



## REPORT ON THE IMPACT OF THE SPANISH SAME-MARRIAGE ACT IN THE NATIONAL LAW

September, 22th, 2009



PROFESIONALES  
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**REPORT ON THE IMPACT OF SPANISH SAME-SEX MARRIAGE ACT IN  
THE NATIONAL LAW**

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## *Report on the Impact of Spanish Same-Sex Marriage Act in the National Law*

### **I.- Introduction**

1) Act 13/2005, of 1st of July (hereinafter, Same-Sex Union Act, SSUA), of National Parliament modified the Spanish Civil Code, including the same-sex union as a legal marriage for the first time in Spain's History.<sup>1</sup>

2) Spanish Constitution (Section 32.1) recognises the right to marry: "*Man and woman have the right to marry with full legal equality*".<sup>2</sup>

3) According to the Spanish National Institute of Statistics, the number of same-sex unions under that Act were: 1,275 (0,6% of the total of marriages) in 2005; 4,574 (2,16% of the total of marriages) in 2006; 3,250 (1,6% of the total of marriages) in 2007, and 3,549 in 2008.<sup>3</sup>

4) SSUA was unusually rejected by the Senate (Spanish Parliamentary system is bicameral, with a Congress and a Senate, both with legislative powers). Spanish Council of State ("Consejo de Estado") was highly severe in its criticizes towards the project of SSUA in its unanimous Report 2628/2004 (December, 16<sup>th</sup>, 2004).

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<sup>1</sup> In Spanish: "*Ley 13/2005, de 1 de julio, por la que se modifica el Código Civil en materia de derecho a contraer matrimonio*", published in the Official Bulletin of the State ("Boletín Oficial del Estado", "BOE") on July, the 2nd, 2005.

<sup>2</sup> In Spanish: "*El hombre y la mujer tienen derecho a contraer matrimonio con plena igualdad jurídica*".

<sup>3</sup> Instituto Nacional de Estadística (INE): [www.ine.es](http://www.ine.es)

This official statistic is far from the numbers given by LGTB Movements. Even the Spanish Socialist Government gave the number of near 4 million gays in Spain (10% of total population) and about 100,000 same-sex "marriages" in the first two years after SSUA came into effect. See, about this, the report "Homosexuality, marriage and adoption", by the Centre for Studies of the Social Reality, Abad Oliva-CEU University, Barcelona. In Spanish: "Homosexualidad, matrimonio y adopción. Un enfoque desde el capital social", Centro de Estudios de la Realidad Social, in: [http://incas.uao.es/pdf/12\\_es.pdf](http://incas.uao.es/pdf/12_es.pdf)  
The ratio of divorces in same-sex marriages given by some medias is about 10%. Full official statistics are not clear nor public.

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5) A complaint against SSUA has been lodged before the Spanish Constitutional Court by the main centre-right political party of Spain (the so-called “Partido Popular, PP”, Popular Party<sup>4</sup>) in September, the 28th, 2005. The complaint for an alleged violation, among others, of Article 32.1 of the Constitution (“*Man and woman have the right to marry with full legal equality*”) has not been decided yet. However, the Constitutional Court declared in its Decisión 222/1994, of 11 of July, that “*the union between persons of the same biological sex is not an institution legally accepted, and it does not exist a constitutional right to it*”.<sup>5</sup>

6) The Spanish Royal Academy of Legislation and Jurisprudence<sup>6</sup> and the General Council of the Judiciary<sup>7</sup> (Report of January, 26<sup>th</sup>, 2005) declared that SSUA and same-sex marriage were contrary to the Constitution. Furthermore, recognised legal writers, professors and jurists have serious reasons to consider that SSUA is incompatible with the Constitution.

7) Although conscientious objection is a constitutional right recognised as such in many different circumstances by the Constitutional Court, the Supreme Court (in fact, under the authority of the Constitutional Court in constitutional issues) does not accept the right of civil servants (e.g., judges) to object against same-sex unions in order to be removed from their legal obligations when it violates their moral conscience.<sup>8</sup>

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<sup>4</sup> The former leader of the PP, José María Aznar, was the Spanish Prime Minister from 1996 to 2004.

<sup>5</sup> Auto del Tribunal Constitucional nº 222/1994, Sala Primera.

<sup>6</sup> Real Academia de Legislación y Jurisprudencia: <http://rajyl.insde.es>

<sup>7</sup> Consejo General del Poder Judicial: <http://www.poderjudicial.es>

<sup>8</sup> V. gr., Supreme Court’s Judgment of May, 11th, 2009, which denied the right of a judge who supervises the Civil Registry to be excluded from the compulsory procedure of recording of a same sex union.

## II.- Changes in terminology and legal concepts related to marriage and family

1) Same-sex union Act 13/2005 has definitely changed the public order (“*ordre publique*”) of the Spanish Law in general, and specifically very substantial aspects of the Spanish Family Law.

2) SSUA is the legal base of Order of the Ministry of Justice Nr 568/2006, of February, the 8<sup>th</sup><sup>9</sup>, which “neutralizes” the different sexual condition of man and women based on nature, using a new terminology applied to marriage and the family as follows:

- a) The legal terms “husband” (“*marido*”) and “wife” (“*mujer*”) are replaced by “spouse A” (“*cónyuge A*”) and “spouse B” (“*cónyuge B*”) in the Civil Registry and all official documents.
- b) The legal terms “father” (“*padre*”) and “mother” (“*madre*”) are replaced by “parent A” (“*progenitor A*”) and “parent B” (“*progenitor A*”) in the Civil Registry and all official documents.
- c) The legal expression “marriage of the father and mother (“*matrimonio de los padres*”)” is replaced by “marriage of the spouses” mother (“*matrimonio de los progenitores*”).

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<sup>9</sup> In Spanish: “*Orden JUS/568/2006, de 8 de febrero, sobre modificación de modelos de asientos y certificaciones del Registro Civil y del Libro de Familia*”, published in the Official Bulletin of the State (“*Boletín Oficial del Estado*”) on March, the 3d, 2006.

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3) Assisted Reproduction Act 14/2006 uses the expression “couple of parents” (“pareja progenitora”, “pareja generadora”), that in Spanish language does not mean any specific sex of its two members, instead of “husband” (“marido”) and “wife” (“mujer”).<sup>10</sup>

4) Changes in the Spanish Civil Code (CC) by SSUA are both, terminological and conceptual:

### **4.1) Conceptual:**

#### **a) Requirements and effects of the marriage (Article 44 CC):**

Former version: “*Man and woman are entitled to marriage according to the provisions of the present Code*”.

New version: “*Man and woman are entitled to marry according to the provisions of the present Code. Requirements and effects of the marriage are equal when the married persons are of the same or opposite sex.*”

#### **b) Housework obligations (Article 68 CC):**

Former version: “*Husband and wife are obliged to live together, and owe to each other fidelity and mutual succour.*”

New version: “*Spouses are obliged to live together, and owe to each other fidelity and mutual succour. They will also share housework and the care and assistance to ancestors and descendants and other dependent persons*”:

**c) Full recognition of equality rights** with respect to sucesion (inheritance rights), adoption (see IV), social benefits (see VI), nullity of marriage, separation and divorce,

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<sup>10</sup> V. gr., Arts. 11.6 and 16.1.

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and others<sup>11</sup>. They are all based in the strict and radical application of the principle of Article 66 CC: “*Spouses are equal in rights and duties*”.

### **4.2.) Terminological:**

- a) “Spouses” instead of “husband and wife” (Articles 66 CC,<sup>12</sup> 67 CC<sup>13</sup>).
- b) “Parents” instead of “father and mother” (Articles 154 CC,<sup>14</sup> 160 CC<sup>15</sup>).
- c) “One or both exercising the parental authority” instead of “father” and “mother” (Article 164 CC<sup>16</sup>).

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<sup>11</sup> The Urban Leasing Law of 1994 (“Ley 29/1994, de 24 de noviembre, de Arrendamientos Urbanos”) allows (Article 16) certain relatives or persons related to the deceased lessee (spouse, heterosexual or homosexual person living with the deceased lessee for at least the last two years, descendants, ascendants, brothers and sisters or disabled relatives living with the person for the same period) to be subrogated under a property lease.

<sup>12</sup> Former version: “*Husband and wife are equal in rights and duties*”.  
New version: “*Spouses are equal in rights and duties*”.

<sup>13</sup> Former version: “*Husband and wife must respect and help one to each other and act in the interest of the family*”.  
New version: “*Spouses must respect and help one to each other and act in the interest of the family*”.

Articles 1.323, 1.344, 1.348, 1.351, 1.361, 1.365, 1.404 and 1.458 CC (on the economic relationships inside the marriage) use the terms “spous” or “spouses”.

<sup>14</sup> Former version: “*Not emancipated sons are under the authority of their father and mother.*”  
New version: “*Not emancipated sons are under the authority of their parents.*”

<sup>15</sup> Former version: “*Every father and mother (...) are entitled to relacionate to their children who are minor (...).*”  
New version: “*Every parent (...) is entitled to relacionate to his/her children who are minor (...).*”

<sup>16</sup> Parents administration of their children’s assets and its exceptions.

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d) “Both parents” instead of “husband and wife” (Article 637 CC<sup>17</sup>).

5) The changes introduced are not merely nominal; they suggest a new concept of person in which sex would be our primary and natural condition, but not the final gender to be decided by our free and personal election. In fact, from that perspective, there are two sexes, but five genders (including transsexuals from man to woman and viceversa).

6) Gender’s legal perspective of SSUA brought as a “must” (and as a logical consequence) the legal recognition of the transsexual gender by Act 3/2005, March, the 15<sup>th</sup><sup>18</sup>. In Spain, transsexuality is not only a legal possibility, but medical treatment is even paid in some regions by public budget. As a result of Act 3/2005, the new transsexual gender and the new surname accorded to it are recorded in the Civil Registry, and all official documents mention them. The change of sex is, except in some cases, secret to third parties, and no information about it is included in the new documents.

7) Marriage does not ground on the natural opposite sex condition of man and woman. The concept of marriage is then diluted and it expresses any legal union based exclusively in the will of persons to live together. From this point of view—even though not yet introduced in Spanish Law—no reasons can be argued against polygamy, as some legal authors remark.

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<sup>17</sup> On Donations. Fomer versión: uses the expression “*husband and wife*”. New version: uses the expression “*both parents*”.

<sup>18</sup> In Spanish: “*Ley 3/2007, de 15 marzo, reguladora de la rectificación registral de la mención relativa al sexo de las personas*”, published in the Official Bulletin of the State (“Boletín Oficial del Estado”) on March, the 16th, 2007).

8) The diversity of human groups with children (couples married and not married, same-sex or opposite-sex unions, and even singles) are all together called “families” or even “family models”.

### **III.- Reproductive Issues**

1) Assisted Reproduction Act 14/2006<sup>19</sup> states in its Article 6 that every woman will be able to use the assisted reproduction technology “*irrespective of her marital status and sexual orientation*”. It means that homosexuals, bisexuals or transexuals can, as heterosexuals women, be inseminated. As a matter of law, being married or having a couple is completely irrelevant.

2) From a legal point of view, human reproduction is no longer necessarily linked to a natural difference of sexes in a couple, but to a radical free and sovereign will of the spouses.

3) The case of the first Spanish transexual (from woman to man) pregnant with twins was widely reported in all mass media, shocking the public opinion.<sup>20</sup>

4) Spanish and International Press have denounced Spain to have become a paradise for touristic “beach and assisted reproduction” for lesbians,<sup>21</sup> especially in the Spanish Mediterranean Coast (Barcelona and Valencia).<sup>22</sup>

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<sup>19</sup> In Spanish: “*Ley 14/2006, de 26 de Mayo, sobre técnicas de reproducción humana asistida*”, published in the Oficial Bulletin of the State (“Boletín Oficial del Estado”) on May, the 27th, 2006.

<sup>20</sup> In the 17<sup>th</sup> week, Rubén Noé Coronado suffered a natural abortion. Vid. “EL MUNDO” (Spanish leading daily newspaper), in:  
<http://www.elmundo.es/elmundo/2009/06/10/espana/1244652672.html>

<sup>21</sup> EL MUNDO, in:

#### **IV.- Adoption**

1) Homosexuals couples, “married” or not, can adopt children through authorised institutions in Spain. In case of a non-married couple, any of them can individually adopt. If they are “married”, there can be a joint adoption.<sup>23</sup>

2) The General Council of Judiciary (“Consejo General del Poder Judicial”) in its report on the reform of Civil Code regarding same-sex marriage stated: *“Natural filiation is the model of any adoptive filiation. For that reason, joint adoption by a[] homosexual couple violates the integral protection of children by State Powers, including the Legislative Power (Article 39.2 of the Constitution), because it is contrary to the best interest of the child. Furthermore, to forbid any adoption of children by homosexual couples does not [violate] the principle of equality and it is discriminatory.”*<sup>24</sup>

3) Spain recognises the jurisdiction of the European Court of Human Rights, which stated that adoption is not a right and that it is not unlawful discrimination to deny adoption by a homosexual<sup>25</sup> (Frettè v. France<sup>26</sup>). But the European Court changed its

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<http://www.elmundo.es/elmundo/2009/06/12/valencia/1244818732.html>

<sup>22</sup> For example, the Intertility Institute of Valencia (“Instituto Valenciano de Infertilidad, IVI”) carried out 6,399 treatments of assistance reproduction in 2008 (18% of them were German, British and Italian patients, where legislation is more restrictive). We do not have statistics of the homosexual patients, but the price in Spain is attractive to other Europeans. See EL PAIS (Daily newspaper):

[http://www.elpais.com/articulo/Comunidad/Valenciana/tratamientos/IVI/practica/extranjeros/elpepiespval/20090227elpval\\_16/Tes/](http://www.elpais.com/articulo/Comunidad/Valenciana/tratamientos/IVI/practica/extranjeros/elpepiespval/20090227elpval_16/Tes/)

<sup>23</sup> Art. 175.4 CC.

<sup>24</sup> January, 26th, 2005: See: [http://www.apmagistratura.com/apm/matrim\\_homo/01.PDF](http://www.apmagistratura.com/apm/matrim_homo/01.PDF)

<sup>25</sup> As Judge Zupančič stated in his dissenting opinion in E. B. v. France, adoption is not a right but a privilege. Discrimination can only occur in the field of rights, but not when a privilege is given or denied.

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case-law, accepting adoption by homosexuals (E. B. v. France) and declaring the existence of discrimination by sexual orientation.

4) Two homosexual men “married” under Spanish law were authorised by the Spanish Ministry of Justice to record in the Civil Registry “their” two children born from a surrogate woman in San Diego (California). The surrogacy is illegal in Spain<sup>27</sup>, and it was done in fraud of Law. But, the two men are legal “parents” of both children as a result of the Resolution of the General Department for Registries and Notaries Nr 2575/2008, of February, the 18<sup>th</sup>, 2009.<sup>28</sup>

5) Spain has a high *ratio* of international adoptions of children from foreign countries (primarily from China, Ukraine, Russia and Latin-America).<sup>29</sup> Most of those countries do not allow their citizens to be adopted in Spain by homosexual couples, as a way of protecting the best interest of the child. But Spanish Law authorises the adoption of foreign children by homosexuals, even a joint one if they are “married”.<sup>30</sup>

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<sup>26</sup> February, 26<sup>th</sup>, 2002. In the same sense, E. B. V. France, January, 22th, 2008: “(...) *The provisions of Article 8 do not guarantee either the right to found a family or the right to adopt. (...) The right to respect for “family life” does not safeguard the mere desire to found a family; it presupposes the existence of a family, or at the very least the potential relationship between, for example, a child born out of wedlock and his or her natural father, or the relationship that arises from a genuine marriage, even if family life has not yet been fully established, or the relationship that arises from a lawful and genuine adoption.*” § 41.

<sup>27</sup> Art. 10 of the Assisted Reproduction Act 14/2006 declares any contract of surrogacy null and void, irrespective of its profit or no profit nature.

<sup>28</sup> The General Department for Registries and Notaries (in Spanish, “Dirección General de los Registros y del Notariado”, or “DGRN”) depends from the Ministry of Justice.

<sup>29</sup> International adoption is higher than national one. According to the Ministry of Education, Social Policy and Sports, the number of foreign minors adopted (from 2003 to 2007) were 23.035. See: <https://www.mepsyd.es/dctm/mepsyd/politica-social/familias-infancia/estadisticasadopcionnacional-2006.pdf?documentId=0901e72b80027855>

<sup>30</sup> Act 54/2007, December, 28th, on International Adoption (BOE December, 29th, 2007). In Spanish: *Ley 54/2007, de 28 de diciembre, de Adopción internacional*. Its Article 10 requires “suitability”

## **V.- Education**

- 1) The Spanish educational system is based on the Organic Law 2/2006, May, the 3<sup>rd</sup>, (“Ley Orgánica de Educación”, “LOE”)<sup>31</sup>.
- 2) The LOE established a new area of knowledge called “Education for Citizenship” (EFC), that introduces four compulsory subjects at Primary (“Educación Primaria”) and Secondary (“Educación Secundaria Obligatoria”, or “ESO”; and “Bachillerato”) levels, from 10 to 16 years old, approximately.
- 3) The national curriculum of EFC includes issues concerning sexual and emotional education and gender mainstreaming. Despite the absence of explicit mention to same-sex marriage in the legal norms regulating the EFC curriculum, official EFC materials (books, leaflets, songs, e-documents<sup>32</sup>, etc.) teach it as lawful and ethically acceptable.
- 4) Moral contents of EFC were strongly rejected by an important part of Spanish society (52,000 conscientious objectors to EFC) and other significant entities, both political (e.g., the Popular Party, mentioned above), and religious ones (e.g., the Spanish Conference of Bishops of the Catholic Church).

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(“idoneidad”) of the adoptive parent irrespective of his/her sex. That suitably refers to his/her capacity, aptitud and motivation to exercise the parental power (“patria potestad”) according to the needs of the child adopted, and to assume the consequences and responsibilities derived from the adoption.

<sup>31</sup> In Spanish: “Ley Orgánica 2/2006, de 3 de Mayo, de Educación”, published in the Oficial Bulletin of the State (“Boletín Oficial del Estado”) on May, the 4th, 2006.

<sup>32</sup> See the project SEXPRESAN on sexual education, into the official webpage of the Spanish Ministry of Education:  
<http://www.isftic.mepsyd.es/w3/eos/MaterialesEducativos/mem2007/sexpresan/multimedia/Sexpresan.swf>

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5) Nearly 1,800 judicial complaints have been lodge in less than two year as a consequence of EFC in the national compulsory curriculum. Some of those complaints have already been decided by the Supreme Court. In those Judgments of February, the 11<sup>th</sup>, 2009, the Supreme Court does not recognize the right of parents to object to the EFC curriculum, in spite of the controversial ethical aspects included in it.

6) The Supreme Court decisions on EFC have not always been followed by the lower courts, which have ruled recognizing the right of parents to object to that subject: e. g. Superior Court of Castilla-León, Judgments of September, 23<sup>th</sup>, 2009; and District Administrative Court nr 2 of Saragossa, of April, 13<sup>th</sup>, 2009.<sup>33</sup> The Supreme Court decisions are not binding on other inferior courts. Spain is not a common-law country, and judges are only under the compulsory authority of written-law.

7) The Supreme Court Judgments on Conscientious Objection against EFC are not final, and parents have appealed to the Constitutional Court. If the Spanish Constitutional Court does not reverse the Supreme Court Judgments, an international appeal to the European Court of Human Rights is expected.

8) The Supreme Court did not recognise the right to object, but at the same time, declared that parents are entitled to prevent their children from being indoctrinated, at least in public schools. This is the present way that legal advisers of the parents opposed to moral contents of EFC are bringing new actions before the courts.

9) 73,6% of students in Spain (Primary and Secondary levels) are taught in Catholic Religion and Moral—in private and public schools—by free decision of their parents.

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<sup>33</sup> In Spanish: Zaragoza.

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This amounts to 3,5 million students of a total of 4,7 millions in the whole country.<sup>34</sup> This is a constitutional right under Section 27.3 of the Constitution. Moreover, nearly 30% of Spanish students are educated in Catholic schools, which mostly receive public funds.

**10)** The Spanish Conference of Bishops has twice declared that EFC, as it has been passed in the national curriculum laws, imposes a compulsory moral education, and some of its principles, ethical teachings and anthropological perspectives (e. g., moral relativism and gender ideology), are contrary to Catholic doctrine and the true Humanism.<sup>35</sup> One of the expressions of the aforementioned moral relativism and gender ideology would be same-sex marriage.

**11)** The “Intruction for Catholic Schools regarding ‘Education for Citizenship’”, signed by the three bishops of the Madrid Region, emphasizes that EFC violates the right of parents to decide the moral and religious education for their children. The Instruction states that it is morally acceptable to *“use all legitime instruments to defend freedom of conscience and education (...) including the conscientious objection.”*<sup>36</sup>

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<sup>34</sup> According to the Report of the Bishop Comisión for Education (“Number of students receiving religious and moral Catholic doctrine in the School”, 2008-2009”), In: <http://www.conferenciaepiscopal.es/ensenanza/ERE/2009.pdf>

<sup>35</sup> Permanent Commission of the Spanish Conference of Bishops, Declarations of February, 28th, 2007 (“The LOE, its Royal Decrees and the fundamental rights of parents and schools”) and June, 20<sup>th</sup>, 2007 (“New Declaration on LOE and its development: teachers of religion and “citizenship”). See: <http://www.conferenciaepiscopal.es/documentos/Conferencia/LOE2007.htm> <http://www.conferenciaepiscopal.es/documentos/Conferencia/LOE2007b.html>

<sup>36</sup> September, 1st, 2008. In: <http://www.cas-aranjuez.org/Colegio/Tablon/Documentos/CartaObispos.pdf>

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12) Spanish Constitution in Section 27.6 protects schools' ability to teach a religious doctrine ("ideario" or "carácter propio"). The contradiction between this constitutional protection and certain aspects of the EFC national curriculum (e.g., same-sex "marriage") is nowadays a cause of conflicts.

13) Public funds support a wide diversity of activities by some homosexual groups in public schools all over the country. Many parents are not informed of these practices.

### **VI.- Social security and other benefits**

1) Parental leave ("Permiso de paternidad"): when a child is adopted by a homosexual "marriage", or the child who is the biological son/daughter of one of the partners is adopted by the other partner, both parents have been recognised to be entitled to parental leave.<sup>37</sup>

2) Widow's Pension ("Pensión de viudedad"): widowed partners of married same-sex couples have equal rights with widows married to an opposite-sex person.<sup>38</sup>

3) Public Social Security: same-sex "marriage" has the same treatment as opposite-sex marriage, and the spouse is beneficiary of the social security rights derived from marriage.

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<sup>37</sup> E. g., Madrid District Labour Court nr 30 recognised such a right to a lesbian who adopted the biological son of her "spouse", in October 2008.

This is not a generally statutory recognised right excepting in the Region of Andalusia. Regional Act of Andalusia 12/2007, November, 26th, recognises (Article 40.2) the right of regional civil servants (around 250,000 persons) to paternity leave (up to 4 weeks) to same-sex couples (married or not) in case of adoption or fostering.

<sup>38</sup> Daily Newspaper EL MUNDO, October, 8th, 2005: the first recognition by the State of the widow's pension in a same-sex "marriage":

<http://www.elmundo.es/elmundo/2005/10/07/sociedad/1128701297.html>

## **VII.- Penal Code**

1) Article 515.5 of the Spanish Penal Code (SPC) considers illegal any association promoting or inciting discrimination, hate or violence against persons, groups or associations, based on ideology, religion, convictions, ethnicity, race, national origin, sex, **sexual orientation**, familial situation, illness or handicap.<sup>39</sup>

2) Article 173.1 SPC considers to be criminal any degrading treatment to a person damaging his/her moral integrity.<sup>40</sup>

3) Article 22.4 SPC defines as an aggravating circumstance committing a crime motivated by racism, anti-Semitism, or any other kind of discrimination related to ideology, religion, beliefs of the victim, ethnicity, race, national origin, sex, or **sexual orientation** (...).<sup>41</sup>

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<sup>39</sup> Spanish version: “*Son punibles las asociaciones ilícitas, teniendo tal consideración: (...) 5. Las que promuevan la discriminación, el odio o la violencia contra personas, grupos o asociaciones por razón de su ideología, religión o creencias, la pertenencia de sus miembros o de alguno de ellos a una etnia, raza o nación, su sexo, orientación sexual, situación familiar, enfermedad o minusvalía, o inciten a ello.*”  
On the other hand, Articles 516-521 regulate different aspects of the basic conducts included in the crime of Art. 515.

<sup>40</sup> Spanish version: “*El que infligiera a otra persona un trato degradante, menoscabando gravemente su integridad moral, será castigado con la pena de prisión de seis meses a dos años.*”

<sup>41</sup> Spanish version: “*Son circunstancias agravantes: (...) 4.- Cometer el delito por motivos racistas, antisemitas u otra clase de discriminación referente a la ideología, religión o creencias de la víctima, la etnia, raza o nación a la que pertenezca, su sexo u orientación sexual, o la enfermedad o minusvalía que padezca.*”

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4) Article 208 SPC states: “Any action or expression damaging the dignity of a person, harming his honour or his self respect, will be considered defamation.”<sup>42</sup>

5) The very vague and generic concepts of the aforementioned criminal provisions do not offer sufficient legal certainty to exclude, for example, the freedom of expression to criticize the morality of homosexual relationships or the unfairness of same-sex marriage or adoption by homosexuals.

6) Although they have not been frequently used, the political, social and media pressure against dissidence is increasing its intensity. New legal reforms are expected to reinforce the gender ideology in the public sphere, and it is not seen as lack of reasonableness a possible use of SPC against persons and institutions actively opposed to same-sex “marriage” and homosexuality.

7) A region of Spain, Catalonia, has instituted the first Public Prosecutor in Europe who supervises the penal processes related to any crime or action considered “homophobic” (discrimination based on sexual orientation).

8) One of the main targets of homosexual social activism is the Catholic Church and Bishops because of their declarations on the immorality of homosexual relationships and same-sex marriage. One of the groups called “Colegas” presented a report to the General Public Prosecutor Office (“Fiscalía General del Estado”) against the Catholic Church, trying to promote criminal prosecution against some statements of the Bishops. No prosecution has yet been carried out by the Public Prosecutor against any Catholic Bishop or priest for that reason.

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<sup>42</sup> Spanish version: “Es injuria la acción o expresión que lesionan la dignidad de otra persona, menoscabando su fama o atentando contra su propia estimación.”

## CONCLUSIONS

1) Spanish Same-Sex Union Act (“SSUA”) has changed the public order (“*ordre publique*”) of the Spanish Law, specially Family Law.

2) SUUA was rejected by the Senate, criticised by the Spanish Council of State, declared unconstitutional by the Spanish Royal Academy of Legislation and Jurisprudence and the General Council of the Judiciary. SUUA has been appealed (decision still pending) before the Spanish Constitutional Court.

3) SSUA changes terminological and legal concepts related to marriage and family: the terms husband (“marido”) and “wife” (“mujer”) are replaced in the Civil Registry and official documents by “spouse A” (“cónyuge A”) and “spouse B” (“cónyuge B”). “Father” (“padre”) and “mother” (“madre”) are replaced by “parent A” (“progenitor A”) and “parent B” (“progenitor A”). This is not at all a merely nominal change.

4) SSUA enlarges the concept of marriage, its requirements and effects.

5) SSUA adds new legal houseworking obligations based on a radical concept of equality in family life.

6) SSUA implies the full recognition of equality rights with respect to succession (inheritance rights), adoption, social benefits, nullity of marriage, separation and divorce, and others. These equal rights are all based in the strict and radical application of the principle of Article 66 Spanish Civil Code: “*Spouses are equal in rights and duties*”.

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7) Every woman is able to use the assisted reproduction technology “*irrespective of her marital status and sexual orientation*”. This means that homosexuals, bisexuals or transexuals can, as heterosexuals women, be inseminated. As a matter of law, to be married or to have a couple is completely irrelevant.

8) Joint adoption is legal with respect to homosexuals who are “married”.

9) The compulsory subject introduced in Primary and Secondary levels named “Education for Citizenship” (EFC) includes issues concerning sexual and emotional education and gender maintreaming. Even though strongly rejected by a large part of Spanish society (52,000 conscientious objectors to EFC) and other significant entities, Supreme Court does not recognize the right of parents to object to the EFC curriculum. The cases are pending before the Constitutional Court.

10) Homosexual “marriages” are in some cases and territories entitled to parental leave (“Permiso de paternidad”). They are fully recognised as entitled to Widow’s Pension (“Pensión de viudedad”) and Public Social Security.

11) Penal Code considers as a crime some offences against sexual orientation. Vagueness of those provisions does not offer sufficient legal certainty to exclude, for example, the freedom of expression to criticize the morality of homosexual relationships or the unfairness of same-sex marriage and adoption by homosexuals.





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