes knowledge of the rules in force, but also a certain stability of the legal system”⁷².

⁶⁴ Recital 29

⁶⁵ Recital 29

⁶⁶ Recital 30

⁶⁷ Article 10.3 (d)

⁶⁸ Article 15.3 (a),

⁶⁹ Article 11.3 and 7.2.

⁷⁰ Popelier, P. (2015). Five Paradoxes on Legal Certainty and the Lawmaker. *Legisprudence*, pg. 48.

⁷¹ Moreno, F. S. (1995). Seguridad jurídica. In *Enciclopedia Jurídica Civitas* (p. Tomo IV). Madrid: Civitas. Pg. 58.

⁷² Luño, A. E. (1991). *La seguridad jurídica*. Barcelona. Pg. 22.

One of the main critics to self-determination of transgender people is the lack of legal certainty. For example, in 2021, Spain's Equality Ministry wrote a draft of a transgender law that wanted to established self-determination and depathologized the situation. The judicial council sent a report to the Ministry remarking that "The draft bill also fails to resolve the consequences derived from the general rule according to which the person will be able to exercise all the rights inherent to their new condition after the registration of the change of sex. Paradoxically, these consequences can lead to situations of discrimination against women and, therefore, contrary to equality. Examples of this are sporting competitions or physical tests required for access to certain professions, when one has changed from male to female gender.

The modification of gender registration will not make it possible to avoid obligations and responsibilities towards victims of gender-based violence in order to prevent fraudulent situations from arising."⁷³, in general they tried to explain the lack of legal certainty that this law could establish.

Some authors like Pieter Cannoot and Mattias Decoster have said that "Given sex/gender's fluidity, variances, and socially constructed character, the law will never be able to reliably document it – just as it cannot do so for race, religion, sexual orientation, or political affiliation. Moreover, it has been said that sex/gender registration enables the state to carry out various public health policies, such as mandatory preventive cancer screenings and demographic research, or to combat existing gender disparities through, for example, affirmative action. Hence, one could contend that mandatory (non-binary) sex/gender registration pursues the legitimate aim of protecting public health or women's rights, and therefore answers pressing social needs, such as the overall population's physical well-being or gender equality. However, here again, the gendered violence resulting from mandatory (binary) sex/gender registration, in breach of the right to gender autonomy, ensures that it does not meet the threshold set by the suitability criterion of the proportionality test. Despite the fact that these policies could continue to exist, relying on self-identified, instead of state-certified, sex/gender, Cooper and Renz correctly note that 'just because states withdraw from determining and assigning gender does not mean they cannot recognize gender determinations by others' and consequentially regulate

⁷³ Gallardo, V. M. (2022, April 8). *EPE*. Retrieved from El informe del CGPJ sobre la ley trans pide limitar la autodeterminación del género a partir de los 16 años: <https://www.epe.es/es/igualdad/20220408/ley-trans-menores-autodeterminacion-del-genero-cgpj-13495336>

sex/gender in order to mitigate existing health discrepancies or unequal power dynamics. Indeed, states could, for example, compel private actors, such as sport federations, schools, or hospitals, to accept an individual's self-defined sex/gender, or instead allow these private actors to adopt their own definition of it, whilst also enacting 'regulatory frameworks which structure and limit permissible choices'⁷⁴, so for them it would not even be necessary gender registration, as it can be a way to discriminate. But, in my opinion, that is just a very simple way to interpret life, as discrimination based on gender would still be there, so it is important for democracy to know the gender of people in order to mitigate this pre-existent inequality conditions.

However, others like Mochamad Ade Syukur Nur Alam explain that "The formulation of legal provisions regarding sex change that can reflect justice, benefit, and legal certainty as well as support the welfare of Transgender and Ambiguous Genitalia sufferers is as follows, the use of the phrase the right to live in physical and spiritual prosperity in the formulation of legal norms as a large group that can reach various things so that it is not equated with specific matters such as housing, health services and so on; and provisions on the prohibition of plastic surgery to change identity, except for patients who have received a court order. This is a step to harmonization and synchronization of legal provisions governing sex change between the Health Law and the Population Administration Law"⁷⁵.

7. Review on transgender people protection in Spain

Methodology used in Annex 1

7.1. Legislation

7.1.1. Equality and non-discrimination

Regarding the Spanish legislation about equality and non-discrimination, the fundamental norm⁷⁶ in Spain is the Spanish Constitution, in which no reference to gender identity

⁷⁴ Pieter Cannoot, M. D. (2020). The Abolition of Sex/Gender Registration in the Age of Gender Self-Determination: An Interdisciplinary, Queer, Feminist and Human Rights Analysis. *International Journal of Gender, Sexuality and Law*. Pg. 22-24

⁷⁵ Alam, M. A., Budiono, A. R., Madjid, A., & Istislam. (2021). Formulation of Legal Provisions Concerning Gender Change. *International Journal of Multicultural and Multireligious Understanding*, 738-751.

⁷⁶ Fundamental rule: "The fundamental norm is the hypothesis that allows legal science to consider law as a system of valid norms [...] if we wanted now to determine what is the basis of validity of the Constitution on which the validity of laws and legal acts depends, we could go back to an older Constitution, but we would finally arrive at a first Constitution established by a usurper or by any group of persons. The will of the first constituent must therefore be considered as having a normative character,

appears. Regarding employment, there is no national law, but some regions do have employment related gender identity laws: in Catalonia (Law 11/2014 to guarantee the rights of lesbian, gay, transgender and intersexual people, and to eradicate the homophobia, biphobia and transphobia), Extremadura (Law 12/2015 for social equality of lesbian, gay, bisexual, transexual, transgender and intersexual people, and public policy against discrimination for sexual orientation and gender identity), Galicia (Law 2/2014 for equality and non-discrimination of lesbian, gay, transexual, bisexual and intersexual people in Galicia), Andalusia (Law 2/2014 for non-discrimination due to gender identity and recognition of transexual peoples' rights), Canary Islands (Law 8/2014 for non-discrimination due to gender identity and recognition of transexual peoples' rights), Navarra (Law 12/2009 for non-discrimination due to gender identity and recognition of transexual peoples' rights), Basque Country (Law 14/2012 for the non-discrimination of gender identity and recognition of transexual people rights), Madrid (Law 14/2015 for non-discrimination due to gender identity and recognition of transexual peoples' rights), Balearic Islands (Law 8/2016 to guarantee the rights of lesbian, gay, transgender and intersexual people, and to eradicate LGBTI phobia), Murcia (Law 8/2016 to equality of lesbian, gay, bisexual, transexual, transgender and intersexual people, and public policy against discrimination due to sexual orientation and gender identity in Murcia), Valencia (Law 8/2017 integral for the recognition of gender identity and gender expression), Aragon (Law 18/2018 of equality and integral protection against discrimination due to sexual orientation, gender identity and gender expression), Cantabria (Law 8/2020 to guarantee of lesbian, gay, trans, transgender, bisexual and intersexual peoples' rights and non-discrimination due to sexual orientation and gender identity) and La Rioja (Law 2/2022 to equality, recognition to gender identity and gender expression and trans peoples' rights and their families). Regarding Goods and Services, again no national law exists, but it is legislated in Catalonia (Law 11/2014 to guarantee the rights of lesbian, gay, transgender and intersexual people, and to eradicate the homophobia, biphobia and transphobia), Extremadura (Law 12/2015 for social equality of lesbian, gay, bisexual, transexual, transgender and intersexual people, and public policy against discrimination for sexual orientation and gender identity), Galicia (Law 2/2014 for equality and non-discrimination of lesbian, gay, transexual, bisexual and intersexual people in Galicia), Aragon (Law 18/2018 of equality and integral protection

and it is from this fundamental hypothesis that all scientific research into the legal order under consideration must begin." (Kelsen, 2009 pg.113)

against discrimination due to sexual orientation, gender identity and gender expression), Cantabria (Law 8/2020 to guarantee of lesbian, gay, trans, transgender, bisexual and intersexual peoples' rights and non-discrimination due to sexual orientation and gender identity), Madrid (Law 14/2015 for non-discrimination due to gender identity and recognition of transsexual peoples' rights), Balearic Islands (Law 8/2016 to guarantee the rights of lesbian, gay, transgender and intersexual people, and to eradicate LGBTI phobia), Murcia (Law 8/2016 to equality of lesbian, gay, bisexual, transsexual, transgender and intersexual people, and public policy against discrimination due to sexual orientation and gender identity in Murcia), and Valencia (Law 8/2017 integral for the recognition of gender identity and gender expression).

In education, a national law exists, the LO⁷⁷ 8/2013 for the improvement of the education quality, in the article 124.2⁷⁸ which establishes that the students that “violate the personal dignity of other members of the educational community which have as their origin or consequence discrimination, or harassment based on gender, sexual orientation or identity”⁷⁹ will be expelled (temporary or permanent) from the center. That implies that the corrective measures of discrimination due to gender identity are enforced, and those not only cover for other student but also to teachers, administrative staff, etc.

A national law regarding Health also exists, the Law 33/2011 general about public health, in which the article 6.1 specifically says that “every person have the right to have public health actions carried out under conditions of equality without discrimination based on birth, racial or ethnic origin, sex, religion, conviction or opinion, age, disability, sexual orientation or identity, illness or any other personal or social condition or circumstance”. Overall, there is no ban for conversion therapy, but it is regulated in some regions: Valencia (Law 8/2017 integral for the recognition of gender identity and gender expression), Madrid (Law 3/2016 of integral protection against LGBTI-phobia, and the discrimination based on sexual orientation and identity in Madrid), Andalusia (Law 8/2017 to guarantee the rights, the equality of treatment and non-discrimination against LGBTI people and their families), and Aragon (Law 18/2018 of equality and integral

⁷⁷ Organic Law

⁷⁸ [...] Las medidas correctoras deberán ser proporcionadas a las faltas cometidas. Aquellas conductas que atenten contra la dignidad personal de otros miembros de la comunidad educativa, que tengan como origen o consecuencia una discriminación o acoso basado en el género, orientación o identidad sexual, o un origen racial, étnico, religioso, de creencias o de discapacidad, o que se realicen contra el alumnado más vulnerable por sus características personales, sociales o educativas tendrán la calificación de falta muy grave y llevarán asociada como medida correctora la expulsión, temporal o definitiva, del centro. [...].

⁷⁹ Article 124.2

protection against discrimination due to sexual orientation, gender identity and gender expression). There is no restriction for people based on gender identity in blood donations in Spain (see Annex 1, about blood donors in Spain). In general, neither at the national or regional level is there an equality body mandate. However, two regions have an equality action plan which includes gender identity: Catalonia (Law 11/2014 to guarantee the rights of lesbian, gay, transgender and intersexual people, and to eradicate the homophobia, biphobia and transphobia) and Navarra (Action plan 2019-2022 for the development of the Foral Law 8/2017 for the social equality of LGBTI+ people). Finally, the last part of reviewing the Spanish legislation about equality and non-discrimination is if there is any law about gender identity specifically, again it doesn't exist in a national level, but it does in some regions: Catalonia (Law 11/2014 to guarantee the rights of lesbian, gay, transgender and intersexual people, and to eradicate the homophobia, biphobia and transphobia), Extremadura (Law 12/2015 for social equality of lesbian, gay, bisexual, transexual, transgender and intersexual people, and public policy against discrimination for sexual orientation and gender identity), Andalusia (Law 2/2014 for non-discrimination due to gender identity and recognition of transexual peoples' rights), Canary Islands (Law 8/2014 for non-discrimination due to gender identity and recognition of transexual peoples' rights), Navarra (Law 12/2009 for non-discrimination due to gender identity and recognition of transexual peoples' rights), Madrid (Law 14/2015 for non-discrimination due to gender identity and recognition of transexual peoples' rights), Balearic Islands (Law 8/2016 to guarantee the rights of lesbian, gay, transgender and intersexual people, and to eradicate LGBTI phobia), Murcia (Law 8/2016 to equality of lesbian, gay, bisexual, transexual, transgender and intersexual people, and public policy against discrimination due to sexual orientation and gender identity in Murcia), Valencia (Law 8/2017 integral for the recognition of gender identity and gender expression), and Cantabria (Law 8/2020 to guarantee of lesbian, gay, trans, transgender, bisexual and intersexual peoples' rights and non-discrimination due to sexual orientation and gender identity).

7.1.2. Family

Regarding Spanish family legislation, there is marriage equality regardless of gender identity nor sexual orientation in the Law 13/2005 which modifies the Civil Code, in particular the article 44 "marriage shall have the same requirements and effects when both parties are of the same or different sex", and there is no proposition in the

constitution against same-sex marriage. Also, registered partnership with similar rights to marriage or cohabitation is legal in every region of Spain except Murcia, Castilla León, Castilla la Mancha and la Rioja, as well as legal cohabitation. About adoption, in the law 13/2005 which modifies the Civil Code, it establishes that “no one may be adopted by more than one person, unless the adoption is made jointly or successively by both spouses. The marriage celebrated subsequent to the adoption allows the spouse to adopt the children of his or her spouse”⁸⁰. Furthermore, regarding the assisted reproduction, the Law 3/2007 regulating the registry rectification of the mention related to the sex of persons, the first additional proposition which modifies the article 7.3 of the law 14/2006 about techniques of assisted human reproduction, it establishes that “2. In no case shall the registration in the Civil Registry reflect data from which the character of the generation can be inferred. 3. When the woman is married, and not legally or de facto separated, with another woman, the latter may declare before the Registrar of the Civil Registry of the conjugal domicile, that she consents that when the child of her spouse is born, the filiation with respect to the child born will be determined in her favor”, this is just for married women that have used assisted reproductive techniques in registered medical services with anonymous donor and previous consent. Besides, it was mandatory to “pre-filiate” the birth at the civil registry before it took place, which was a discriminatory measure compares to heterosexual couples. In addition, the article 6.1 of the Law 14/2006 about techniques of assisted human reproduction, says that “any woman over 18 years of age and with full capacity to act may be a recipient or user of the techniques regulated in this Law, provided that she has given her written consent to their use in a free, conscious and express manner. A woman may be a user or recipient of the techniques regulated in this Law regardless of her marital status and sexual orientation”. But it is important to remark that there is no proposition in any law that regulates the recognition of transgender parenthood.

7.1.3. Hate crime and hate speech

Regarding hate crime and hate speech, there is no Hate Crime Law, although as mentioned below, discrimination under the grounds of sexual orientation or gender identity is seen as an aggravant as expressed in the article 22.4 of the Spanish Penal Code⁸¹. However, hate speech is especially difficult to fight with legal instruments in

⁸⁰ Modification of the article 175.4 CC

⁸¹ Article 22.4: “Committing the crime for racist, anti-Semitic or any other type of discrimination based on the ideology, religion or beliefs of the victim, the ethnic group, race or nation to which he/she belongs,

Spain. Under the recent reform of the Penal Code, behavior such as transphobic or homophobic insults are no longer considered an offence in Spain.

7.1.4. Legal gender recognition

Regarding legal gender recognition, the Law 3/2007 regulating the registry rectification of the mention related to the sex of persons, in the article 1.1 recognizes that “any person of Spanish nationality, of legal age and with sufficient capacity to do so, may request the rectification of the registration of sex. The rectification of the sex will entail the change of the proper name of the person, so that it is not discordant with his or her registered sex”, the article 2 mentions the administrative laws in which is regulated the procedure⁸². About the age restriction the Constitutional Court On 18 July 2019 ruled against excluding trans minors from Law 3/2007 regulating legal gender recognition (LGR). The judgment lifts the age limitation on the law, making it possible for trans youth under 18 to change their gender marker the same way that adults would. Previously, trans minors had to go to court. Legal protections for trans youth vary across regions. In December 2019, the first minor changed his legal gender, as endorsed by the Supreme Court (this ruling also changed the procedure on name changes). The Spanish law does not regulate the self-determination of transgender people, as they have to be diagnosed by an expert (psychological opinion required)⁸³, need to be medicated for 2 years before they can change their gender officialy⁸⁴, and they are considered to have “gender

his/her sex, age, sexual or gender orientation or identity, reasons of gender, aporophobia or social exclusion, illness or disability, regardless of whether such conditions or circumstances are actually present in the person who is the object of the conduct.”

⁸² Article 2: The rectification of the registration of sex shall be processed and agreed upon subject to the provisions of this Law, in accordance with the rules established in the Civil Registry Law of June 8, 1957, for governmental files. The request for the rectification of the registry must include the choice of a new proper name, except when the person wishes to keep the one, he/she has and this is not contrary to the requirements established in the Law of the Civil Registry.

⁸³ Article 4: The registry rectification of the mention of the sex will be agreed upon once the applicant accredits:

(a) That he/she has been diagnosed with gender dysphoria. The accreditation of the fulfillment of this requirement will be made by means of a report of a doctor or clinical psychologist, registered in Spain or whose titles have been recognized or homologated in Spain, and that must make reference: 1. The existence of dissonance between the morphological sex or physiological gender initially registered and the gender identity felt by the applicant or psychosocial sex, as well as the stability and persistence of this dissonance. 2. The absence of personality disorders that could have a determining influence on the existence of the dissonance mentioned in the previous point.

⁸⁴ Article 4: The registry rectification of the mention of the sex will be agreed upon once the applicant accredits:

b) That she has been medically treated for at least two years to accommodate her physical characteristics to those corresponding to the claimed sex. The accreditation of the fulfillment of this requirement will be

dysphoria”, whilst the possibility of non-binary is not recognized. Instead, it is not required any surgical intervention⁸⁵, nor sterilization or divorce.

7.1.5. Civil society space

Regarding civil society space, the Organic Law 1/2002 regulating the association right, does not stablish any kind of obstruction for LGBTI+ associations to be created, operate or receive external funding. Also, the article 21 of the Spanish Constitution stablishes the fundamental right of reunion and the article 20 stablishes the fundamental right of speech freedom.

7.1.6. Asylum

Finally, regarding asylum the Law 12/2009 about asylum rights and subsidiary protection, stablishes in the article 3 that “refugee status is granted to any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion, membership of a particular social group, gender or sexual orientation, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or a stateless person who, not having a nationality and being outside the country of his former habitual residence, for the same reasons is unable or, owing to such fears, is unwilling to return to it, and is not subject to any of the grounds for exclusion under Article 8 or the grounds for refusal or revocation under Article 9”, and the article 7.e that “[...] [d]epending on the circumstances prevailing in the country of origin, a group based on a common characteristic of sexual orientation or sexual identity, and/or age is included in the concept of a particular social group, without these aspects alone giving rise to the application of this article. In no case may sexual orientation be understood as the commission of conduct typified as a crime in the Spanish legal system. Likewise, depending on the circumstances prevailing in the country of origin, it includes persons who flee their countries of origin due to a well-founded fear of persecution for reasons of gender and/or age, without these aspects alone

made by means of a report of the registered physician under whose direction the treatment has been carried out or, in its absence, by means of a report of a specialized forensic physician.

⁸⁵ Article 4.2: It will not be necessary for the granting of the registry rectification of the mention of the sex of a person that the medical treatment has included sexual reassignment surgery. The medical treatments referred to in letter b) of the previous paragraph will not be a necessary requirement for the granting of the registry rectification when there are health or age reasons that make it impossible to follow them and medical certification of such circumstance is provided.

giving rise to the application of this article”. But there is no policy or other measure regarding gender identity.

7.1.7. Overview table and graphic

Criteria	Is it covered?
Constitution mention	No
Employment	Partially (only in Catalonia, Extremadura, Galicia, Andalucía, Canary Islands, Navarra, Basque Country, Madrid, Balearic Islands, Murcia, Valencia, Aragon, Cantabria and La Rioja)
Goods and services	Partially (only in Catalonia, Extremadura, Galicia, Aragón, Balearic Islands, Madrid, Murcia, Valencia, Aragón and Cantabria)
Education	Yes
Health	Yes
Conversion therapy ban	Partially (only in Valencia, Madrid, Andalucía and Aragón)
Equality body mandate	No
Law about gender expression	Partially (only in Catalonia, Extremadura, Andalucía, Canary Islands, Navarra, Madrid, Balearic Islands, Murcia, Valencia and Cantabria)
Equality action plan	Partially (only in Catalonia and Navarra)
Blood donations	Yes
Marriage equality	Yes
Registered partnership	Partially (in all regions except Murcia, Castilla la Mancha, Castilla la Mancha and La Rioja)
Cohabitation	Partially (in all regions except Murcia, Castilla la Mancha, Castilla la Mancha and La Rioja)
No constitutional limitation on marriage	Yes
Joint adoption	Yes
Second-parent adoption	Yes

Automatic co-parent recognition	Yes
Medically assisted insemination (singles and couples)	Yes
Recognition of trans parenthood	No
Hate crime law about gender identity	Yes
Hate speech law about gender identity	Yes
Policy tackling hatred about gender identity	Partially (only in Catalonia and Navarra)
Existence of legal measures about gender recognition	Yes
Existence of administrative procedures about gender recognition	Yes
Name change	Yes
No age restriction in name change	Yes
Self-determination	No
Non-binary recognition	No
No gender identity disorder diagnosis/psychological opinión required	No
No compulsory medical intervention required	No
No compulsory surgical intervention required	Yes
No compulsory sterilization required	Yes
No compulsory divorce required	Yes
No age restriction	Yes
Legal gender recognition procedures for minors	Yes
Depathologisation	No
No obstruction for LGBTI events	Yes
Protection for LGBTI events	Yes
No obstruction for LGBTI associations	Yes
No laws limiting external funding	Yes
No laws limiting freedom of expression	Yes

Asylum law for gender identity	Yes
Policy/other positive measures for gender identity	No

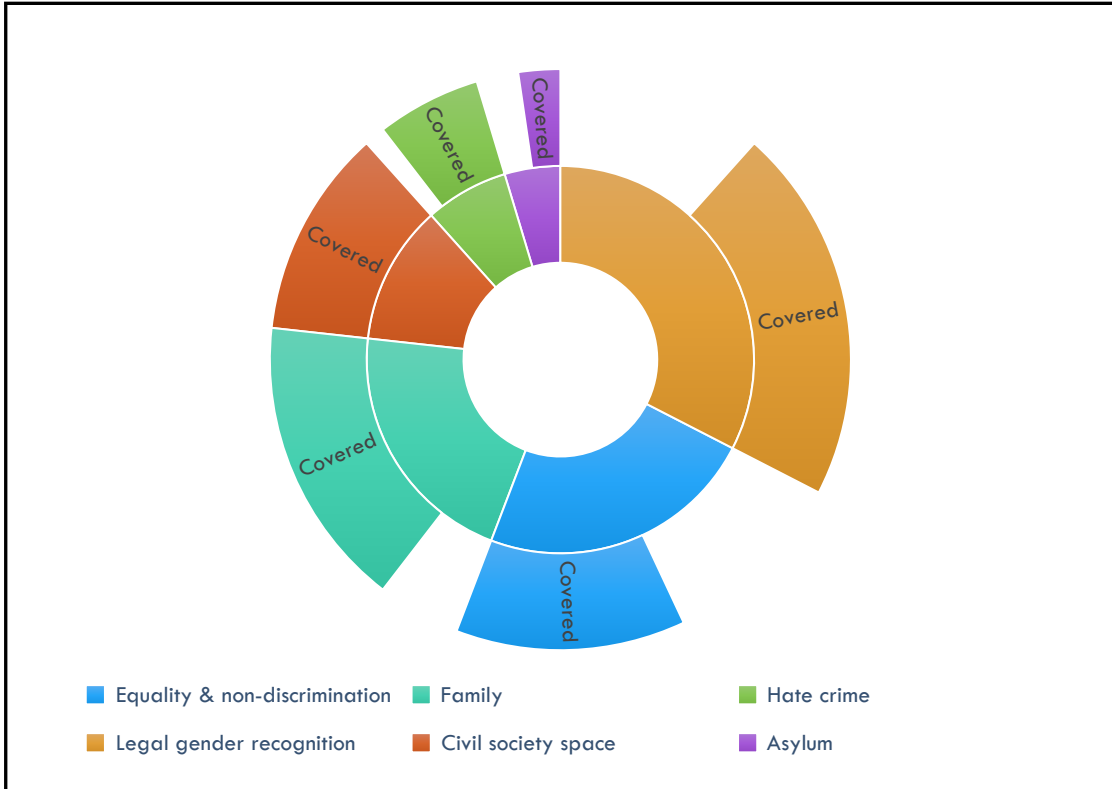


Figure 1 Topics covered by Transgender Spanish legislation (see annex 1 for more information)

7.2. Real problems and application

Regarding employment, the Court rule STS 2252/2021 declared legal for prostitutes (in this case were transgender prostitutes) to associate. However, the Supreme Court declare the article 4 of the “Organization of Sex Workers” invalid, as it expressed that “The union will develop its activities within the functional scope of activities related to sex work in all its aspects”, and based on Spanish Civil law the object of a contract must be legal and in Spain sex work is not.

Regarding freedom of expression, due to the Supreme Court rule STS 1163/2020 that established the impossibility of using the LGBT flag by public entities, many other courts have declared the same as in Zaragoza in the SJCA 126/2021.

Regarding health, during the lockdown in 2020 the “Federacion Estatal de Lesbianas, Gais, Trans i Bisexuales”⁸⁶ (FELGTB) received 266% more call in their “rainbow line” (a number of telephonic attentions for LGTB people to help them when suffering hate crimes)⁸⁷. Also, the FELTGB made an investigation about the reality of transgender women in their “transition” in which is cleared the difficulties they go through without help⁸⁸, or with help of some associations that of course make a great labor, but this help should come from the state, as is their obligation. Moreover, during the first semester of 2021 there was hormone shortages in Spain, which was a health problem for a lot of transgender people, Mar Cambrollé (the president of Plataforma Trans) explained that “Trans people are living a situation of unprotection by the State unparalleled in the history of our democracy, to the high levels of violence and decibels that the anti-trans rights discourse has reached as a reaction to the advance in rights raised by the Trans Law, we must add the prolonged shortage of the necessary medicines for the hormonal treatment that trans people receive, something that is already putting our lives in check, since the interruption of this treatment causes serious consequences in our health”, and added that “We demand the Ministry of Health to implement the necessary mechanisms as a matter of urgency to protect the health of trans people, manufacturing the medicine through a magistral formula immediately to alleviate the current situation and provide for future measures to ensure the proper supply of medicines. It is imperative to put a solution to this problem that has been recurring periodically since 2016: the life and health of trans people also matter”, which elucidates that the problem was not a one-time thing, but it has been a major problem for transgender people for years. Added to transgender people actual problems, in 2021 a doctor in Murcia diagnosed a patient as “homosexual” which⁸⁹, as set out above (see “transgender” the term), the WHO already banished from the list of mental diseases.

Regarding asylum, the association Kifkif (association of LGBT migrants and refugees) alerted on February 2021 that positive cases on VIH amongst the LGBT

⁸⁶ State Federation of Lesbians, Gays, Trans and Bisexuals

⁸⁷ FELGTBI+. (2021). Retrieved from Las llamadas de personas trans a la Línea Arcoíris de FELGTB aumentaron más de un 250% durante el confinamiento: <https://felgtb.org/blog/2020/09/10/las-llamadas-de-personas-trans-a-la-linea-arcoiris-de-felgtb-aumentaron-mas-de-un-250-durante-el-confinamiento/>

⁸⁸ Experiencia de las mujeres trans en su proceso de transición médica. (2021). *FELGTB*. Retrieved from <https://felgtb.org/wp-content/uploads/2021/01/experienciamujeretransProcesoTranscionMedica.pdf>

⁸⁹ Catanesi, S. C. (2021, october 6). *El Diario*. Retrieved from Un ginecólogo de Murcia diagnostica como enfermedad la homosexualidad de una paciente que acudió a su consulta: https://www.eldiario.es/murcia/sociedad/medico-diagnostica-enfermedad-homosexual-paciente-cita-ginecologica-murcia_1_8372717.html

refugees increased, only in January 2021 an 8% of tests were positive (out of 51 total tests between Getafe and Madrid), while the year earlier the tests that came out positive were the 5'61% out of the 213 total tests done. The association said that the group that are more affected by this are refugee transgender women, as the 60% (according to their data) are prostitutes, as they have a lot of difficulties finding a “normal” job based on their gender identity (in addition to their vulnerability for being refugees).⁹⁰ Also, in March 2021 the same association reported that as notified by the “*Unidad de Gestion de la Diversidad de la Policia Municipal de Madrid*”, that year decreased the number of reports for hate crimes (55 in 2020, while in 2019 were 88); they also reported that the European Agency of Fundamental rights explained that only the 10% of hate crimes are reported, which implies that LGBT refugees or migrants are afraid or they are not willing to these kind of crimes⁹¹.

8. Review on transgender people protection in Belgium

Methodology used in Annex 1

8.1. Legislation

8.1.1. Equality and non-discrimination

Regarding the Belgian legislation about equality and non-discrimination, in their constitution there is no reference about gender identity, the Law to combat certain forms of discrimination⁹² rules propositions for employment equality, for goods and services, health and education (this is understood as the national law for gender identity and expression) the Act amending the Act of May 10, 2007 to combat discrimination between women and men in order to extend it to gender identity and gender expression⁹³. There is no ban for conversion therapy, as well as an equality action plan, but there is an equality body mandate amongst gender identity the institute for equality for women and men that is “the autonomous federal public institution responsible for guaranteeing and promoting gender equality and to combat any form of gender-based discrimination and inequality

⁹⁰ Kifkif alerta del incremento de casos positivos por VIH en refugiados LGTBI, especialmente entre mujeres trans migrantes. (2021). *Kifkif*. Retrieved from <https://kifkif.info/kifkif-alerta-del-incremento-de-casos-positivos-por-vih-en-refugiados-lgtbi-especialmente-entre-mujeres-trans-migrantes/>

⁹¹ Kifkif hace un llamamiento ante el aumento de infradenuncias de Migrantes LGTBI por miedo a represalias. (2021). *Kifkif*. Retrieved from <https://kifkif.info/kifkif-hace-un-llamamiento-ante-el-aumento-de-infradenuncias-de-migrantes-lgtbi-por-miedo-a-represalias/>

⁹² Wet ter bestrijding van bepaalde vormen van discriminatie (2007)

⁹³ Wet tot wijziging van de wet van 10 mei 2007 ter bestrijding van discriminatie tussen vrouwen en mannen met het oog op de uitbreiding ervan naar genderidentiteit en genderexpressie

by developing and implementing a fitting legal framework, structures, strategies, tools and actions”⁹⁴.

8.1.2. Family

Regarding family, there is the marriage equality by the Act to open marriage to persons of the same sex and to amend certain provisions of the Civil Code. In Belgium there is no registered partnership with the same rights as marriage but with limited rights by the Act of 23 November 1998, gave limited rights to registered same-sex and opposite-sex couples by amending certain provisions of the Belgian Civil Code, as well as cohabitation in the Law to introduce legal cohabitation⁹⁵, in the article 2 (that changed articles 1475 to 1479 of the Civil Code), and in the Constitution there is no limitation on marriage. For adoptions, the Act to amend certain provisions of the Civil Code to allow adoption by persons of the same sex (2006)⁹⁶, in its article 2 establishes that “In article 343, § 1, of the Civil Code, replaced by the Law of April 24, 2003 and amended by the Law of December 27, 2004, the following amendments are made: 1. in a), the words *of a different gender* are deleted”, and the articles 3 to 8 establish some procedures and other provisions for equality in that matter, and the article 4 establishes for second-parent adoption that “article 353-2 of the same Code, inserted by the Law of April 24, 2003, the existing text of which will constitute § 1, is supplemented by a § 2 reading :

‘ § 2. If a person adopts the child or adoptive child of his same-sex spouse or of the same-sex person with whom he cohabits, the latter and the adopter shall declare before the court by mutual agreement which of the two shall give his name to the adoptee. This declaration shall be noted in the judgment.

If, as a result of a previous adoption, the name of the adopter has been added to that of the adoptee, the parties may request the court that the name of the latter shall henceforth be composed of the original name of the adoptee or the name of the previous adopter, preceded or followed by the name chosen in accordance with Article 353-1, § 2, paragraph 1. The adoptee who, prior to a previous adoption, bore the same name as that chosen in accordance with Article 353-1, § 2, paragraph 1, shall adopt that name without modification”’. Regarding automatic co-parent recognition, the Act establishing the

⁹⁴ Institut for the Equality of Women and Men. (2022, May 15). *THE INSTITUTE FOR THE EQUALITY OF WOMEN AND MEN*. Retrieved from <https://igvm-iefh.belgium.be/en>

⁹⁵ Wet tot invoeren van de wettelijke samenwoning

⁹⁶ Wet tot wijziging van een aantal bepalingen van het Burgerlijk Wetboek, teneinde de adoptie door personen van hetzelfde geslacht mogelijk te maken

parentage of the co-mother⁹⁷, establishes in the different provisions (chapter 2) some changes for the Civil Code that make no barriers in order to be recognized legally from birth to their parents, and for medically assisted insemination for couples and singles exists the Law on medically assisted reproduction and the destination of surplus embryos and gametes⁹⁸. It is also relevant that since the administrative procedure was simplified in 2008 there is no need for parents to fill in the birth certificates their gender.

8.1.3. Hate crime and hate speech

Regarding hate crime and hate speech, there is no law that legislates about hate crimes based on gender identity nor any policy tackling hatred based on gender identity. However, it does exist the Act amending the Act of May 10, 2007, to combat discrimination between women and men in order to extend it to gender identity and gender expression, that punishes the hate speech based on gender identity.

8.1.4. Legal gender recognition

Regarding legal gender recognition, the Law of June 25, 2017 reforming regulations on transgender people as regard the indication of an adjustment of the registration of gender in civil status records and its consequences⁹⁹ establishes the legal measures to legally change the gender, the administrative procedures (article 3) and it allows the name change (chapter 2) which can be made from the age of 12 with parents' permission, and from the age of 16 "a minor who has not been disowned may make a declaration"¹⁰⁰ to legally change their gender status or name. The chapter 3 and 4 of the law establish the self-determination of the gender, the non-requirement for a psychological opinion or gender identity disorder diagnosis, as well as the non-compulsory medical intervention, surgical intervention, sterilization or divorce. However, there is no procedure for non-binary people.

8.1.5. Civil society space

Regarding civil society space, the articles 25 to 27 of the Belgian Constitution¹⁰¹, there is freedom of assembly for LGBT people, and those can operate without obstruction,

⁹⁷ Wet houdende de vaststelling van de afstamming van de meemoeder

⁹⁸ Wet betreffende de medisch begeleide voortplanting en de bestemming van de overtallige embryo's en de gameten

⁹⁹ Wet tot hervorming van regelingen inzake transgenders wat de vermelding van een aanpassing van de registratie van het geslacht in de akten van de burgerlijke stand en de gevolgen hiervan betreft 25 Juni 2017

¹⁰⁰ Article 3.11

¹⁰¹ Article 25: "The press is free; censorship can never be introduced; no security can be demanded from authors, publishers or printers. When the author is known and resident in Belgium, neither the publisher, the printer nor the distributor can be prosecuted."

LGBTI rights defenders are not at risk, and public events can be held without obstructions.

8.1.6. Asylum

Regarding Asylum, the Law amending the Law of 15 December 1980 on the entry, stay, establishment and removal of foreigners, the Law of 12 January 2007 on the reception of asylum seekers and of certain other categories of foreigners and the Organic Law of 8 July 1976 on the public centers for social welfare¹⁰² establishes in the article 3.2 that “[...] [g]ender aspects, including gender identity, shall be duly taken into account when determining whether a person belongs to a particular social group or when identifying a characteristic of such a group,” and as other positive measure for transgender people seeking asylum, the Commissioner-General has a gender group that provides training on LGBT issued for protection officers.

8.1.7. Overview table and graphic

Criteria	Is it covered?
Constitution mention	No
Employment	Yes
Goods and services	Yes
Education	Yes
Health	Yes
Conversion therapy ban	No
Equality body mandate	Yes
Law about gender expression	Yes
Equality action plan	No
Blood donations	No
Marriage equality	Yes
Registered partnership	Partially (with limited rights)

Article 26: “Belgians have the right to gather peaceably and without arms, in accordance with the laws that can regulate the exercise of this right, without submitting it to prior authorization. This provision does not apply to open air meetings, which are entirely subject to police regulations.”

Article 27: “Belgians have the right to enter into association or partnership; this right cannot be subject to any preventive measure.”

¹⁰² Wet tot wijziging van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, van de wet van 12 januari 2007 betreffende de opvang van asielzoekers en van bepaalde andere categorieën van vreemdelingen en van de organieke wet van 8 juli 1976 betreffende de openbare centra voor maatschappelijke welzijn

Cohabitation	Yes
No constitutional limitation on marriage	Yes
Joint adoption	Yes
Second-parent adoption	Yes
Automatic co-parent recognition	Yes
Medically assisted insemination (singles and couples)	Yes
Recognition of trans parenthood	Yes
Hate crime law about gender identity	No
Hate speech law about gender identity	Yes
Policy tackling hatred about gender identity	No
Existence of legal measures about gender recognition	Yes
Existence of administrative procedures about gender recognition	Yes
Name change	Yes
No age restriction in name change	No
Self-determination	Yes
Non-binary recognition	No
No gender identity disorder diagnosis/psychological opinion required	Yes
No compulsory medical intervention required	Yes
No compulsory surgical intervention required	Yes
No compulsory sterilization required	Yes
No compulsory divorce required	Yes
No age restriction	No
Legal gender recognition procedures for minors	Yes
Depathologisation	No
No obstruction for LGBTI events	Yes

Protection for LGBTI events	Yes
No obstruction for LGBTI associations	Yes
No laws limiting external funding	Yes
No laws limiting freedom of expression	Yes
Asylum law for gender identity	Yes
Policy/other positive measures for gender identity	Yes



Figure 2: Topics covered by Transgender Belgian legislation (see annex 2 for more information)

8.2. Real problems and application

Regarding employment, a study on behalf of the city of Ghent carried out by the University of Ghent, showed that “people who indicated in their CV or motivation letter that they were transgender were 29% less likely to be invited for a job interview”. Liesbet Stevens, director of the Interfaculty Institute for Family and Sexuality Studies remarked that “[w]e already knew that trans persons often face discrimination, not only in the labor market, but in all areas of life. This study now puts concrete figures on it. The results of the field tests are disturbing, and therefore read like a call to politicians to continue investing in the mission of the Institute.”¹⁰³ Moreover, the study revealed that “age

¹⁰³ News.Belgium. (2021, June 30). Retrieved from Trans personen 29% minder vaak op sollicitatiegesprek: <https://news.belgium.be/nl/trans-personen-29-minder-vaak-op-sollicitatiegesprek>

discrimination is more common amongst women than men, and that among persons with a migrant background, it is mainly men who are less likely to receive a positive response.”¹⁰⁴

Regarding equality and non-discrimination, the federal government failed to have its Interfederal Action Plan on Sexual Orientation, Gender Identity and Expression and Sex Characteristics ready by the 2021 deadline. In addition, in 2018 StepStone a Belgian jobsite asked 121 transgender employees from different industries across Belgium, the results were that 39% of respondents had left their employer for the unwelcoming environment, and 2 out of 3 transgender respondents had experienced discrimination due to being a transgender employee.¹⁰⁵

Regarding health, the investigation “Being Transgender in Belgium” made by the Institute for the Equality of Women and Men (with collaboration the University of Ghent and the University of Antwerp), discovered that in 2016, 45’1% of transgender people considered suicide during the last year and 6’9% attempted suicide. In comparison with non-transgender Belgian population, the numbers are really high, as the 14% considered suicide and 4’2% previously attempted suicide.¹⁰⁶ In the same investigation, the IEWM asked a group of transgender of the three different regions of Belgium (Walloon, Flemish, Brussels-Capital) about their life satisfaction within 1 to 10, it came out that the average score was 6’1, but in Brussels-Capital specifically the score was 6’97, that makes transgender people from that region generally happier than from the others. However, this numbers are low, as the average score of the country for cisgender people is 7’6.

Regarding education, the same investigation by the IEWM indicated that the 60% students who are not open about their gender identity report being criticized sometimes or always, compared to the 30’5% of those that live openly. However, the transgender students that live openly experience a lot more infringements of privacy (they are asked about their dead-name¹⁰⁷, their genitals, etc.), 43’8% versus 6’7% of those that do not live openly.

¹⁰⁴ News.Belgium. (2021, June 30). Retrieved from Trans personen 29% minder vaak op sollicitatiegesprek: <https://news.belgium.be/nl/trans-personen-29-minder-vaak-op-sollicitatiegesprek>

¹⁰⁵ Cramers, K. (2018). *StepStone*. Retrieved from <https://www.stepstone.be/about-us/press-room/4-10-belgian-transgender-employees-quit-job-due-unwelcoming-environment/>

¹⁰⁶ Institute for the Equality of Women and Men. (2017). *Being Transgender in Belgium*. Brussels.

¹⁰⁷ That term mis used for the name a transgender person used to use before the transition.

In general, this investigation is useful to get an idea of what transgender people live daily, because the real change for them it is not only in the law, for being addressed by the wrong pronoun is something they suffer but it is not possible to legislate about.

9. Review on transgender people protection in Italy

The procedure of the review is in the Annex 1.

9.1. Legislation

9.1.1. Equality and non-discrimination

Regarding equality and non-discrimination, in the Italian Constitution¹⁰⁸ there is no explicit reference to gender identity, on the contrary the article 3 of it establishes that “all citizens have equal social dignity and are equal before the law, without distinction based on gender, race, language, religion, personal and social conditions”, and “personal conditions” can be interpreted (and is by the courts) widely. There is no employment law that establishes any proposition for gender identity equality or non-discrimination, nor exists any ban for conversion therapy, an equality action plan, equality body mandate, or law about gender expression. On a national level it does not exist either any law for gender identity equality or non-discrimination in education, goods and services or health. However, in some regions there are laws covering those fields: in Umbria exists the Law against discrimination and violence determined by sexual orientation and gender identity¹⁰⁹, the articles 2 to 5 rules employment¹¹⁰, the article 6 rules health¹¹¹, and the article 8 rules goods and services¹¹²; in Emilia-Romagna exists the Regional Law against

¹⁰⁸ *La Costituzione*

¹⁰⁹ *Norme contro le discriminazioni e le violenze determinate dall'orientamento sessuale e dall'identità di genere (2016)*

¹¹⁰ Articles 2.2 and 2.3 : “2. [...] the Region and local authorities, to the extent of their competence, work to ensure that every person, regardless of sexual orientation or gender identity, has equality of opportunity and non-discrimination in access to educational and vocational training paths, in job placement and the use of related services, in job retention and retraining, in career paths and in remuneration. 3. The Region, in particular, through the employment services guarantees appropriate accompanying measures in order to support people, who are discriminated against for reasons arising from sexual orientation or gender identity, in the identification and construction of training and job placement paths that enhance individual qualities and direct them to the tools for the promotion and start-up of new businesses.”

¹¹¹ Articles 6.1 and 6.3 “1. Local health units and social and welfare services, with their own staff, promote and ensure appropriate information, counseling and support interventions to remove obstacles that prevent people from accepting and expressing their sexual orientation or gender identity. 3. [...] the entities referred to in paragraph 1 shall activate forms of collaboration, rendered free of charge, with associations that work in the field of combating discrimination and violence determined by sexual orientation and gender identity.”

¹¹² Article 8.2: “The Region, within the scope of its powers, in implementation of the constitutional principles of equality and non-discrimination, works to ensure and guarantee equal access to public and

discrimination and violence determined by sexual orientation or gender identity¹¹³, the article 2 rules employment¹¹⁴, the article 5 rules health¹¹⁵, but there is no provision for goods and services; in Piedmont exists the Rules for implementing the prohibition of all forms of discrimination and equal treatment in matters of regional competence¹¹⁶, the articles 7 and 8 rule employment¹¹⁷, the article 6 rules health¹¹⁸, and the article 5 rules goods and services¹¹⁹; in Tuscany exists the Rules against discrimination determined by

private services for each person and to implement the principle that the services provided by these services cannot be refused or administered in a detrimental manner because of sexual orientation or gender identity.”

¹¹³ *Legge Regionale contro le discriminazioni e le violenze determinate dall'orientamento sessuale o dall'identità di genere (2019)*

¹¹⁴ Article 2.1, 2.2. and 2.3: “1. The Region and local authorities, within the scope of their respective competencies, adopt interventions aimed at countering acts and behaviors that discriminate against people on the grounds of sexual orientation or gender identity, through the promotion of specific projects in support of victims of discrimination in the context of active labor policies, vocational training and retraining as well as for job placement, after discussion with the most representative trade unions and, to the extent of their competence, in collaboration with the Regional Equality Advisor referred to in Legislative Decree April 11, 2006, no. 198 (Code of equal opportunities between men and women, pursuant to Article 6 of Law No. 246 of November 28, 2005) and in accordance with the provisions of Article 32 bis of Regional Law No. 6 of 2014.

2. The Region and local authorities, in their codes of conduct and staff training and refresher courses, shall promote equal treatment of all sexual orientation and gender identity, including by combating discriminatory stereotypes and offensive or derogatory language.

3. For the purposes of this law, discriminatory stereotypes are understood, with full respect for the freedom of thought, education and expression constitutionally guaranteed to all citizenship, to mean prejudices that produce effects detrimental to the dignity, freedoms and inviolable rights of the person, limiting his or her full development.”

¹¹⁵ Article 5.1: “1. The Regional Health Service, social welfare and social-health services support and promote information, counseling and support initiatives on specific issues involving gay and lesbian, transgender, transsexual and intersex people. The same initiatives are offered to parents and families.”

¹¹⁶ *Norme di attuazione del divieto di ogni forma di discriminazione e della parità di trattamento nelle materie di competenza regionale (2018)*

¹¹⁷ Articles 1 (d) and article 3: “[...] (d) update the professional profiles and objectives for which specific training is provided within the regional vocational training system, in order to include appropriate modules on the prohibition of discrimination and the principle of equal treatment.” “3. Within the scope of its competence in labor policies, the Region:

(a) works to ensure that every person, regardless of the conditions described in Article 2, paragraph 1, letter (a), is guaranteed the right to work and access to job placement paths and the use of related services;

(b) promotes, in conjunction with the social partners and public and private entities working for the purposes of this law, initiatives to raise awareness, training and updating on the prohibition of discrimination and the principle of equal treatment aimed at workers, employers and corporate management;

(c) promote, in conjunction with other public and private entities active in the field of labor policies and in the field of anti-discrimination, initiatives to raise awareness, training and updating on the prohibition of discrimination and the principle of equal treatment addressed to staff working at employment services active in the regional territory.”

¹¹⁸ Article 6: “1. Within the scope of its competencies in the field of health, health care provision and social policies, the Region:

(a) incorporate the prohibition of discrimination and the principle of equal treatment on the basis of the conditions described in Article 2, paragraph 1 (a), into the planning, organization and management of health and social services and the integrated system of interventions;

(b) promote training and refresher initiatives for staff of local health agencies and primary care physicians on the prohibition of discrimination and the principle of equal treatment, in cooperation with trade unions and professional organizations and public and private entities working for the purposes of this law.”

¹¹⁹ Article 5: “1. The Region, within the scope of its competencies, ensures equal access to public and private services to every person, regardless of the conditions described in Article 2, paragraph 1 (a), and

sexual orientation or gender identity¹²⁰, in which the articles 2 to 5 rule employment¹²¹, the article 8 and 9 rule health¹²², and the article 7 rules goods and services¹²³; in Marche exists the Regional Law against discrimination determined by sexual orientation or gender identity¹²⁴ in which article 2.3 rules employment¹²⁵, the articles 2.1 and 2.2 rule health¹²⁶, but there is no provisions that rule goods and services; and finally, in Sicily exists the Rules against discrimination determined by sexual orientation sexual orientation or gender identity and Establishment of the regional register of civil unions¹²⁷,

implements the principle that the services provided by these services cannot be refused or administered by implementing the direct or indirect discriminatory behaviors referred to in Article 2.

2. The Region, within the scope of its competence in the area of the right to housing and in accordance with the provisions on social housing, shall work to prevent and combat discrimination in access to housing based on the conditions described in Article 2, paragraph 1 (a).”

¹²⁰ *Norme contro le discriminazioni determinate dall'orientamento sessuale o dall'identità di genere (2009)*

¹²¹ Article 2.2: “2. The Region of Liguria, through Regional Law May 11, 2009, No. 18 (Regional Educational System of Education, Training and Guidance) and subsequent amendments and additions and Regional Law August 1, 2008, No. 30 (Regional Standards for the Promotion of Employment) and subsequent amendments and additions, works to ensure to every person, regardless of gender or sexual orientation, equality of opportunity and non-discrimination in access to education and vocational training paths, in the insertion to work and the use of related services, in the permanence at work, in career paths and in remuneration.”

Article 3: “1. Consistent with the strategies of the European Union for the development of human resources, the Region and the Provinces promote the enhancement of professional culture, related to the positive acquisition of each person's sexual orientation or gender identity.

2. The Region and Provinces, including through the Regional Employment System, support users in identifying and constructing training and job placement paths that enhance individual qualities and direct them to tools for promoting and starting new businesses.”

¹²² Article 9.1. and 9.5: “1. Local health agencies (ASLs) shall ensure appropriate information, counseling and support interventions to remove obstacles to the free expression and manifestation of one's sexual orientation or gender identity. [...] 5. In order to promote particular social prominence on issues of discrimination and to establish circuits of information and solidarity among users, ASLs must allow access to and periodic reviews with associations and groups representing different sexual orientations or gender identities.”

¹²³ Article 7.1: “1. The Region, within the scope of its powers, works to ensure transparency and guarantee equal access to public and private services for everyone, and implements the principle that the services provided by these services cannot be refused or administered in a deterrent manner for the causes of discrimination.”

¹²⁴ *Disposizioni contro le discriminazioni determinate dall'orientamento sessuale o dall'identità di genere (2010)*

¹²⁵ Article 2.3: “3. The Region shall promote active labor policies aimed at avoiding exposure to the risk of social exclusion for reasons related to sexual orientation and gender identity.”

¹²⁶ Article 2.1.: “1. The Region, the Provinces and the Regional Health Service Boards, within the scope of their competencies, promote training and professional development initiatives on the specific health and social issues of homosexuality and on the best ways to intervene for public workers in contact with victims of discrimination or crimes related to sexual orientation and gender identity.”

¹²⁷ *Norme contro la discriminazione determinata dall'orientamento sessuale o dall'identità di genere. Istituzione del registro regionale delle unioni civili. (2015)*

which article 3 rules employment¹²⁸, the article 4 rules health¹²⁹, and the article 7 rules goods and services¹³⁰. Regarding all set out above it is relevant to mention that according to the article 117 of the Italian Constitution, Regions only have concurring legislative powers in most of the relevant topics, which means that protection in the area covered by regional laws are limited only to the competences of the Regions (except Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/Südtirol and Valle d'Aosta/Vallée d'Aoste that according to the article 116 of the Italian Constitution have special forms and conditions of autonomy). Regarding blood donations, on the Decree of the Ministry of Health from 26/01/2001 is listed the reasons for permanent exclusion, and it is not one the “non-normative” gender identity or sexual orientation.

9.1.2. Family

Regarding family, there is not marriage equality for same-sex couples; it doesn't exist cohabitation; nor joint adoption for, automatic co-parent recognition (in the court rule 237/2019, the Constitutional Court declared inadmissible the registration of two lesbian mothers of their child), second-parent adoption, medically assisted insemination for same-sex couples (in the court rule 221/2019, the Constitutional Court declared legit the ban of assisted insemination for same-sex couples); it is not recognized trans parenthood; and it is not legislated medically assisted insemination for singles. There is a constitutional limitation on marriage and was perpetuated by the Constitutional Court in the rule 170/2014, which established that marriage based on the article 29 on the Italian Constitution is an institution for different-sex couples only. However, considering the

¹²⁸ Article 3.1: “1. The region shall work, within the scope of its competencies, so that the integrated system of education and vocational training vocational training and the system of employment services concur to ensure the effectiveness of the right to education and training throughout life and the right to work. It works to ensure that every person, regardless of membership gender or sexual orientation, equality of opportunities and non-discrimination in access to paths of education, higher education and vocational training, in job placement and the use of related services, in career paths and remuneration.”

¹²⁹ Article 4.1. and 4.4: “1. The region operates, within the scope of its competencies, in matters of planning and management of health and social services with reference to the purpose of this law, through the implementation of the principles set forth in this article. 4. Provincial health agencies, within the scope of their own competencies and in the planning of the Regional Health Plan, shall ensure adequate information, assistance, counseling and support to remove obstacles to the free expression and manifestation of one's sexual orientation or of one's gender identity.”

¹³⁰ Article 7.1: “1. The region, within the scope of its powers, works to ensure transparency and guarantee each person equal access to public and private services and implements the principle according to which the services provided within the framework of such services may not be denied or administered in a detrimental manner for causes attributable to discrimination related to sexual orientation sexual orientation and gender identity.”

Regulation of same-sex civil unions and regulation of domestic partnerships¹³¹, registered partnership with similar rights to marriage is allowed.

9.1.3. Hate crime and hate speech

Regarding hate crime and hate speech, it is not on a national or regional level legislated hate crime law or hate speech law based on gender identity, nor exists any policy tackling hatred based on gender identity.

9.1.4. Legal gender recognition

Regarding legal gender recognition, the law 164/1982 in the matter of sex attribution rectification¹³² rules different measures for legally changing the gender, it allows on it the name change, it establishes the procedures for minors (the plea must be introduced by both parents or guardians) and introduces the administrative procedure to do it (a ruling court is necessary for it¹³³). This same law establishes that there is no self-determination, as a gender identity disorder diagnosis or psychological opinion is required, which means that is compulsory a medical intervention and it is not depathologized. However, on November 5th, 2015, the Constitutional Court ruled that “sex reassignment should be placed outside the medicalizing discourse,”¹³⁴ so there is no medical treatment necessary, a surgical intervention or sterilization. Also, as set out above regard marriage, when a different-sex couple is married and one of them legally changes their gender, they must divorce as it establishes the article 4 of the Law 164/1982 in the matter of sex attribution rectification¹³⁵.

¹³¹ *Regolamentazione delle unioni civili tra persone dello stesso sesso e disciplina delle convivenze (2016)*

¹³² *Norme in materia di rettificazione di attribuzione di sesso.(1982)*

¹³³ Article 2 “The application for sex attribution rectification referred to in Article 1 shall be made by appeal to the court of the place where the plaintiff resides.

The president of the court shall designate the investigating judge and shall set by decree the date for hearing the appeal and the time limit for service on the spouse and children.

The prosecutor participates in the trial pursuant to Article 70 of the Code of Civil Procedure.

When necessary, the investigating judge shall by order order the acquisition of counseling intended to ascertain the psycho-sexual conditions of the person concerned. In the judgment granting the application for sex attribution rectification, the court shall order the civil registrar of the municipality where the birth record was compiled to make the rectification in the relevant register.”

¹³⁴ Corte costituzionale, sentenza n. 221 del 5 novembre 2015

¹³⁵ Article 4: “[...] [i]t causes the dissolution of the marriage or the termination of the civil effects resulting from the transcription of the marriage celebrated by religious rite. The provisions of the Civil Code and Law No. 898 of December 1, 1970, as amended, shall apply.

9.1.5. Civil society space

Regarding civil society space, the Italian constitution on its article 17 establishes that “[c]itizens have the right to assemble peaceably and unarmed. No previous notice is required for meetings, including those held in places open the public. In case of meetings held in public places, previous notice shall be given to the authorities, who may prohibit them only for proven reason of security or public safety”, the article 21 establishes that “[a]nyone has the right to freely express their thoughts in speech, writing, or any other form of communication”. Also, there is no law that limits external funding for LGBTI+ associations, nor freedom of expression (in a respectful way).

9.1.6. Asylum

Regarding asylum, the Legislative Decree n° 142 from August 18th, 2015, establishes in its article 17.1 that “The reception measures provided for in this decree take into account the specific situation of vulnerable persons, such as [...] physical or sexual violence or violence related to sexual orientation or gender identity, and victims of genital mutilation”, but there is no other policy or positive measure based on gender identity.

9.1.7. Overview table and graphic

Criteria	Is it covered?
Constitution mention	No
Employment	No
Goods and services	Partially (only in Umbria, Emilia-Romagna, Piedmont, Tuscany, Liguria, Marche e Sicily)
Education	Partially (only in Umbria, Emilia-Romagna, Piedmont, Tuscany, Liguria, Marche e Sicily)
Health	Partially (only in Umbria, Emilia-Romagna, Piedmont, Tuscany, Liguria, Marche e Sicily)
Conversion therapy ban	No
Equality body mandate	No
Law about gender expression	No

Equality action plan	No
Blood donations	Yes
Marriage equality	No
Registered partnership	Yes
Cohabitation	No
No constitutional limitation on marriage	No
Joint adoption	No
Second-parent adoption	No
Automatic co-parent recognition	No
Medically assisted insemination (singles and couples)	No
Recognition of trans parenthood	No
Hate crime law about gender identity	No
Hate speech law about gender identity	No
Policy tackling hatred about gender identity	No
Existence of legal measures about gender recognition	Yes
Existence of administrative procedures about gender recognition	Yes
Name change	Yes
No age restriction in name change	No
Self-determination	No
Non-binary recognition	No
No gender identity disorder diagnosis/psychological opinion required	No
No compulsory medical intervention required	No
No compulsory surgical intervention required	Yes
No compulsory sterilization required	Yes
No compulsory divorce required	No
No age restriction	Yes

Legal gender recognition procedures for minors	Yes
Depathologisation	No
No obstruction for LGBTI events	Yes
Protection for LGBTI events	Yes
No obstruction for LGBTI associations	Yes
No laws limiting external funding	Yes
No laws limiting freedom of expression	Yes
Asylum law for gender identity	Yes
Policy/other positive measures for gender identity	No

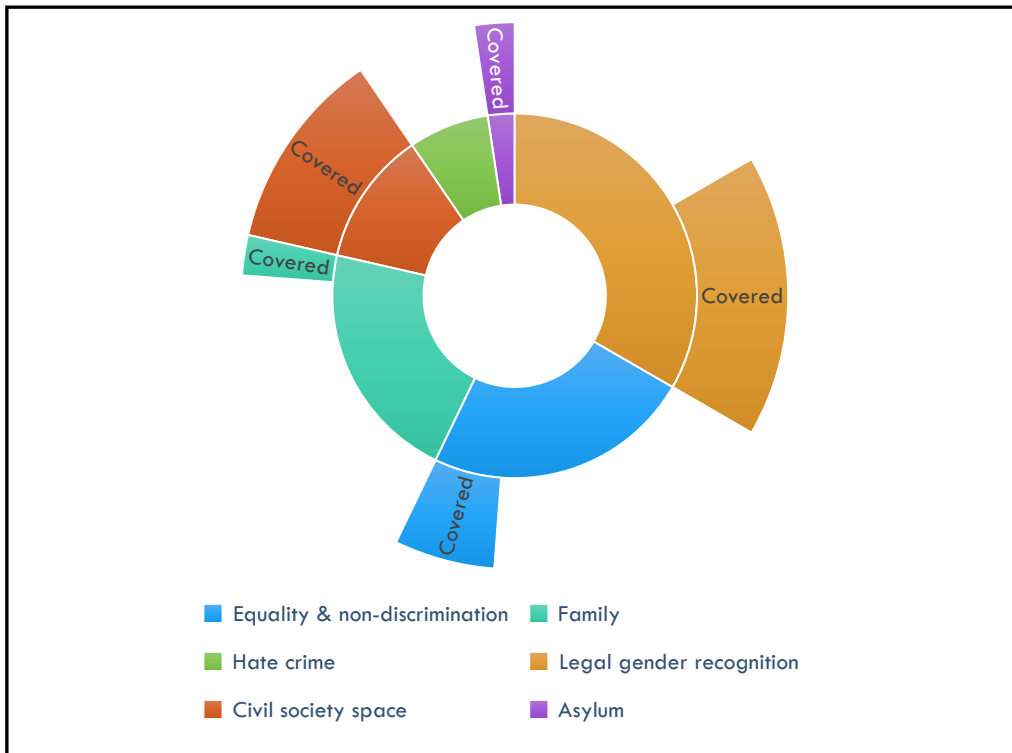


Figure 3: Topics covered by Transgender Italian legislation (see annex 5 for more information)

9.2. Real problems and application

Regarding hate speech, it is very common (including from politicians and religious figures). In January 2021, Maurizio Patriciello a recognized priest from Napoli tweeted “I was born of a father and a mother. My father's name was Raffaele, my mother Stefania. My father was male, my mother female. I am eternally grateful to them for the immense

gift of life. Parent 1 and parent 2 remind me of the first additions in primary school. An abomination. Let's stop this. Let's be serious people. And let's look after the real problems of the country”, and the Antinoo Arcigay Napoli association responded saying that “Don Patriciello continues to confuse himself with the State. He continues to spread that heteronormative culture that silences the truth of the facts, of families that simply must be protected, and of the essential protection of their children. But he does not regulate his disdain for an inclusive formula, which he wants to reintroduce, and he shouts it out loud, because despite everything, the healthy and the insane exist, and the Church must raise its voice in a secular State and guarantor of all citizens. And his intolerance, his ideological vision of the State, touches thousands of people. And the real problem is this, to be in a position of high and strategic visibility to create irreparable damage on a cultural level. And then the insidious reference to feminists, in another post, who even want to claim the authenticity and freedom of the female gender, in a readable demagogy, which certainly can touch those who do not consciously feel how unequal the role of women is in the Church in the first place. As usual, things are discussed and written without any training, and the responsibilities become political, big, exactly how everything triggers poorly treated arguments, or deliberately expressed to create new wars of freedom”¹³⁶. Also, the Pro-life movement put some transphobic posters in Marsala¹³⁷ in front of schools and meeting places, the Arcigay Palermo Association declared that “in addition to fomenting a general climate of hatred and violence, an association that calls itself 'pro-life and pro-family' concretely risks fomenting bullying against children who are already potential targets, with serious potential consequences for their well-being and health.” And they added that “In Italy, 44% of Lgbt+ people have been victims of LGBTphobic bullying within school environments. The risk of suicide among Lgbt+ adolescents is three times that of their heterosexual peers, this ratio increases 5 times for trans adolescents. Lgbt+ adolescents experience episodes of depression more frequently than their peers: this is what we are talking about with combating homosexual-bitrans-phobic

¹³⁶ Antinoo Napoli. (2021). *Antinoo Napoli*. Retrieved from ANTINOO ARCIGAY NAPOLI CONDANNA IL POST DI PADRE PATRICIELLO. FALANGA: PATRICIELLO DIFFONDE CULTURA ETERONORMATA. SANNINO: PATRICIELLO SCARICA ODIIO CONTRO LE NOSTRE FAMIGLIE: <https://www.arcigaynapoli.org/2021/01/16/antinoo-arcigay-napoli-condanna-il-post-di-padre-patriciello-falanga-patriciello-diffonde-cultura-eteronormata-sannino-patriciello-scarica-odio-contro-le-nostre-famiglie/>

¹³⁷ See Annex 6

bullying in schools, improving the quality of life of boys and girls, trying to build healthier and more welcoming environments for them”.¹³⁸

Regarding hate crime, in Catania on March 18, 2021, three policemen beat up some transgender sex workers, the Sportello Sociale San Berillo association declared that “for months now, the neighbourhood, guilty of hosting migrant communities and sex workers, has been subject to daily raids by the police. But if usually this doggedness is exercised with the intimidation that those wearing a uniform can easily exert against individuals that our society pushes to the margins, this time the police wanted to show their muscles. The inhabitants of the neighbourhood were violently beaten up, guilty of having dared to film the work of the police with their mobile phones” and that “we witnessed three policemen ramming the body of a trans woman and her mother desperately trying to film what she saw as she was unable to do anything else. But this, evidently, was not enough for the police teams, who, in order to erase the evidence of what they had just done, started raiding and searching, without any warrant, the house of a sex worker, inside which they continued to beat by closing the shutters that gave onto the balcony in front from which one could see”.¹³⁹ In Pompeii a transgender girl was shot with a rubber pellet gun by a group of teenagers¹⁴⁰. In Rome, a gay tourist couple were insulted and beat up by a group of teenagers in the underground.¹⁴¹

¹³⁸ Arcigay Palermo. (2021). *Arcigay Palermo*. Retrieved from Propaganda di “Pro vita” in Sicilia: <https://arcigaypalermo.wordpress.com/2021/05/21/propaganda-di-pro-vita-in-sicilia/>

¹³⁹ lasiciliaweb. (2021, March 19). *lasticiliaweb*. Retrieved from “Gravissima violenza a San Berillo: lavoratrici del sesso massacrato dalla polizia”: <https://www.lasiciliaweb.it/2021/03/gravissima-violenza-a-san-berillo-lavoratrici-del-sesso-massacrato-dalla-polizia/?fbclid=IwAR3FPTtIHdzk8zEr08a9hWIEeHCrgVf-xTpreoBDCMs5vbKik4wcaUngVdY>

¹⁴⁰ La Repubblica. (2021, August 3). *La Repubblica*. Retrieved from Transgender ferita con pistola a pallini di gomma da gang di minori: <https://ricerca.repubblica.it/repubblica/archivio/repubblica/2021/08/23/transgender-ferita-con-pistola-a-pallini-di-gomma-da-gang-di-minoriNapoli07.html?ref=search>

¹⁴¹ Marceca, R. (2021, July 2016). *La Repubblica*. Retrieved from Furti e violenze su stranieri e gay Presa la baby gang: <https://ricerca.repubblica.it/repubblica/archivio/repubblica/2021/07/16/furti-e-violenze-su-stranieri-e-gay-presa-la-baby-gangRoma07.html?ref=search>

10. Review on transgender people protection in Malta

Methodology used in Annex 1

10.1. Legislation

10.1.1. Equality and non-discrimination

Regarding equality and non-discrimination, the Constitution of Malta¹⁴² on its article 32 expressly names gender-identity as one of the traits a person could have that cannot interfere with their rights¹⁴³. It does not exist any law that rules over goods and services or health that includes a provision for gender identity non-discrimination. However, regarding employment, the National Law 274/2014 about employment and industrial relations act, on its Equal Treatment Amendent Regulations (CAP 452), the article 3 establishes that “ in the definition "discriminatory treatment", immediately after paragraph (c) there shall be added the following new paragraph(d):"(d) in so far as the ground of sex is concerned, any less favorable treatment of a person who underwent or is undergoing gender reassignment, which for the purpose of these regulations shall mean where a person is considering or intends to undergo, or is undergoing or has undergone, a process, or part of a process, for the purpose of reassigning the person’s sex by changing physiological or other attributes of sex”, and in the article 4 establishes that “the words "including discriminatory treatment related to pregnancy or maternity leave as referred to in the Protection of Maternity (Employment) Regulations," shall be substituted by the words "including discriminatory treatment related to gender reassignment and to pregnancy or maternity leave as referred to in the Protection of Maternity (Employment) Regulations”. Regarding education, the article 8¹⁴⁴ of the act 1/2003 to Equality for men and Women, rules against discrimination in this field.

¹⁴² Kostituzzjoni ta' Malta

¹⁴³ Article 32: “Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely - (a) life, liberty, security of the person, the enjoyment of property and the protection of the law;(b) freedom of conscience, of expression and of peaceful assembly and association; and(c) respect for his private and family life, the subsequent provisions of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest”

¹⁴⁴ Article 8: “It shall be unlawful for any educational establish mentor for any other entity providing vocational training or guidance to discriminate against any person in -(a) the access to any course, vocational training or guidance; or(b) the award of educational support for students or trainees; or(c) in the selection and implementation of the curricula; or(d) in the assessment of the skills or knowledge of

Conversion therapy is banned as established in the Chapter 567¹⁴⁵ of the Affirmation of Sexual Orientation, Gender Identity & Gender Expression Act. There is an equality body mandate, the Act to amend the Equality for Men and Women, cap. 456 it ensures that Maltese society is free of any form of discrimination; and also, an equality action plan the LGBTIQ Equality Strategy & Action Plan 2018-2022. It exists a law about gender expression, the Gender Identity, Gender Expression and Sex Characteristics Act.

10.1.2. Family

Regarding family, the Constitution of Malta does not establish any limitation on marriage. Also, marriage equality is established in the Marriage Act, no. XXIII of 2017. Registered partnership with similar rights to marriage is legislated in the Civil Partnership Act, and registered partnership with limited rights or cohabitation are legislated in the Cohabitation Act.

Regarding adoptions, the Civil Partnership Act, establishes joint adoption, second-parent adoption and automatic co-parent recognition without any obstruction for transgender people. Also, the Embryo Protection (Amendment) Act, establishes equality on medically assisted insemination for singles and couples regardless the gender identity. The Gender Identity, Gender Expression and Sex Characteristics Act allows for changes to identity documents, including birth certificates. The Marriage (Amendment) Act 2017 also introduced gender-neutral language, such as the father giving birth.

10.1.3. Hate crime and hate speech

Regarding hate crime and hate speech, the ACT No. VIII of 2012. An Act to amend the Penal Code, Cap. 9. Establishes in the article 83B that “The punishment established for any offence shall be increased by one to two degrees when the offence is aggravated or motivated, wholly or in part by hatred against a person or a group, on the grounds of gender, gender identity, sexual orientation, race, [...], ” in the article 222A (2-3) “[...] [t]he punishments established in the foregoing provisions of this sub-title shall also be increased by one to two degrees when the offence is aggravated or motivated on the grounds of gender, gender identity, sexual orientation, race, colour, language, national or

the students or trainees.(2) Failure by the persons responsible for such establishments and entities to fulfil their obligation to suppress sexual harassment as provided under article 9(2) shall for the purposes of subarticle(1) of this article constitute discrimination.(3) It shall be the duty of educational establishments and entities providing vocational training, within the limits of their competence to ensure that curricula and textbooks do not propagate discrimination.”

¹⁴⁵

ethnic origin, citizenship, religion or belief or political or other opinion. An offence is aggravated or motivated on grounds of gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion if: at the time of committing the offence, or immediately before or after the commission of the offence, the offender demonstrates towards the victim of the offence hostility, aversion or contempt based on the victim's membership (or presumed membership) of a group, denoting a particular gender, gender identity, sexual orientation, race, colour, language, national or ethnic origin, citizenship, religion or belief or political or other opinion; [...]"

10.1.4. Legal gender recognition

Regarding legal gender recognition, there exists legal measures to legally change the gender in the Gender Identity, Gender Expression and Sex Characteristics Act. The article 4 of it, establishes the administrative procedure. Also, the article 4.1 establishes that "shall be the right of every person who is a Maltese citizen to request the Director to change the recorded gender and, or first name and, first name, if the person so wishes to change the first name, in order to reflect that person's self-determined gender identity", that implies that a transgender person can self-determine, and change their name. The article 3.4 establishes that "the person shall not be required to provide proof of a surgical procedure for total or partial genital reassignment, hormonal therapies or any other psychiatric, psychological or medical treatment to make use of the right to gender identity", the same article in the second point (a) establishes that "a person's rights, relationship and obligations arising out of parenthood or marriage shall in no way be affected".

10.1.5. Civil Society space

The Constitution of Malta, in its article 33 establishes the freedom of association and expression "Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed, sex, sexual orientation or gender identity, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely [...] (b) freedom of conscience, of expression and of peaceful assembly and association", without limits based on gender identity.

10.1.6. Asylum

Regarding asylum, the L.N. 161 of 2014 REFUGEES ACT (CAP. 420) Procedural Standards in Examining Applications for Refugee Status (Amendment) Regulations, 2014 establishes that “[...] gender related aspects, including gender identity, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group”. Moreover, the International Protection Agency (Formerly the Office of the Refugee Commissioner) adopted new Internal Guidelines on the Procedures and the Assessment of Sexual Orientation and/or Gender Identity Claims. LGBTI organizations reported that procedures for the processing of LGBTIQ asylum claims have improved considerably.

10.1.7. Overview table and graphic

Criteria	Is it covered?
Constitution mention	Yes
Employment	Yes
Goods and services	No
Education	Yes
Health	No
Conversion therapy ban	Yes
Equality body mandate	Yes
Law about gender expression	Yes
Equality action plan	Yes
Blood donations	No
Marriage equality	Yes
Registered partnership	Yes
Cohabitation	Yes
No constitutional limitation on marriage	Yes
Joint adoption	Yes
Second-parent adoption	Yes
Automatic co-parent recognition	Yes
Medically assisted insemination (singles and couples)	Yes

Recognition of trans parenthood	Yes
Hate crime law about gender identity	Yes
Hate speech law about gender identity	Yes
Policy tackling hatred about gender identity	Yes
Existence of legal measures about gender recognition	Yes
Existence of administrative procedures about gender recognition	Yes
Name change	Yes
No age restriction in name change	Yes
Self-determination	Yes
Non-binary recognition	Yes
No gender identity disorder diagnosis/psychological opinion required	Yes
No compulsory medical intervention required	Yes
No compulsory surgical intervention required	Yes
No compulsory sterilization required	Yes
No compulsory divorce required	Yes
No age restriction	Yes
Legal gender recognition procedures for minors	Yes
Depathologisation	Yes
No obstruction for LGBTI events	Yes
Protection for LGBTI events	Yes
No obstruction for LGBTI associations	Yes
No laws limiting external funding	Yes
No laws limiting freedom of expression	Yes
Asylum law for gender identity	Yes
Policy/other positive measures for gender identity	Yes

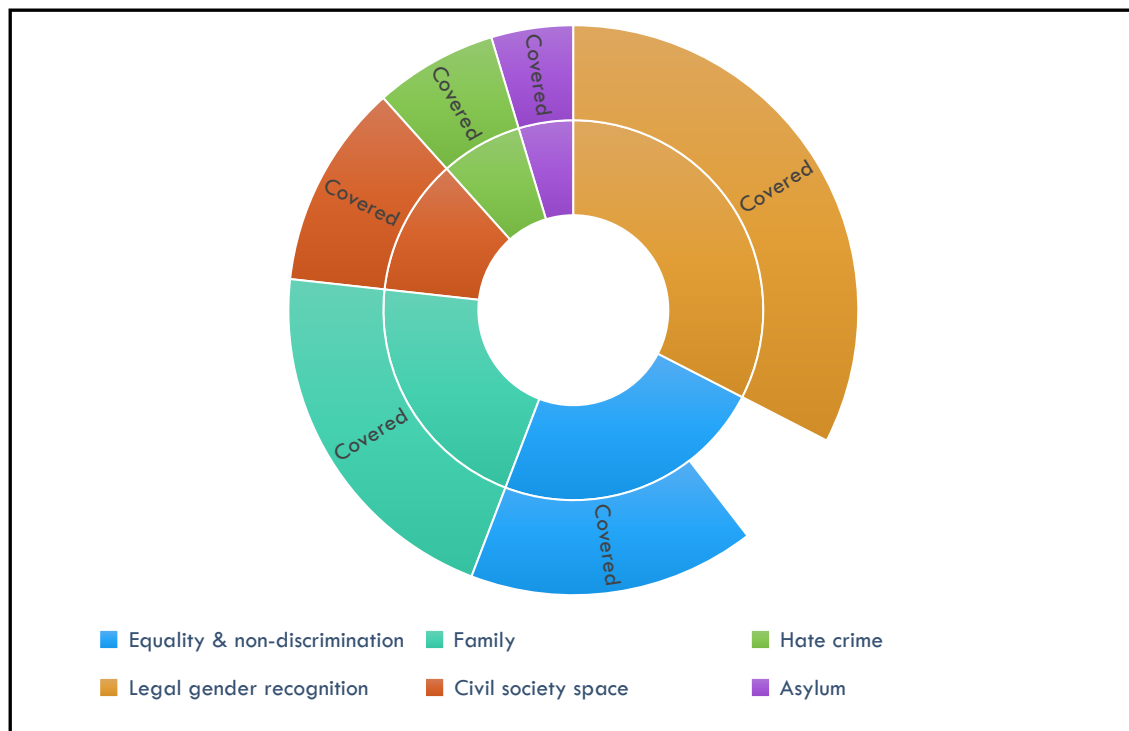


Figure 4: Topics covered by Transgender Maltese legislation (see annex 7 for more information)

10.2. Real problems and application

Regarding asylum, “the government issued a new policy, whereby asylum seekers from “safe countries” will not be eligible for a work permit for the first nine months following arrival. The regulation will also affect LGBTIQ asylum seekers”.¹⁴⁶

Regarding hate speech, a British lesbian singer and her girlfriend during a holiday had to suffer harassment, she expressed that they were shout “lesbians!” on the streets or people doing the middle finger scissor bashing sign, even a waiter asked them a threesome.¹⁴⁷ The association Malta Gay Rights Movement warned in April 2021 that hate crime reports against LGBTQ+ people weren’t taken seriously enough by the police, they explained that they “had filed “countless” reports over the last two years, but did not receive any information or feedback from authorities” added that “We have accompanied several people to the police station. Our employee filed a report against a person behind a Facebook page who was targeting him,” and “In December, we reported a well-known

¹⁴⁶ ILGA europe. (2022). *ANNUAL REVIEW OF THE HUMAN RIGHTS SITUATION OF LESBIAN, GAY, BISEXUAL, TRANS, AND INTERSEX PEOPLE IN MALTA COVERING THE PERIOD OF JANUARY TO DECEMBER 2021*.

¹⁴⁷ Cilia, J. (2021, October 21). *Lovin Malta*. Retrieved from ‘I Was So Looking Forward To Malta’: X Factor UK Singer Reveals Shocking Sexual Harassment While Holidaying: <https://lovinmalta.com/news/i-was-so-looking-forward-to-malta-x-factor-uk-singer-reveals-shocking-sexual-harassment-while-holidaying/>

TV personality who physically attacked a trans person and the witnesses have not even been spoken to,” they added.¹⁴⁸

11. Comparison on the four countries reviewed

Out of the countries reviewed, the one with the best legal situation for transgender people is Malta, as 90’57% of the criteria was covered by their law. But it is a progressive country “on paper” because the cases of homophobia and transphobia are really high, especially in hate speech. The second and third countries are Belgium and Spain with 71’5% and 69’63% respectively, with very similar legislations. And the last one was Italy with a huge difference with only 37’17%, I suspect that is due because it is a very religious country.

The least legal field covered in general was equality and non-discrimination, as the average was 51,5% of the topics covered, on the contrary the legal field most covered was civil society space with a total of 100% topics covered in all four countries.

Criteria	Spain	Belgium	Italy	Malta
Constitution mention	No	No	No	Yes
Employment	Partially (only in Catalonia, Extremadura, Galicia, Andalucía, Canary Islands, Navarra, Basque Country, Madrid, Balearic Islands,	Yes	No	Yes

¹⁴⁸ Vassallo, S. (2021, April 2021). *Lovin Malta*. Retrieved from LGBT Hate Crime Reports Aren’t Taken Seriously In Malta, Gay Rights Lobby Warns: <https://lovinmalta.com/news/lgbt-hate-crime-reports-arent-taken-seriously-in-malta-gay-rights-lobby-warns/>

	Murcia, Valencia, Aragon, Cantabria and La Rioja)			
Goods and services	Partially (only in Catalonia, Extremadura, Galicia, Aragón, Balearic Islands, Madrid, Murcia, Valencia, Aragón and Cantabria)	Yes	Partially (only in Umbria, Emilia- Romagna, Piedmont, Tuscany, Liguria, Marche e Sicily)	No
Education	Yes	Yes	Partially (only in Umbria, Emilia- Romagna, Piedmont, Tuscany, Liguria, Marche e Sicily)	Yes
Health	Yes	Yes	Partially (only in Umbria, Emilia- Romagna,	No

			Piedmont, Tuscany, Liguria, Marche e Sicily)	
Conversion therapy ban	Partially (only in Valencia, Madrid, Andalucía and Aragón)	No	No	Yes
Equality body mandate	No	Yes	No	Yes
Law about gender expression	Partially (only in Catalonia, Extremadura, Andalucía, Canary Islands, Navarra, Madrid, Balearic Islands, Murcia, Valencia and Cantabria)	Yes	No	Yes
Equality action plan	Partially (only in Catalonia and Navarra)	No	No	Yes
Blood donations	Yes	No	Yes	No
Marriage equality	Yes	Yes	No	Yes

Registered partnership	Partially (in all regions except Murcia, Castilla la Mancha, Castilla la Mancha and La Rioja)	Partially (with limited rights)	Yes	Yes
Cohabitation	Partially (in all regions except Murcia, Castilla la Mancha, Castilla la Mancha and La Rioja)	Yes	No	Yes
No constitutional limitation on marriage	Yes	Yes	No	Yes
Joint adoption	Yes	Yes	No	Yes
Second-parent adoption	Yes	Yes	No	Yes
Automatic co-parent recognition	Yes	Yes	No	Yes
Medically assisted insemination (singles and couples)	Yes	Yes	No	Yes
Recognition of trans parenthood	No	Yes	No	Yes
Hate crime law about gender identity	Yes	No	No	Yes
Hate speech law about gender identity	Yes	Yes	No	Yes

Policy tackling hatred about gender identity	Partially (only in Catalonia and Navarra)	No	No	Yes
Existence of legal measures about gender recognition	Yes	Yes	Yes	Yes
Existence of administrative procedures about gender recognition	Yes	Yes	Yes	Yes
Name change	Yes	Yes	Yes	Yes
No age restriction in name change	Yes	No	No	Yes
Self-determination	No	Yes	No	Yes
Non-binary recognition	No	No	No	Yes
No gender identity disorder diagnosis/psychological opinion required	No	Yes	No	Yes
No compulsory medical intervention required	No	Yes	No	Yes
No compulsory surgical intervention required	Yes	Yes	Yes	Yes
No compulsory sterilization required	Yes	Yes	Yes	Yes
No compulsory divorce required	Yes	Yes	No	Yes
No age restriction	Yes	No	Yes	Yes
Legal gender recognition procedures for minors	Yes	Yes	Yes	Yes
Depathologisation	No	No	No	Yes

No obstruction for LGBTI events	Yes	Yes	Yes	Yes
Protection for LGBTI events	Yes	Yes	Yes	Yes
No obstruction for LGBTI associations	Yes	Yes	Yes	Yes
No laws limiting external funding	Yes	Yes	Yes	Yes
No laws limiting freedom of expression	Yes	Yes	Yes	Yes
Asylum law for gender identity	Yes	Yes	Yes	Yes
Policy/other positive measures for gender identity	No	Yes	No	Yes

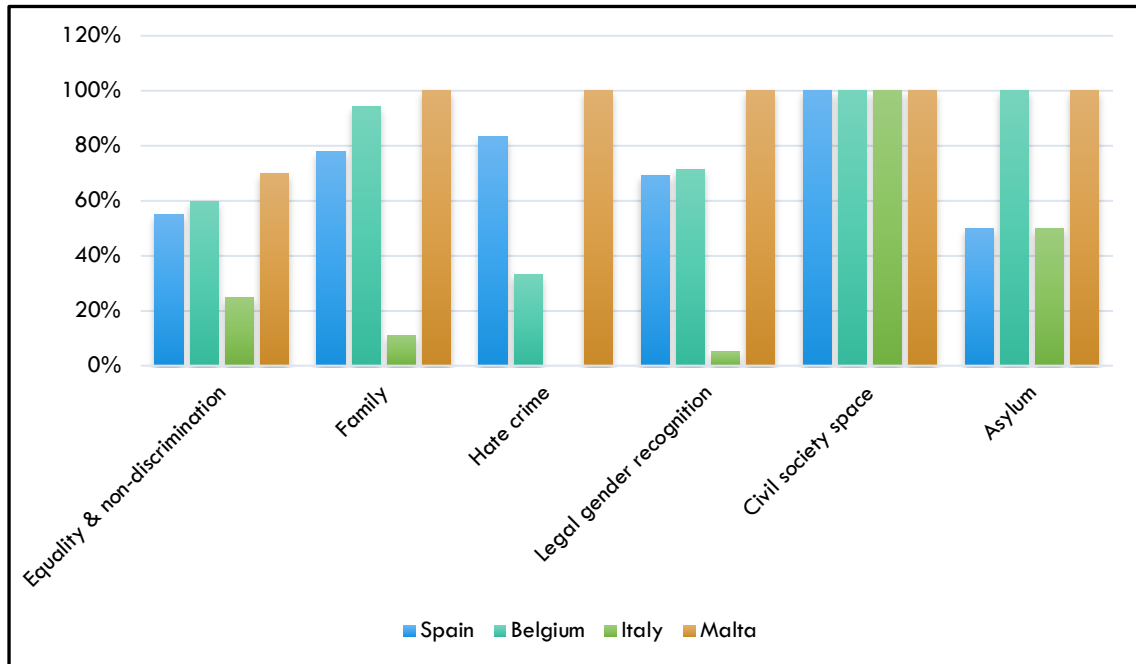


Figure 5: Comparison between the four countries.

12. Conclusion

It is known that transgender people, as all minority groups, suffer discrimination. Thankfully, at least in the European Union, where there is a legal framework that protects transsexuals from discrimination, as well as the requirement of all 27 members of the EU of inserting the Directives in their national legal framework; the situation is improving.

All set out above looks good on paper, but the reality is that in a lot of countries transgender law is not sufficient. In Italy, for example, that I thought at first that was a similar country to Spain due to similarities in culture, was actually a really conservative country with a lot of homophobia and transphobia in their legislation and their population, that reflects on the suffering of transgender people there. The rest of countries reviewed, at first, they appeared to be more progressive, but again that's only on paper, as, for example, in Spain transgenderism is not depathologized and they must still be "diagnosed" by a doctor. Malta seems to be the most progressive country in the European Union about LGBT rights, but due to their very religious population this is not really true, as there are a lot of speech crimes.

Regarding legal certainty, (one of the main criticisms that people make about more progressive transgender legislation) it is important to remark that legal certainty must be for all people, not only cisgender people. And the lack of transgender legislation makes them suffer uncertainty. Therefore, governments shouldn't be led to those few that are going to make profit of it but try to supplant the inequality of this group.

Finally, in my opinion, most problems of transgender people won't be solved only with an improvement of the legislation because, as it has already been seen already, it's not enough. People must be educated about it, so they respect and understand it. Because the real progress and the real change will come from a collective change of mind.

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13.1. Legislation

European Union

- Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.
- The Directive 2006/54/EC implementing the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation
- The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime
- The Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of national protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted
- European Convention on Human Rights
- European Social Charter

Spain

- Law 11/2014 to guarantee the rights of lesbian, gay, transgender and intersexual people, and to eradicate the homophobia, biphobia and transphobia in Catalonia.
- Law 8/2014 for non-discrimination due to gender identity and recognition of transsexual peoples' rights in the Canary Islands.
- Law 12/2015 for social equality of lesbian, gay, bisexual, transsexual, transgender and intersexual people, and public policy against discrimination for sexual orientation and gender identity in Extremadura.
- Law 12/2009 for non-discrimination due to gender identity and recognition of transsexual peoples' rights in Navarra.
- Action plan 2019-2022 for the development of the Foral Law 8/2017 for the social equality of LGBTI+ people.
- Foral Law 8/2017 for the social equality of LGBTI+ people.
- Law 2/2014 for equality and non-discrimination of lesbian, gay, transsexual, bisexual and intersexual people in Galicia.
- Law 14/2012 for the non-discrimination of gender identity and recognition of transsexual people rights in the Basque Country.

- Law 2/2014 for non-discrimination due to gender identity and recognition of transsexual peoples' rights in Andalusia.
- Law 8/2017 to guarantee the rights, the equality of treatment and non-discrimination against LGBTI people and their families in Andalusia.
- Law 14/2015 for non-discrimination due to gender identity and recognition of transsexual peoples' rights in Madrid.
- Law 3/2016 of integral protection against LGBTI-phobia, and the discrimination based on sexual orientation and identity in Madrid.
- Law 8/2016 to guarantee the rights of lesbian, gay, transgender and intersexual people, and to eradicate LGBTI phobia in the Balearic Islands.
- Law 8/2016 to equality of lesbian, gay, bisexual, transsexual, transgender and intersexual people, and public policy against discrimination due to sexual orientation and gender identity in Murcia.
- Law 8/2017 integral for the recognition of gender identity and gender expression in Valencia.
- Law 18/2018 of equality and integral protection against discrimination due to sexual orientation, gender identity and gender expression in Aragon.
- Law 8/2020 to guarantee of lesbian, gay, trans, transgender, bisexual and intersexual peoples' rights and non-discrimination due to sexual orientation and gender identity in Cantabria.
- Law 2/2022 to equality, recognition to gender identity and gender expression and trans peoples' rights and their families in La Rioja.
- Organic Law 8/2013 for the improvement of education quality.
- Law 33/2011 general about public health.
- Law 14/2006 about techniques of assisted human reproduction
- Law 13/2005 which modifies the Civil Code
- Law 3/2007 regulating the registry rectification of the mention related to the sex of persons
- Royal Decree on July 24th 2889 in which is published the Civil Code
- Penal Code

Belgium:

- *Wet ter bestrijding van bepaalde vormen van discriminatie (2007)*
- *Wet tot wijziging van de wet van 10 mei 2007 ter bestrijding van discriminatie tussen vrouwen en mannen met het oog op de uitbreiding ervan naar genderidentiteit en genderexpressie*
- *Wet tot invoeren van de wettelijke samenwoning*
- *Constitution belge*
- *Code civil*
- *Loi modifiant la loi du 10 mai 2007 modifiant, en ce qui concerne l'interdiction de discrimination relative à la paternité ou à la comaternité, la loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes*
- *Wet tot openstelling van het huwelijk voor personen van hetzelfde geslacht en tot wijziging van een aantal bepalingen van het Burgerlijk Wetboek.*
- *Wet tot invoeren van de wettelijke samenwoning*
- *Wet tot wijziging van een aantal bepalingen van het Burgerlijk Wetboek, teneinde de adoptie door personen van hetzelfde geslacht mogelijk te maken*
- *Wet houdende de vaststelling van de afstamming van de meemoeder*
- *Wet betreffende de medisch begeleide voortplanting en de bestemming van de overtallige embryo's en de gameten*

- *Wet tot hervorming van regelingen inzake transgenders wat de vermelding van een aanpassing van de registratie van het geslacht in de akten van de burgerlijke stand en de gevolgen hiervan betreft 25 Juni 2017*
- *Wet tot wijziging van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, van de wet van 12 januari 2007 betreffende de opvang van asielzoekers en van bepaalde andere categorieën van vreemdelingen en van de organieke wet van 8 juli 1976 betreffende de openbare centra voor maatschappelijke welzijn*

Italy:

- *Norme contro le discriminazioni e le violenze determinate dall'orientamento sessuale e dall'identità di genere (2016)*
- *La Costituzione*
- *Disposizioni contro le discriminazioni determinate dall'orientamento sessuale o dall'identità di genere (2010)*
- *Norme contro le discriminazioni determinate dall'orientamento sessuale o dall'identità di genere (2009)*
- *Norme di attuazione del divieto di ogni forma di discriminazione e della parità di trattamento nelle materie di competenza regionale (2018)*
- *Legge Regionale contro le discriminazioni e le violenze determinate dall'orientamento sessuale o dall'identità di genere (2019)*
- *Norme contro la discriminazione determinata dall'orientamento sessuale o dall'identità di genere. Istituzione del registro regionale delle unioni civili. (2015)*
- *Disposizioni contro le discriminazioni determinate dall'orientamento sessuale o dall'identità di genere (2010)*
- *Regolamentazione delle unioni civili tra persone dello stesso sesso e disciplina delle convivenze (2016)*
- *Norme in materia di rettificazione di attribuzione di sesso.*
- *Decreto legislativo n. 142 del 18 agosto 2015*

Malta:

- Constitution of Malta
- National Law 274/2014 about employment and industrial relations
- Equal Treatment Amendent Regulations (CAP 452)
- Protection of Maternity (Employment) Regulations
- act 1/2003 to Equality for men and Women
- Act no amend the Equality for Men and Women, cap. 456.
- Affirmation of Sexual Orientation, Gender Identity & Gender Expression Act
- LGBTIQ Equality Strategy & Action Plan 2018-2022
- Gender Identity, Gender Expression and Sex Characteristics Act
- Marriage Act, no. XXIII of 2017
- Civil Partnership Act
- Cohabitation Act
- Embryo Protection (Amendment) Act
- ACT No. VIII of 2012. An Act to amend the Penal Code, Cap. 9
- Penal Code
- L.N. 161 of 2014 REFUGEES ACT (CAP. 420) Procedural Standards in Examining Applications for Refugee Status (Amendment) Regulations, 201

13.2. Case Law

Spain:

- STS 2252/2021
- STS 1163/2020
- SJCA 126/2021
- STC 99/2019

United Kingdom:

- High Court of Justice, *Corbett v. Corbett (otherwise Ashley)*, All E.R. 2 (1970).

European union:

- CJEU, C-13/94, *P vs. S and Cornwall County Council*, 30 April 1996
- ECtHR, *Sousa Goucha v. Portugal*, No. 70434/12, 22 March 2016
- CJEU, C-473/16, *K.B v. NHS*, 25 January 2018

Annex 1:

Methodology followed for the legislation review

Before beginning with the review of the legislation and case law, I will explain the criteria I have taken to do it¹⁴⁹. There will be six different areas of study; equality and non-discrimination, family, hate crime and hate speech, legal gender recognition, civil society space and asylum.

For equality and non-discrimination, I'm considering if: the constitution has anti-discrimination provisions based on gender identity; there's an employment law that covers anti-discrimination provisions based on gender identity; there's goods and services law that covers anti-discrimination provisions based on gender identity; there's an education law that prohibits discrimination in that field; if there's a health law that prohibits discrimination in that field; conversion therapy is banned¹⁵⁰ (conversion therapy understood as "the umbrella expression refer to any sustained effort to modify a person's sexual orientation, gender identity or gender expression"¹⁵¹); there's an equality action plan; there's an equality body mandate about gender recognition or sexual orientation; there is no ban against blood donation for transgender people. For family, I'm considering if: there is marriage equality for same-sex couples; there is registered partnership equality for same-sex couples and if that makes them obtain the same rights as if married; there is no constitutional limitation over same-sex marriage; adoption is legal for same-sex couples and have the same rights and conditions as different-sex couples; automatic co-parent recognition covers all couples no matter their sexual orientation or gender identity; medically assisted insemination covers when couples or singles regardless their gender identity or sexual orientation nor their partners'; in the certificate of a child is respected the gender identity of the parent, even if that identity is not father or mother. For hate crime and hate speech, I'm considering if: hate crime law expressly includes sexual orientation or gender identity and it is considered as an aggravating factor; hate speech law expressly includes sexual orientation or gender identity and it is considered as an aggravating factor; policy about hate crime and hate speech covers when sexual orientation is included in a national strategy. For legal gender recognition, I'm

¹⁴⁹ I'm considering the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) criteria.

¹⁵⁰ Conversion therapy understood as the therapy that attempts to "cure" homosexuality/bisexuality/transgender, etc.

¹⁵¹ Mendos, L. R. (2020). *Curbing Deception: A world survey on legal regulation fo so-called "conversion therapies"*. Geneva: ILGA World, pg. 13.

considering if: exists legislation or case law for legal gender recognition; exist administrative procedures for legal gender recognition which are not written in law; name change is possible without any obstacles such as age restriction; self-determination does not require a third-party involvement (judge, medical expert, etc.), there's more than two gender marker options and is available to anyone without discrimination; it's not required a "gender identity disorder" recognition, any surgical interventions, sterilization or proof of infertility, divorce or single status, minim or maximum age for legal gender recognition; and transgender or non-binary people are depathologized. For civil society space, I'm considering if: LGBTI public events can be hold without obstruction; LGBTI publics events are sufficiently protected by public authorities; LGBTI organizations can operate without restrictions (state registration, cooperation with authorities, access no national funds, etc.); there are no limits for LGBTI associations receiving external funding; there are no laws limiting expression on LGBTI issues. Finally, for asylum, I'm considering if: there is any law where appears gender identity as a qualification for asylum, there are any policy or other positive measures that include gender identity (ad hoc measures do not count).

Annex 2:

General information for blood donors

Giving blood requires passing a previous health control. Please read the questionnaire attached carefully and fill it in. Ask the healthcare staff if you have any doubts and do not give blood if you are not eligible to. Mandatory tests will be performed on you (blood pressure, haemoglobin).

After donation, your blood will be analysed to determine your blood type and to prevent the transmission of diseases such as HIV, hepatitis C and B, syphilis y blood cell count. Then your blood or its components will be used to treat patients.

BEFORE DONATION...

1. It is convenient not to give blood on an empty stomach. You should have a small amount of food at least.
2. Please tell us if you have had a violent or long physical effort, you have been exposed to sunlight or to high temperatures for a long time or you are feeling very anxious or shocked.
3. Please inform us if you need to make continuous physical effort or undertake potential hazardous activities (such as working at heights or driving heavy vehicles), in order to put off your donation.

DURING DONATION...

Given that most donation problems are due to the logical "anxiety" for being unaware of the donation process itself, we do recommend you to:

1. Calm down and
2. Breathe normally

If you feel any discomfort please inform the healthcare staff assisting you.

These recommendations contribute to make donation a safe, comfortable and rewarding act. The healthcare staff together with all the patients of our Region thank you for your cooperation and hope to see you in a donor centre again.

Arda. de la Democracia, s/n
28032 Madrid
Tel: 913 017 200

AFTER DONATION...

1. Once donation is finished, put pressure on the prick site to prevent bruising.
 2. Keep the small dressing on all day. For 4-6 hours refrain from making efforts or lifting weights with the arm, since most of the times bruises do not develop because of the prick but because recommendations are not followed.
- You will be provided with light refreshments not only for you to taste but also to be observed by the healthcare staff for about 15 minutes. Do not leave the blood centre if you are not feeling well.

For the next 6 hours after donation:

- **Do not move suddenly.** If you feel light-headed, lie down and lift your legs slightly.
- **Do not drink alcohol. Do not smoke** (especially for the first two hours).
- **Try to drink plenty of fluids** (water, juice, milk, etc.)
- **Do not make continuous physical efforts.**
- **Do not expose yourself to sunlight or to high temperatures for a long time.**

Annex 3:

About figure 1. This figure is made with the next data.

Topic	Points in this topic	% Of the total of points reviewed (43)	Topics covered by Spanish legislation	Topics covered partially	Topics not covered	% of topics covered¹⁵²
Equality and non-discrimination	10	23'25%	3	5	2	55%
Family	9	20'93%	6	2	1	77'77%
Hate crime	3	6'9%	2	1	0	83'3%
Legal gender recognition	14	30'2%	9	0	5	69'23%
Civil Society Space	5	11'62%	5	0	0	100%
Asylum	2	4'65%	1	0	1	50%

¹⁵² Topics covered are considered 1, partially covered 0'5, and not covered 0.

Annex 4:

About figure 2. This figure is made with the next data.

Topic	Points in this topic	% Of the total of points reviewed (43)	Topics covered by Belgian legislation	Topics covered partially	Topics not covered	% of topics covered¹⁵³
Equality and non-discrimination	10	23'25%	6	0	4	60%
Family	9	20'93%	8	1	0	94'44%
Hate crime	3	6'9%	1	0	2	33'33%
Legal gender recognition	14	30'2%	10	0	4	71'42%
Civil Society Space	5	11'62%	5	0	0	100%
Asylum	2	4'65%	1	0	1	50%

¹⁵³ Topics covered are considered 1, partially covered 0'5, and not covered 0.

Annex 5:

About figure 3. This figure is made with the next data.

Topic	Points in this topic	% Of the total of points reviewed (43)	Topics covered by Belgian legislation	Topics covered partially	Topics not covered	% of topics covered¹⁵⁴
Equality and non-discrimination	10	23'25%	1	3	6	25%
Family	9	20'93%	1	0	8	11'11%
Hate crime	3	6'9%	0	0	3	0%
Legal gender recognition	14	30'2%	7	0	7	50%
Civil Society Space	5	11'62%	5	0	0	100%
Asylum	2	4'65%	1	0	1	50%

¹⁵⁴ Topics covered are considered 1, partially covered 0'5, and not covered 0.

Annex 6:



Figure 6: Photography of a transphobic poster in Marsala

Annex 7:

About figure 4. This figure is made with the next data.

Topic	Points in this topic	% Of the total of points reviewed (43)	Topics covered by Belgian legislation	Topics covered partially	Topics not covered	% of topics covered¹⁵⁵
Equality and non-discrimination	10	23'25%	7	0	3	70%
Family	9	20'93%	9	0	0	100%
Hate crime	3	6'9%	3	0	0	100%
Legal gender recognition	14	30'2%	14	0	0	100%
Civil Society Space	5	11'62%	5	0	0	100%
Asylum	2	4'65%	2	0	0	100%

¹⁵⁵ Topics covered are considered 1, partially covered 0'5, and not covered 0.