



PARLAMENT DE CATALUNYA

Law 11/2014, of 10 October, for guaranteeing the rights of lesbian, gay, bisexual, transgender and intersex people and eradicating homophobia, biphobia and transphobia

Procedure 202-00035/10

Passed by:

Plenary Assembly

Session 41, 02.10.2014, DSPC-P 79

Publication:

BOPC 408; DOGC 6730, 17.10.2014

Preamble

The objective of this law consists of developing and guaranteeing the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people and preventing discrimination and violence against them, so as to ensure complete freedom in relation to sexual and affective diversity in Catalonia.

The law responds to the demands historically made by the rich network of associations that have been at the forefront of the LGBTI rights movement for decades. In recent years, LGBTI people have obtained a level of social and political recognition they had previously been denied, but there is still a long way to go to achieve full normalisation.

This law uses the term *transgender* to refer to people who feel themselves to be of the opposite sex to that attributed to them at birth on the basis of their biological characteristics, as well as people who do not entirely identify with either males or females according to the conventional notion of genders, regardless of whether or not they have ever undergone surgery. Transsexual people thus fall into the transgender category. Similarly, transsexuality is covered by the umbrella term *trans identity*, which denotes the condition or trait of being transgender.

The new legal framework in Catalonia, Spain and Europe has paved the way for a change in social attitudes towards LGBTI people, due in no small part to the ongoing work of organisations and individuals in the fields of awareness raising, information and dissemination. On that basis, there are a number of reasons for which this law is necessary. Its aims include developing new forms of interrelationship revolving around equality and respect.

In the case of Catalonia, article 40.2 of the Statute of Autonomy establishes a deliberately open notion of family which accommodates the new forms of family present in Catalan society. The different types of family to which the said article refers include those formed by LGBTI people. In Catalonia, LGBTI families enjoy one of the highest levels of recognition of their rights and duties. In that respect, article 40.7 of the Statute of Autonomy stipulates that «the public authorities shall promote the equality of the different stable forms of union established between couples, bearing in mind their characteristics, regardless of the sexual orientation of the partners», and that «the law shall regulate these unions and other forms of cohabitation and their consequences». Similarly, article 40.8 states that «the public authorities shall promote the equality of all individuals, regardless of background, nationality, gender, race, religion, social condition or sexual orientation, and shall also promote the eradication of racism, anti-Semitism, xenophobia, homophobia, and of any other manifestation that may constitute a violation of the equality and dignity of the individual».

Resolution 242/III of the Parliament of Catalonia, of 4 December 1991, on non-discrimination on the grounds of sexual orientation, explicitly expresses support for groups and association centres working in the area of homosexuality. Additionally, Resolution 243/VI of the Parliament of Catalonia advocates non-discrimination on the same grounds.

Also of note is Law 3/2005, of 8 April, whereby Law 9/1998 on the Family Code, Law 10/1998 on stable forms of union established between couples, and Law 40/1991 on the code applicable to the inheritance of the estates of deceased persons in Catalan civil law are all amended in relation to adoption and guardianship. Essentially, the said law provides for adoption by homosexual people.

The various Spanish legislative initiatives that have taken place notably include Law 13/2005, of 1 July, which amends the Civil Code in relation to the right to marry; Law 14/2006, of 26 May, on assisted human reproduction techniques; Law 3/2007, of 15 March, which regulates the procedure of changing an individual's registered sex; Law 62/2003, of 30 December, on tax, administrative and social order measures (articles 27 to 43); and Organic Law 10/1995, of 23 November, on the Criminal Code.

Lastly, where European law is concerned, mention must be made of the European Parliament's resolutions of 8 February 1994, 18 January 2006 and 24 May 2012 on equal rights for lesbian and gay people and the fight against discrimination and homophobia; Council Directive 2000/78/EC, which establishes a general framework for equal treatment in employment and occupation; and article 21 of the Charter of Fundamental Rights of the European Union, which establishes the prohibition of

discrimination on a number of grounds, including sexual orientation, as part of primary EU legislation.

It can thus be said that non-discrimination on the grounds of sexual orientation, gender identity and gender expression, which can affect various sensitive areas of any individual's life, is already present in many provisions of current regulations. This law, with its specific subject matter, will make it possible to extend the regulatory framework relative to the LGBTI community, as well as to reduce discrimination and promote the principles of equality, respect and tolerance among citizens.

It can also be said, on the basis of experience stemming from intensive work by the different institutions of the Generalitat (the Government of Catalonia) in recent years –from the creation of the Programme for the Gay, Lesbian and Transsexual Community on 28 June 2005 to the establishment of the National Council for Lesbian, Gay, Bisexual and Transsexual People by virtue of the Decree of 26 June 2007, also encompassing the creation and implementation, on 5 September 2006, under a governmental agreement, of the Interministerial Plan for Non-discrimination against Homosexual and Transsexual People, which was updated by the Governmental Agreement of 9 October 2012–, that this law is certain to ensure that the Government's provisions on non-discrimination and equality policies will be fulfilled, and that Catalonia will remain a pioneering standard-setter in the development and implementation of LGBTI policies.

LGBTI rights have evolved as a result of a change in society's understanding thereof, although the change in question has been gradual and unequal. This law aims to regulate a number of aspects that require action, according to statistics from recent years.

The task of providing, compiling and systematising data is complicated because it is just now that the first official indicators are beginning to appear. Nonetheless, the statistics available offer sufficiently clear signs that people are still being discriminated against on the grounds of sexual orientation, gender identity and gender expression. Despite the lack of certain data and indicators, everything suggests that the number of cases is actually far higher than statistics show. In that regard, one of the aims of this law consists of promoting studies that provide accurate data on the situation and regulating a guarantee in relation to statistics in data collection.

Another area that this law regulates is the training and awareness raising to be undergone by every professional who, at any time in their career, may have to deal

with a case related to discrimination on the grounds of sexual orientation, gender identity or gender expression. Additionally, it regulates their duty to take action.

The law sets out provisions geared to ensuring that sexual and affective diversity are taken into account and preventing any kind of discrimination throughout the education system, including aspects such as the content of teaching materials; school sporting activities and recreational activities for children and youths; training resources; and training for parents. It also provides for measures for preventing and counteracting the harassment that LGBTI people may suffer in schools.

As far as culture, leisure and sport are concerned, the law introduces criteria for positive action against any type of discrimination on the grounds of sexual orientation, gender identity and gender expression in sporting activities, cultural production and non-formal education.

Given the importance of the media's role in familiarising the public with different social realities, the law puts forward recommendations for the audiovisual media with a view to preventing the transmission of content that could encourage or justify homophobia, biphobia or transphobia.

In the health arena, the law regulates the necessary awareness-raising and prevention work in relation to HIV/AIDS and other sexually transmitted diseases; research into and the study and development of specific health policies for LGBTI people; treatments associated with trans identity and intersexuality; and access to assisted reproduction techniques, among other measures, to ensure that health care is free from any kind of discrimination on the grounds of sexual orientation, gender identity and gender expression.

The law also regulates social services in terms of establishing effective support and prevention measures for vulnerable young people and individuals who may suffer multiple discrimination, as well as of fostering respect for LGBTI people in social facilities.

In addition, the law provides for a real, effective guarantee of non-discrimination against LGBTI people and of scope for them to fully exercise their rights in relation to employment and working conditions; and the promotion of equality indicators and specific training in the fields of labour inspection and occupational risk prevention.

The law also stipulates that the Government's cooperation and solidarity policies are to include cooperation projects that advocate and recognise LGBTI people's human rights.

Where families are concerned, the law seeks to guarantee recognition of the heterogeneity of family, as provided for in Catalonia's civil and administrative legislation, in equal conditions and in all areas of life.

The law contains a specific section on transgender and intersex people, given their historical lack of rights.

Other aspects regulated in the text are the right to equal treatment; judicial protection and eligibility to defend the right to equality; the right of admission; the right to comprehensive protection, to attention and to redress; an institutional guarantee; the establishment of a comprehensive service; and the system corresponding to infringements and penalties.

Given the launch of innovative government action and the positive evaluation of the LGBTI policies put into practice to date in Catalonia, this law is necessary to guarantee progress in terms of securing rights and ensure that it is permanent, to protect and develop the aforementioned action, and to thus rule out any degree of legal uncertainty.

This law seeks to enhance recognition of the rights of LGBTI people in three ways. The first consists of completing legislation on their rights and freedoms; the second of guaranteeing the basic development of the powers assigned to the Generalitat under the road maps corresponding to the Government's plans; and the third of complying with and complementing existing legislation, the Statute of Autonomy and Spanish and European regulations in relation to individuals' rights and duties.

PRELIMINARY TITLE. GENERAL PROVISIONS

Article 1. Object

1. The object of this law is to establish and regulate means of and measures for realising the right to equality and to non-discrimination on the grounds of sexual orientation, gender identity and gender expression in the public and private areas over which the Generalitat and local government bodies have powers.

2. The measures that this law establishes for the realisation of lesbian, gay, bisexual, transgender and intersex (LGBTI) people's right to equality and non-discrimination, as referred to in section 1 above, shall affect:

- a) All areas of social life.
- b) All stages of life.

c) All life events, such as changes in marital status, the formation of a family, illness, disability, deprivation of liberty and death.

Article 2. Purpose

The purpose of this law consists of establishing conditions for the realisation of the rights of LGBTI people and the groups of which they are part; facilitating their participation and representation in all areas of social life; and helping break down stereotypes that have a negative effect on society's perception of them.

Article 3. Scope and guarantee of compliance

1. This law shall apply, in Catalonia, to every individual and every legal entity, whether governed by public or private law, regardless of their administrative or personal situation, notwithstanding the provisions of immigration legislation, the applicable international treaties and all other current legislation.

2. The Generalitat and local government bodies must guarantee compliance with this law and promote conditions geared to its full implementation in the areas that fall under their respective jurisdictions.

Article 4. Definitions

For the purposes of this law, the following definitions shall apply herein:

a) *Direct discrimination*: this is the case when, on the grounds of sexual orientation, gender identity or gender expression, a person is, has been or could be treated less favourably than another person in a similar situation.

b) *Indirect discrimination*: this is the case when an apparently neutral provision, criterion, interpretation or practice could particularly disadvantage LGBTI people in comparison with others.

c) *Discrimination by association*: this is the case when someone suffers discrimination on the grounds of sexual orientation, gender identity or gender expression as a result of their relationship with an LGBTI person or group.

d) *Discrimination by erroneous perception*: this is the case when one or more people are discriminated against on the grounds of sexual orientation, gender identity or gender expression as a result of an erroneous perception.

e) *Multiple discrimination*: this is the case when an LGBTI person suffers specific, aggravated forms of discrimination due to belonging to one or more other groups that are also discriminated against.

f) *Instruction to discriminate*: any order that entails direct or indirect discrimination on the grounds of sexual orientation, gender identity or gender expression.

g) *Harassment on the grounds of sexual orientation, gender identity or gender expression*: any form of behaviour that is based on a person's sexual orientation, gender identity or gender expression and has the purpose or effect of violating their dignity, threatening their physical or psychological integrity, or creating an intimidating, hostile, degrading, humiliating, offensive or disturbing environment for them.

h) *Discriminatory retaliation*: any adverse action or negative effect suffered by a person as a result of them making a complaint, claim, report or appeal or raising a grievance of any kind with a view to preventing, mitigating or reporting discrimination or harassment to which they are being or have been subjected.

i) *Secondary victimisation*: any additional mistreatment that an LGBTI person suffering discrimination, harassment or retaliation experiences as a direct or indirect consequence of the shortcomings of the action taken by the corresponding bodies, and also as a result of the acts of other parties involved.

Article 5. General anti-discrimination clause

1. Catalonia's public administration bodies and Ombudsman (Síndic de Greuges) must protect the right to non-discrimination regardless of the sexual orientation, gender identity or gender expression of an individual or of the family of which they are part.

2. The right to non-discrimination must be a guiding principle of the Catalan legal system, administrative action and judicial practice. The public authorities and citizens alike must respect the said right.

Article 6. Guiding principles of public authority action

In accordance with the guiding principles behind this law, public authority action in relation to LGBTI people must:

a) Protect the integrity, dignity and freedom of all individuals, in accordance with fundamental rights and universal human rights.

b) Make measures taken in this area comprehensive and of a cross-cutting nature.

c) Guarantee respect for diversity where identities corresponding to sexual and affective orientation are concerned.

d) Provide for awareness raising in the area in question; for the prevention and detection of discrimination; for assistance for and the recovery of victims of discrimination; and for a guarantee of their right to redress.

e) Ensure the participation, visibility and representation of LGBTI people, and of their situation and specific needs, in public and private life alike.

- f) Take all the different situations involving discrimination which could affect LGBTI people into account, bearing in mind interactions of homosexuality, bisexuality, trans identity and intersexuality with any other personal or social circumstance that might give rise to discrimination.
- g) Implement recognition of the heterogeneity of family in Catalan public and private law, in judicial and administrative practice, and in all the activities of the Generalitat.
- h) Guarantee cooperation between administration bodies.
- i) Ensure that professionals receive specialised training and develop the necessary skills.
- j) Promote studies of and research into sexual and affective diversity which might serve to eradicate discrimination and violence against LGBTI people.
- k) Establish measures to promote organisations that work for the realisation of LGBTI rights and of non-discrimination against LGBTI people.
- l) Adapt the actions and measures taken to the specific needs of small municipalities and rural environments.

TITLE I. ADMINISTRATIVE ORGANISATION

Chapter I. Permanent participative and advisory body

Article 7. The National Council for Lesbian, Gay, Bisexual, Transgender and Intersex People

1. The National Council for Lesbian, Gay, Bisexual, Transgender and Intersex People is hereby created as a high-level medium for citizen participation in matters related to the rights and duties of LGBTI people, and as an advisory body to the Catalan administration bodies whose work affects the area in question, notwithstanding the functions and powers of other bodies specified in legislation. The Council shall include representatives of the associations whose work mainly involves LGBTI rights, and professionals and other individuals notable for their endeavour and expertise in the said area.

2. The National Council for Lesbian, Gay, Bisexual, Transgender and Intersex People shall be affiliated to the ministry with jurisdiction over non-discrimination against such people. The Council may receive information on the implementation of this law; propose improvements to the activity of public services, be they those of the

Catalan administration bodies or those corresponding to the other areas covered hereby; and report on draft legislation and non-regulatory projects.

3. The National Council for Lesbian, Gay, Bisexual, Transgender and Intersex People shall be represented on such governmental participative bodies corresponding to the areas covered by this law as the Government may specify.

CHAPTER II. LGBTI POLICY IMPLEMENTATION AND COORDINATION

Article 8. LGBTI policy coordinating body

1. The Government must have a body that coordinates the implementation of the LGBTI policies of the different ministries of the Generalitat. The body in question must have sufficient human and material resources.

2. The Government must promote the planning of administrative action in the areas corresponding to each of the ministries of the Generalitat. Such planning must encompass establishing objectives, scheduling activities, evaluating results and proposing improvements where LGBTI policies are concerned.

3. The ministries of the Generalitat must apply this law in collaboration and coordination with the LGBTI policy coordinating body.

4. Such collaboration and coordination as may be appropriate must be established between the LGBTI policy coordinating body and the Ombudsman, the Office of the Public Prosecutor and other bodies of relevance to non-discrimination.

5. The LGBTI policy coordinating body must periodically report to the Parliament and the National Council for Lesbian, Gay, Bisexual, Transgender and Intersex People on the social impact of this law.

Article 9. Comprehensive service

1. The LGBTI policy coordinating body must offer a comprehensive service for attending to people who are suffering, have suffered or are in danger of suffering discrimination or violence on the grounds of sexual orientation, gender identity or gender expression, so as to respond to their needs appropriately, swiftly, compassionately and in a coordinated fashion.

2. For the purposes of section 1 above, and in order to guarantee its accessibility, the service must be permanently available and staffed by people who have received

training related to discriminatory behaviour and in the effective, efficient use of electronic media.

3. The professionals who work in the service must have training related to civil rights and in non-discrimination.

TITLE II. PUBLIC POLICIES FOR PROMOTING REAL EQUALITY FOR LGBTI PEOPLE

Chapter I. Professionals working in sensitive areas

Article 10. Training and awareness raising

1. Catalonia's public administration bodies must guarantee that professionals whose work involves prevention, detection, service provision, assistance and recovery in the areas of health, education, the labour market, social services, justice and law enforcement, communication, and sport and leisure are duly trained and aware.

2. Training for employees who have not been transferred from other public administration bodies, be they civil servants or otherwise, must be promoted through cooperation agreements or other instruments.

Article 11. Duty to take action

1. It shall be the duty of the professionals to whom article 10 refers to inform the law enforcement agencies and the competent body if they become aware of a situation of risk or have reason to suspect a case of discrimination or violence on the grounds of sexual orientation, gender identity or gender expression.

2. A specific protocol must be developed for the purposes of section 1 above.

CHAPTER II. AREAS OF ACTION

Article 12. Education

1. For the purposes of this law, *coeducation* shall be held to mean education that enhances genuine equal opportunities and the eradication of any kind of discrimination on the grounds of sexual orientation, gender identity and gender expression.

2. In accordance with the principle of coeducation, respect for sexual and affective diversity, gender identity and different forms of family must be ensured in the various fields of education.

3. The principle of coeducation must be incorporated into schools' tutoring plans, as well as their plans and rules related to coexistence.

4. The content of and language used in teaching and training materials, in any format, must take diversity with regard to sexual orientation, gender identity and gender expression into account and avoid any kind of discrimination on those grounds.

5. Diversity where sexual orientation, gender identity and gender expression are concerned and the principles of this law are to be respected throughout the education system, in training institutions and centres, in adult education, in training for parents, in school sporting activities and in recreational activities for children and youths.

6. It shall be necessary to ensure awareness and the prevention of violence on the grounds of sexual orientation, gender identity and gender expression, and to offer schools mechanisms for detecting discrimination against or the exclusion of any individual on the said grounds. In that regard, the implementation of plans geared to coexistence must be promoted, with particular emphasis on measures for preventing and counteracting the harassment that LGBTI people may suffer in schools.

7. The Administration of the Generalitat must, through the ministry with jurisdiction over education, guarantee the implementation of the provisions of this article and ensure that schools and other education centres constitute a supportive environment for sexual and affective diversity, where pupils and teachers can be open as far as their sexual orientation, gender identity and gender expression are concerned, thus helping to establish positive models for the education community.

Article 13. Universities

1. The principles of non-discrimination and respect for sexual orientation, gender identity and gender expression shall be applicable to universities.

2. In such a way as to respect academic freedom and university autonomy, the Generalitat and Catalonia's universities must jointly promote protective, support and research-related measures for the visibility of LGBTI people, and the development of measures for non-discrimination and awareness raising in the university arena. To that end, they must establish a protocol for non-discrimination on the grounds of sexual orientation, gender identity and gender expression.

Article 14. Culture, leisure and sport

1. Catalonia's public administration bodies must provide for the incorporation of activities aimed at non-discrimination on the grounds of sexual orientation, gender identity and gender expression into the following fields within the areas of culture, leisure and sport:

- a) Cultural competitions and sporting events.
- b) Projects related to the recovery of historical memory.
- c) Cultural productions and shows for children and youths.
- d) Teaching resources and collections of documents in non-formal education.

2. Catalonia's public administration bodies must guarantee:

- a) The promotion and dissemination of the best practices related to the principles of this law of youth organisations and of spare-time education companies and associations.
- b) In conjunction with sports federations, the absence of barriers to LGBTI people's participation in sporting competitions and correct treatment for such people in sports facilities.
- c) Broader functions for the Catalan Sports Observatory where measures against violence and discrimination in sport are concerned, and the development of a collection of the best awareness-raising practices of sports clubs, associations and federations.
- d) Access to specific literature on LGBTI issues.
- e) The adoption of appropriate measures, on the basis of powers over recreational activities and shows, to prevent homophobic, biphobic and transphobic acts being committed.

Article 15. The media

With regard to the media, the Catalan Broadcasting Council must:

- a) Ensure that the media's code of ethics does not breach the principles of this law in relation to respect for sexual orientation, gender identity, gender expression and affective diversity.
- b) Make recommendations on the use of language and the treatment and use of images in relation to homosexuality, bisexuality, trans identity and intersexuality.
- c) Ensure that all the media's content and advertising is respectful to LGBTI people.

d) Ensure that the media treat diversity with regard to sexual and affective orientation, forms of family, gender identity and gender expression as the norm, so as to enhance the visibility of positive examples.

e) Ensure that the media's programming reflects diversity where sexual orientation, gender identity, gender expression and forms of family are concerned.

f) Monitor information in which sexual diversity, gender identity or gender expression is portrayed in a negative light, and periodically compile a record thereof. The resulting report must be issued to the Ombudsman, the Parliament of Catalonia and the National Council for Lesbian, Gay, Bisexual, Transgender and Intersex people.

Article 16. Health

1. Catalonia's health system must incorporate a gender perspective and take the specific needs of LGBTI people into account, with the aim of guaranteeing them the right to receive health care and enjoy objective equality in their use of health services.

2. Catalonia's health system must, through specific protocols, guarantee that, regardless of their sexual orientation or gender identity, partners in stable unmarried couples have the same rights as enjoyed by spouses or nearest relatives under health sector regulations. An individual's partner in a stable unmarried couple shall be deemed their nearest relative for the purposes of consent given on behalf of another person.

3. In their activity related to health and the health system, Catalonia's public administration bodies must:

a) Ensure that health policy is respectful to LGBTI people and neither directly or indirectly treats their condition as a pathology, especially in the case of transgender and intersex people.

b) Develop public health policies that provide for LGBTI people's right to health, adapting established protocols if appropriate.

c) Establish specific strategies for tackling the specific health problems of LGBTI people and reinforcing epidemiological surveillance sensitive to the different health and disease-related situations of such people, respecting affected individuals' right to privacy in all cases.

d) Create mechanisms for the participation of LGBTI people, bodies and associations in policies related to sexual health.

e) Guarantee research into and the study and development of specific health policies for LGBTI people.

f) Encourage the establishment of health practices and psychological therapies which are fair and respectful, and in no case generate aversion, at all levels of health institutions, as far as sexual orientation, gender identity and gender expression are concerned.

g) Recognise the right to access to preventive methods that guarantee safer sexual practices and make sexually transmitted infections and the consequent treatment thereof avoidable, and foster the use of such methods.

h) Recognise the right to prevention, effective detection and comprehensive treatment, based on the current portfolio of health services, which may be modified to accommodate advances in science; and carry out periodic health promotion, disease prevention, awareness-raising and community support activities in relation to sexually transmitted infections, for men and women alike.

i) Incorporate comprehensive care for transgender and intersex people into the health system, based on the current portfolio of health services, which may be modified to accommodate advances in science, and establish criteria for access to hormonal treatment and surgery. The wishes of the person affected must be taken into account in decision making, as long as their life is not in danger and there is no risk of their health suffering, in accordance with current regulations. In the case of minors, special consideration must also be given to their right to freely develop their personality, as well as to their maturity and their capacity to make decisions.

j) Establish the mechanisms necessary to ensure that administrative documentation and medical forms reflect the heterogeneity of family and the circumstances of LGBTI people.

k) Guarantee lesbians' right to equal access to assisted reproduction techniques.

Article 17. Social action

1. Catalonia's public administration bodies must pay particular attention to support for young LGBTI people who are vulnerable or socially isolated, and must work to prevent situations in which the life or health of such people could be at risk for reasons stemming from their personal condition.

2. The Administration of the Generalitat must promote support measures and action for young LGBTI people who have been forced to leave their family home or have voluntarily done so due to mistreatment and psychological pressure.

3. Preventive measures must be established for LGBTI people who could suffer multiple discrimination, with a view to avoiding situations involving discrimination, the risk of social exclusion and vulnerability.

4. The social services and, specifically, public and private homes for the elderly must ensure that situations of discrimination against LGBTI people, whether living alone or with a partner, do not arise. Social services users must be encouraged to respect diversity where sexual orientation, gender identity and gender expression are concerned.

5. In care homes and other facilities in which there are separate areas for each sex, it must be ensured that transgender people are able to make use of the areas corresponding to the gender with which they identify.

Article 18. Public order and deprivation of liberty

With regard to public order and deprivation of liberty, the Government must:

a) Establish appropriate measures to guarantee the adequacy of the treatment LGBTI people receive in police stations and of the conditions in which they are held there.

b) Establish rules on identifying and searching transgender people on the basis of the identity they feel.

c) Ensure that the police and prison authorities permit and facilitate the continuation of any medical or hormonal treatment transgender detainees and prisoners may be receiving.

d) Guarantee transgender prisoners in penitentiary centres treatment and living conditions corresponding to the gender with which they identify.

e) Guarantee that initial and ongoing training law enforcement officers, such as members of the local police, the Mossos d'Esquadra (the police force of the Generalitat) and prison staff, covers diversity with regard to sexual orientation, gender identity and gender expression, as well as civil and administrative regulations and criminal legislation for the protection of LGBTI people.

f) Apply a protocol for dealing appropriately and comprehensively with victims of attacks on the grounds of sexual orientation, gender identity or gender expression.

g) Encourage victims to report acts of violence committed against them on the grounds of sexual orientation, gender identity or gender expression.

Article 19. Participation and solidarity

1. The cooperation and pro-peace and human rights policies that the Generalitat implements with a view to aiding development must promote the fight for LGBTI people's rights and foster cooperation projects that advocate and recognise such

people's human rights in countries in which they are persecuted, discriminated against or denied the said rights.

2. It shall be necessary to promote:

- a) The introduction of diversity with regard to sexual orientation, gender identity and gender expression as a field of work in the area of immigration; and support for people who have suffered persecution or retaliation in their country of origin on the grounds of their sexual orientation, gender identity or gender expression.
- b) The establishment of stable communication with the group of representatives of the religious beliefs present in Catalonia.

CHAPTER III. THE LABOUR MARKET

Article 20. Mainstreaming LGBTI people's right to equal treatment and opportunities

1. The policies of the ministry with jurisdiction over work must take people's right not to be discriminated against on the grounds of sexual orientation, gender identity and gender expression into account.
2. Companies must respect LGBTI people's right to equal treatment and opportunities, and must therefore take measures to prevent any kind of discrimination in the workplace. Such measures must be negotiated and, if applicable, are to be agreed upon with workers' legal representatives.
3. The Government must take appropriate measures to promote the voluntary adoption of equality and non-discrimination plans. The said measures are to be especially geared to small and medium-sized enterprises and must include the necessary technical support.

Article 21. Measures and actions related to employment

The ministry with jurisdiction over work must:

- a) Provide employees of the Administration of the Generalitat, be they civil servants or otherwise, with a real, effective guarantee, through the Labour Inspectorate, of non-discrimination on the grounds of sexual orientation, gender identity or gender expression, and of scope for LGBTI people to fully exercise their rights in relation to recruitment and to working and job conditions.
- b) Promote dissemination and awareness-raising measures and actions that guarantee equal opportunities and non-discrimination in companies, such as:

- 1st. Adapting and improving the response capacity of public employment services.
 - 2nd. Incorporating equal opportunities criteria into new calls for applications for subsidies.
 - 3rd. Encouraging business and trade-union bodies to carry out information campaigns.
 - 4th. Using channels for social dialogue to call for the promotion of inclusive measures and anti-discrimination clauses.
 - 5th. Encouraging companies to adopt codes of conduct and protocols geared to equal opportunities for and non-discrimination against LGBTI people.
- c) Promote the progressive introduction of equality indicators that reflect the situation of LGBTI people in the public and private sectors, and of a mark to identify companies that stand out in terms of the application of equality and non-discrimination policies.
 - d) Implement strategies for finding work for transgender people.
 - e) Promote new approaches to work-related organisation and time management in companies and develop measures and actions aimed at the whole of Catalonia's production sector to facilitate a balance between working, personal and family life, taking the heterogeneity of family into account.
 - f) Promote specific training for labour inspectors and occupational risk prevention workers, in the public and private sectors alike, in matters related to the discrimination that LGBTI people may suffer and in diversity with regard to sexual orientation, gender identity and gender expression.
 - g) Urge labour inspectors to inform the competent bodies of any cases of discrimination on the grounds of sexual orientation, gender identity or gender expression which have occurred, are occurring or are at risk of occurring in workplaces.
 - h) Promote channels for participation and dialogue and encourage specific information campaigns in collaboration with LGBTI associations and the corresponding social stakeholders.

CHAPTER IV. FAMILIES

Article 22. LGBTI families

1. Families shall enjoy the legal protection specified by law, covering, without discrimination, family relationships arising from marriage, stable cohabiting couples and single-parent families.
2. In accordance with current regulations, non-discrimination on the grounds of sexual orientation, gender identity and gender expression must be guaranteed in suitability assessments in adoption processes. The process of studying and assessing suitability must be educational, transparent, informative and open to challenge, and must take the heterogeneity of family into account.
3. Information programmes aimed at families may be established by the bodies of the Generalitat with jurisdiction over family and equality, as well as by local governments, in order to raise awareness of affective and gender-related diversity and combat discrimination on the grounds of sexual orientation, gender identity and gender expression. Particular emphasis must be placed on information about and the promotion of equal treatment of the LGBTI people who are most vulnerable due to their gender and age, such as youngsters and the elderly, to guarantee that they can fully enjoy their rights and freely develop their personality in their family environment.
4. The comprehensive service to which article 9 refers must, in coordination with local governments, attend to victims of discrimination in the family environment and provide them with support, especially in cases of sexist violence and cases involving LGBTI groups.
5. In the event of the death of a partner in a stable unmarried couple, the other partner must be able to participate, in the same conditions as a spouse, in the formalities and procedures related to identification and disposal of the body, burial, receipt of personal belongings and any other formality or procedure that may be necessary.
6. Catalonia's public administration bodies must establish the necessary mechanisms for ensuring that administrative documents reflect the affective relationships of LGBTI people and the heterogeneity of family.

TITLE III. TRANS IDENTITY AND INTERSEXUALITY

Article 23. Transgender people and intersex people

1. In the areas corresponding to Catalonia's public administration bodies, especially that of education and universities, conditions enabling transgender people and

intersex people, even if they are minors, to be treated and named on the basis of the gender with which they identify must be established via regulations.

2. In all their procedures, Catalonia's public administration bodies must ensure respect for the confidentiality of data related to the gender identity of the beneficiaries of this law.

3. In all cases, the right to consultation and to specific information must be guaranteed for transgender people and intersex people in areas such as access to the labour market, hormonal treatments and surgery, and sexual and reproductive health.

4. Transgender people and intersex people must be able to claim their rights under this law without the need for a diagnosis of gender dysphoria or receipt of any kind of medical treatment.

TITLE IV. MECHANISMS FOR GUARANTEEING THE RIGHT TO EQUALITY

Chapter I. General provisions

Article 24. Judicial and administrative protection of LGBTI people's right to equality

Judicial and administrative protection against breaches of LGBTI people's right to equality must encompass, depending on the nature of each case, the adoption of all measures necessary for the immediate cessation of discrimination, the adoption of precautionary measures, the prevention of imminent or further violations, compensation for damages and the restoration of conditions in which the victim can fully exercise their right. Moral damages shall be assumed to have been caused if discrimination is proven. Such damages must be evaluated on the basis of the circumstances of the case and the severity of the injury that has actually occurred.

Article 25. Eligibility to defend LGBTI people's right to equality

1. Subject to authorisation from the individual or individuals affected, legally constituted bodies, associations and organisations whose purposes include defending and promoting human rights shall be deemed interested parties in administrative proceedings in which a decision must be made in relation to a situation of discrimination. Trade unions, professional associations and consumer and user organisations shall also be deemed interested parties.

2. In accordance with the terms of procedural laws, the bodies, associations, organisations and trade unions to which section 1 above refers shall be eligible to defend the rights and interests of any of their members who wish them to do so in civil judicial, adversarial administrative and labour relations proceedings.

CHAPTER II. RIGHT OF ADMISSION

Article 26. Right of admission

1. Exercising the right of admission may not, under any circumstances, entail discrimination on the grounds of sexual orientation, gender identity or gender expression.

2. The prohibition of discrimination covers conditions of access to establishments, entitlement to remain there, and the use and enjoyment of the services they provide. The criteria and restrictions included in conditions applicable to accessing and remaining in an establishment must be displayed on visible signs at its entrances and by other means specified in regulations.

3. The owners of establishments and spaces open to the public and the organisers of recreational activities and shows must prevent the following people from gaining access thereto or eject them therefrom, with the help of law enforcement officers if necessary:

a) People who verbally or physically attack others on the grounds of sexual orientation, gender identity or gender expression.

b) People wearing or bearing and publicly displaying symbols, garments or objects that incite violence, discrimination, homophobia, biphobia or transphobia.

CHAPTER III. RIGHT TO ATTENTION AND TO REDRESS

Article 27. Right to real, effective, comprehensive protection

Catalonia's public administration bodies must guarantee LGBTI people who suffer or are at risk of suffering any kind of violence or discrimination the right to immediately receive real, effective, comprehensive protection.

Article 28. Breaches of the law in contractual agreements

Any provisions, acts or clauses of legal transactions which constitute or cause discrimination on the grounds of sexual orientation, gender identity or gender expression shall be deemed null and void, and may give rise to liability in accordance with current legislation.

Article 29. Right to attention and to legal assistance

Catalonia's public administration bodies must establish the mechanisms necessary to guarantee LGBTI people's right to receive full information and specialised legal assistance in relation to discrimination and the different types of violence perpetrated against such people.

Article 30. Reversal of the burden of proof

1. In accordance with procedural law and the laws governing administrative proceedings, in the event of a claimant or an interested party alleging and providing legitimate evidence of discrimination on the grounds of sexual orientation, gender identity or gender expression, it shall be up to the defendant, or whomever the situation of discrimination is imputed to, to present objective, reasonable, sufficiently proven justification of the measures adopted and their proportionality.

2. The facts or indications on the basis of which discrimination on the grounds of sexual orientation, gender identity or gender expression can be presumed to exist may be proven by means of any type of evidence admissible by law, notwithstanding any proceedings instituted and measures adopted under the organisational, coexistence-related or disciplinary rules of institutions and public services. Statistical evidence and situation tests may also be taken into account. The conditions and guarantees applicable must be established via regulations.

3. The administrative or sanctioning body may, *ex officio* or at the request of a party, seek reports or opinions from bodies with jurisdiction over equality.

4. The provisions of section 1 above shall not apply to criminal or administrative disciplinary proceedings.

CHAPTER IV. INFRINGEMENTS AND PENALTIES

Article 31. Concept of infringement

1. Administrative infringements of LGBTI people's rights shall consist of the acts or omissions that are classified herein and fall within the jurisdiction of the Generalitat

or of Catalonia's local government bodies, provided that they do not constitute crimes.

2. Differences in treatment based on any of the grounds specified herein and arising from a provision, a form of conduct, an act, a criterion or a practice that can be objectively justified for a legitimate purpose and as an appropriate, necessary, proportional means of fulfilling it shall not be deemed discrimination.

3. Any discrimination on the grounds of sexual orientation, gender identity or gender expression, including harassment, which takes place in the work arena, whether in relation to the recruitment or promotion of employees or to tasks to be performed, shall constitute an infringement. As such, it must be investigated and, if applicable, penalised in accordance with the procedure and classification of infringements established in labour legislation.

Article 32. Compatibility with the criminal area of law

1. Acts to which criminal or administrative penalties have already been applied may not be penalised again, in cases involving the same subject, acts and grounds for a penalty.

2. If the administrative body believes that an infringement may constitute a crime, it must notify the Spanish Public Prosecution Service or the competent judicial body and suspend its disciplinary proceedings until such time as the judicial authority issues a final judgement or a ruling that brings the proceedings to an end, or as the Spanish Public Prosecution Service states that it would be inappropriate to initiate or continue proceedings. In cases in which no crime is deemed to exist, the administrative body must continue with its disciplinary proceedings and consider any facts established in court to be proven.

Article 33. Procedure

1. The bodies empowered to initiate, investigate and rule on disciplinary proceedings must apply the regulations thereon applicable in the areas over which the Administration of the Generalitat has jurisdiction, in accordance with the principles of legality, competence, non-retroactivity, correspondence with the descriptions set out in law, liability, proportionality, prescription and the prohibition of double jeopardy.

2. If, while investigating a case, the competent body reaches the conclusion that the power to impose penalties in relation to the alleged infringement corresponds to another public administration body, it must notify the latter thereof and transfer the case to it.

Article 34. Infringements

1. An infringement may be minor, serious or very serious, in accordance with the provisions of this law, as long as it does not constitute a crime.
2. An infringement may not be penalised without the corresponding case having been investigated beforehand, in accordance with administrative procedure.
3. The following shall be deemed minor infringements:
 - a) Deliberately using offensive expressions, via any medium, which incite violence against people or their families on the grounds of sexual orientation, gender identity or gender expression.
 - b) Deliberately using offensive expressions that incite violence and have homophobic, biphobic or transphobic connotations in the media, in speeches or in public comments.
 - c) Carrying out acts that entail publicly, evidently and explicitly isolating, rejecting or scorning people on the grounds of sexual orientation, gender identity or gender expression.
4. The following shall be deemed serious infringements:
 - a) Deliberately and repeatedly using offensive expressions that incite violence against people or their families on the grounds of sexual orientation, gender identity or gender expression.
 - b) Damaging or destroying objects or the property of people or their families on the grounds of sexual orientation, gender identity or gender expression, provided that such acts do not constitute a crime.
 - c) Deliberately preventing a person from carrying out a procedure, using a public service or entering an establishment open to the public on the grounds of their sexual orientation, gender identity or gender expression.
 - d) Deliberately and repeatedly using offensive expressions that incite violence and have homophobic, biphobic or transphobic connotations in the media, in speeches or in public comments.
5. The following shall be deemed very serious infringements:
 - a) Harassing or behaving aggressively towards people or their families on the grounds of sexual orientation, gender identity or gender expression.
 - b) Organising public shows or recreational activities intended to incite hate, violence or discrimination against LGBTI people.

6. Multiple discrimination and secondary victimisation shall cause the category of infringement established under this law to rise a degree, where each basis for imposing a penalty is concerned.

Article 35. Penalties

1. The penalty applicable to minor infringements shall consist of a fine equivalent to the monthly amount of Catalonia's income sufficiency indicator, corresponding to a period of between seven days and three months. In the absence of repetition, the competent body may issue a written warning instead of imposing the said penalty.

2. In the case of serious infringements, one or more of the following penalties may be imposed:

a) A fine equivalent to the amount of Catalonia's income sufficiency indicator corresponding to a period of between three months and a day and seven months.

b) Prohibition of the receipt of public aid or subsidies for a maximum period of one year.

c) Prohibition from entering into contractual agreements with the Administration of the Generalitat and its autonomous and public bodies for a maximum period of one year.

3. In the case of very serious infringements, one or more of the following penalties may be imposed:

a) A fine equivalent to the amount of Catalonia's income sufficiency indicator corresponding to a period of between seven months and a day and ten months.

b) Prohibition of the receipt of public aid or subsidies for a maximum period of two years. In the case of repetition or recidivism, this prohibition may be for a maximum of five years.

c) Prohibition from entering into contractual agreements with the Administration of the Generalitat and its autonomous and public bodies for a period of between one year and a day and three years.

4. To determine the penalties that ought to be imposed and, if applicable, to graduate the size of fines and the duration of temporary penalties, the competent authorities must ensure proportionality between the seriousness of an act deemed an infringement and the penalty or penalties applied on the basis of the resulting injury, the number of people affected, the body affected and the nature of the duty affected, in accordance with current legislation. Particular consideration must be given to the following criteria:

a) The offender's degree of culpability and the intentionality of their acts.

- b) The physical harm and the moral and material damages caused to people or property, and the situation of risk generated or sustained.
 - c) Recidivism or repetition.
 - d) Multiple discrimination and secondary victimisation.
 - e) The economic and social significance of the infringement.
 - f) Repeated failure to comply with warnings or recommendations from the Social Services Inspectorate.
 - g) The permanent or temporary nature of the situation of risk arising from the infringement.
 - h) Compliance with the breached rules, on the offender's own initiative, at any time during administrative disciplinary proceedings prior to a decision being issued.
5. The objectives of a penalty must be prevention, dissuasion, redress and the repair of any damages that the discrimination involved has caused or could cause.

Article 36. Liability

1. Liability for the infringements classified herein shall correspond to the individuals who or the public or private legal entities that commit them through their acts or omissions.
2. Liability shall be joint and several in the event of there being more than one liable party and it not being possible to determine the degree to which each of them has participated in committing the infringement.

Article 37. Prescription

1. Periods of prescription of six, twelve and eighteen months shall apply to infringements that this law classifies as minor, serious and very serious respectively.
2. Periods of prescription of three, six and twelve months shall apply to penalties imposed under this law for minor, serious and very serious infringements respectively.

Article 38. Competence

1. The power to initiate administrative disciplinary proceedings under this law and to impose penalties shall correspond to the secretary-general of the ministry with jurisdiction over non-discrimination against LGBTI people.
2. The Ombudsman may call on the body or figure empowered to impose penalties to initiate proceedings for non-fulfilment of this law arising from the acts or omissions of the public administration bodies.

Article 39. Guarantee in relation to statistics

1. The obtainment of official statistical data for developing public policies on non-discrimination against LGBTI people must take place within the framework of Catalan legislation related to statistics, especially where the regulation of statistical confidentiality is concerned, in accordance with the terms of current Catalan regulations on statistics, current regulations on personal data protection and all other applicable regulations.

2. The LGBTI policy coordinating body must produce, commission and periodically publish statistics and qualitative studies relating especially to:

a) Attacks on and cases of discrimination against LGBTI people.

b) Formal complaints filed by virtue of this law and criminal complaints filed in response to crimes involving discrimination or violence against LGBTI people.

c) Administrative decisions and judicial rulings, and the purport thereof, related to the object of this law, particularly those that could prove the existence of cases of indirect discrimination and help develop measures for public anti-discrimination policies.

3. The LGBTI policy coordinating body may propose that agreements be established with other public administration bodies, public institutions and organisations for the purposes of compliance with section 2 above.

ADDITIONAL PROVISIONS

First additional provision. Interministerial coordination

1. The Government must guarantee mechanisms for coordination between the different ministries of the Generalitat which have jurisdiction over the subject matter, in order for them to implement the public policies and apply the principles stipulated herein.

2. To adapt administrative inspection work to the principles and public policies to which section 1 above refers, each ministry's bodies with jurisdiction over the subject matter must initiate a study of all the instruments for developing an internal training plan for civil servants who have to carry out such work.

Second additional provision. Social impact of the law

Within two years of this law coming into force, the LGBTI policy coordinating body must assess the social impact hereof and make its assessment public.

Third additional provision. Cooperation and collaboration between institutions

1. In accordance with the powers assigned thereto under the Statute of Autonomy and Law 24/2009, of 23 December, the Ombudsman shall exercise functions involving the protection of rights and freedoms related to non-discrimination against LGBTI people which may have been violated by the acts of public or private institutions.

2. In the field of non-discrimination against LGBTI people, the Government must cooperate with the bodies and figures with jurisdiction over the protection of rights and freedoms, offer them all the information at its disposal and provide them with the necessary support in their activity.

3. The Government must propose a cooperation agreement to the judicial authority, the Ombudsman and the Spanish Public Prosecution Service within six months of the creation of the LGBTI policy coordinating body to which article 8 of this law refers.
Fourth additional provision. Passing a non-discrimination law

1. Within eight months of the publication of this law, the Government must present a non-discrimination bill to the Parliament.

2. On the basis of a comprehensive, cross-cutting perspective, the non-discrimination law must regulate measures geared to preventing, eradicating and rectifying discrimination in its various forms in the public and private sectors, in accordance with the powers assigned to the Generalitat. The said law must also establish a disciplinary system with classification and description of infringements related to the different forms of discrimination, as well as graduation criteria for such infringements.

3. The disciplinary system of the non-discrimination law and that of this law must be harmonised in such a way as to guarantee the level of protection afforded LGBTI people in all cases.

4. In the event of the non-discrimination law creating a body for guaranteeing, improving and promoting people's right not to be discriminated against, the said body may take on the policies related to service, information, advice and evaluation and the disciplinary powers established under this law. Should it do so, the guaranteed level of protection and action against discrimination on the grounds of sexual orientation, gender identity or gender expression must at least match that provided for under this law.

TRANSITIONAL PROVISIONS

First transitional provision. Validity of Decree 141/2007

The National Council for Lesbian, Gay, Bisexual, Transgender and Intersex People shall, for all purposes, replace the National Council for Lesbian, Gay, Bisexual and Transsexual People created under Decree 141/2007, of 26 June. Until such time as new regulations come into force, all aspects of the said decree which are concordant with this law shall retain their validity.

Second transitional provision. Disciplinary proceedings

Until such time as a decree governing anti-discrimination disciplinary proceedings is passed, the procedure established under Decree 278/1993, of 9 November, on disciplinary proceedings applicable in the areas over which the Generalitat has jurisdiction shall remain in force.

FINAL PROVISIONS

First final provision. Period for the development of the law

Within the scope of its powers, the Government must establish the regulatory provisions necessary for the development of this law within a year of it being passed.

Second final provision. Entry into force and budget appropriations

1. This law shall come into force on the day after its publication in the *Diari Oficial de la Generalitat de Catalunya* (Official Journal of the Generalitat of Catalonia).
2. Provisions whose fulfilment requires expenditure from the budget of the Generalitat shall take effect as of the entry into force of the budgetary law corresponding to the first budget year subsequent to the entry into force of this law.