

Spanish Penal Code

Article 22.4 of the Penal Code

Committing the offence for racist, anti-Semitic, anti-Roma or another kind of discrimination regarding the ideology, religion or beliefs of the victim, the ethnicity, race or nation to which they belong, their sex, age, orientation or sexual or gender identity, reasons of gender, aporophobia or social exclusion, the disease they suffer from or their disability, regardless of whether such conditions or circumstances actually occur in the person on whom the conduct falls

**Article 22.4 is the general framework for hate crime and hate speech legislation as it regulates and establishes aggravating factors related to motivation in criminal offences.*

Article 510

1. Shall be punished by imprisonment for a term of one to four years and a fine of six to twelve months:

a) Those who publicly encourage, promote or incite, directly or indirectly, hatred, hostility, discrimination or violence against a group, a part of a group or against a specific person because of their membership of that group, on racist, anti-Semitic, anti-Roma or other grounds relating to ideology, religion or beliefs, family situation, membership of an ethnic group, race or nation, national origin, sex, sexual orientation or identity, for reasons of gender, aporophobia, illness or disability.

b) Those who produce, elaborate, possess with the aim of distributing, provide third parties with access to, distribute, disseminate or sell writings or any other type of material or media which by their content are suitable for encouraging, promoting, or inciting directly or indirectly hatred, hostility, discrimination or violence against a group, a part of a group, or against a specific person because of their membership, for racist, anti-Semitic, anti-Roma or other reasons relating to ideology, religion or beliefs, family situation, membership of an ethnic group, race or nation, national origin, sex, sexual orientation or identity, gender, aporophobia, illness or disability.

c) Those who publicly deny, seriously trivialise or glorify the crimes of genocide, crimes against humanity or crimes against persons and property protected in the event of armed conflict, or glorify their perpetrators, when they have been committed against a group or part of a group, or against a specific person because of their membership, for racist, anti-Semitic, anti-Roma, anti-Gypsy or other reasons, or other motives relating to ideology, religion or beliefs, family situation or membership of an ethnic group, race or nation, national origin, sex, sexual orientation or identity, gender, aporophobia, illness or disability, when this promotes or favours a climate of violence, hostility, hatred or discrimination against them.

2. They shall be punished with imprisonment of six months to two years and a fine of six to twelve months:

a) Those who harm the dignity of persons by actions that humiliate, belittle or discredit any of the groups referred to in the previous section, or any part of them, or any specific person on the grounds of their membership of such groups, on racist, anti-Semitic, anti-Roma or other grounds relating to ideology, religion or beliefs, family situation, membership of an ethnic group, race or nation, national origin, sex, sexual orientation or identity, for reasons of gender, aporophobia, illness or disability, or produce, elaborate, possess with the aim of distributing, provide third

parties with access to, distribute, disseminate or sell writings or any other type of material or media which by their content are suitable to harm the dignity of persons by representing a serious humiliation, disparagement or discrediting of any of the aforementioned groups, of a part of them, or of any specific person by reason of their membership of the aforementioned groups.

b) Those who glorify or justify, by any means of public expression or dissemination, crimes that have been committed against a group, part of a group, or against a specific person because of their membership of that group on racist, anti-Semitic, anti-Roma or other grounds relating to ideology, religion or beliefs, family situation, membership of an ethnic group, race or nation, national origin, sex, sexual orientation or identity, gender, aporophobia, illness or disability, or those who have participated in their execution.

The offences are punishable by one to four years' imprisonment and a fine of six to twelve months when they promote or encourage a climate of violence, hostility, hatred or discrimination against the aforementioned groups.

3. The penalties provided for in the previous paragraphs shall be imposed in their upper half when the acts have been carried out through a means of social communication, via the Internet or through the use of information technologies, in such a way that they are accessible to a large number of people.

4. When the acts, in view of their circumstances, are suitable for disturbing the public peace or creating a serious feeling of insecurity or fear among the members of the group, the penalty shall be imposed in the upper half of the sentence, which may be increased up to the next higher degree.

5. In all cases, the penalty of special disqualification shall also be imposed for educational professions or trades, in the field of teaching, sports and leisure time, for a period of between three and ten years longer than the duration of the custodial sentence imposed in the sentence, taking into account in proportion to the seriousness of the offence, the number of offences committed and the circumstances of the offender.

6. The judge or court shall order the destruction, erasure or rendering useless of the books, files, documents, articles and any kind of support that is the object of the offence referred to in the previous paragraphs or by means of which it was committed. When the offence has been committed by means of information and communication technologies, the removal of the contents shall be ordered.

In cases in which, through an Internet access portal or information society service, the contents referred to in the previous section are disseminated exclusively or predominantly, the blocking of access or the interruption of the provision of the same shall be ordered.

Law 15/2022, of 12 July, on equal treatment and non-discrimination

Article 22. Social media and advertising, internet and social networks.

1. All social media shall respect the right to equal treatment, avoiding any form of discrimination in the treatment and accessible format of information, in their content and programming.

2. The public administrations, within the scope of their respective competences, shall promote the adoption of self-regulation agreements for the media, advertising, internet, social networks and information and communication technology companies that contribute to compliance with legislation on equal treatment and non-discrimination and intolerance for the reasons that inspire this law, and to the promotion of a non-stereotyped image of the different persons and population groups, including the sales and advertising activities that are carried out therein and encouraging language and messages that are contrary to discrimination and intolerance.

They shall also promote the adoption of agreements with internet service companies and platforms to improve the effectiveness of the prevention and elimination of content that violates the right to equality in this area.

3. Commercial or institutional advertising that contains elements of discrimination on the grounds of the causes envisaged in this law shall be considered unlawful advertising.

Article 23. Artificial Intelligence and automated decision-making mechanisms

1. Within the framework of the National Artificial Intelligence Strategy, the Charter of Digital Rights and European initiatives on Artificial Intelligence, public administrations shall encourage the implementation of mechanisms so that the algorithms involved in decision-making used in public administrations take into account criteria of minimisation of bias, transparency and accountability, whenever technically feasible. These mechanisms will include their design and training data, and address their potential discriminatory impact. To this end, impact assessments will be promoted to identify potential discriminatory bias.

2. Public administrations, within the framework of their competences in the field of algorithms involved in decision-making processes, shall prioritise transparency in the design and implementation and the interpretability of the decisions taken by them.

3. Public administrations and companies shall promote the use of Artificial Intelligence that is ethical, reliable and respectful of fundamental rights, especially following the recommendations of the European Union in this regard.

4. A seal of quality for algorithms shall be promoted.

Updated 1 February 2024