



LIMITATIONS ON FUNDAMENTAL RIGHTS AND FREEDOM OF EDUCATION IN SPAIN

The current **Organic Law 3/2020, of December 29**, amending Organic **Law 2/2006, of May 3, Education**, (hereinafter LOMLOE, as it is known in Spain), can be found in this [link](#)¹.

With regard to Fundamental Rights, the main document in Community law is the **Charter of Fundamental Rights of the European Union**, solemnly proclaimed by the European Parliament, the European Council and the Commission on December the 7th of 2000. The text of the **Charter of Fundamental Rights of the European Union**, published in its 2016 version in DOCE 2016/C 202/02 of 7/6/2016, is available in all official languages of the Union in this [link](#)².

As an element of contrast and evaluation of the educational policies promoted in the LOMLOE, we must remember that the aforementioned **Charter of Fundamental Rights of the European Union** includes, in Title II, "Freedoms", among others, the following articles:

Article 10 - Freedom of thought, conscience and religion

1. *Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.*
2. *The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.*

Article 14 - Right to education

1. *Everyone has the right to education and to have access to vocational and continuing training.*
2. *This right includes the possibility to receive free compulsory education.*
3. *The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.*

Indeed, the European Union and the European Parliament have a long tradition of defending Fundamental Freedoms and rights, which dates back to documents such as the Resolution on **Freedom of Education** in the European Community March 3rd 1984, the Declaration of Fundamental Rights and **Freedoms** April 4th 1989, and which has recently been reflected in the European Parliament Resolution of June 12th 2018 **on the modernization of education in the European Union**.

This Resolution states: '*Considering that the right to education includes the freedom to establish educational centres in compliance with democratic principles, as well as the right of parents to ensure the education and teaching of their children in accordance with their religious, philosophical and pedagogical convictions.*'¹

In addition, we must also recall the content of various international agreements on human rights and fundamental freedoms, in particular the **Universal Declaration of Human Rights**, which contains the following articles:

¹ [121/000007 Organic Law amending Organic Law 2/2006, of May 3, On Education. \(congreso.es\)](#)
(BOCG-14-A-7-3, dated 19/11/20. From page 6).

² <https://eur-lex.europa.eu/legal-content/ES/TXT/?uri=celex%3A12016P%2FTXT>



Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 26.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

We will also cite the **European Convention for the Protection of Human Rights and Fundamental Freedoms** (Council of Europe, April 11th, 1950, which in its. Additional Protocol I, March the 3rd 1952, in article 2. Right to instruction, establishes that:

“No one can be denied the right to instruction. The State, in the exercise of the functions it assumes in the field of education and teaching, will respect the right of parents to ensure this education and this teaching in accordance with their religious and philosophical convictions”.

And the Declaration of the Rights of the Child November, 20th, 1959:

“which in its Principle VII establishes that “the best interests of the child should be the guiding principle of those who are responsible for their education and guidance; this responsibility rests primarily with the parents”.

Finally, we note that **the International Covenant on Economic, Social and Cultural Rights** December 16th 1966, states:

Article 13

- 3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*
- 4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

Bearing all these rules in mind, we denounce that some of the educational policies contained in the LOMLOE are clearly contrary to respect because of the fundamental rights and **freedoms** identified. This standard has a unique Article, in whose different sections the amendments to the articulation of the previous Organic Law on Education are indicated. We will cite the section of the LOMLOE and the article that modifies.

MEASURES TENDING TO INCREASE PUBLIC EDUCATION (state-owned and fully supported with public funds) AND TO THE PROGRESSIVE ELIMINATION OF CONCERTED EDUCATION (private social initiative and sustained only partially with public funds).

MEASURES TO LIMIT THE RIGHT OF CHOICE OF TEACHING CENTER BY FAMILIES.

Section 8a (new):



Article 15 of the LOMLOE:

"Public administrations will progressively increase the supply of public places in the first cycle in order to meet "all applications for schooling of the children from zero to three years".

Paragraph 56:

Article 109.1 of the LOMLOE:

"Ensuring everyone's right to education through a sufficient supply of public places".

Article 109.2 of the LOMLOE:

"The teachings regulated in this law will be programmed by the Educational Authorities taking into account the existing offer of public centers and the one authorized authorized in the private centers concluded... " (art. 109.2 LOMLOE).

Article 109.5 of the LOMLOE:

"The administration will promote a progressive increase in school positions in the network of publicly owned centres".

The reform eliminates from the wording **of the old article 109.2** the concept of "social demand" as one of the criteria for the programming of educational supply. That is, the demand of families ceases to count as one of the criteria for scheduling school positions.

Section 81.bis (new):

"4. Municipalities will cooperate with the corresponding educational administrations in obtaining the necessary plots for the construction of new public educational centres".

(Additional Provision 15 to LOMLOE). Eliminates the possibility that concerted centres can access endowment flooring, limiting it exclusively to public centres.

All these measures, and some more provisions in the same sense that seek the exclusive promotion of public education to the detriment of the concerted one, eliminating the complementarity of both networks, established in the current regulations and recognized by supreme and constitutional court rulings, limit both the right of social initiative to the creation and management of teaching centers other than those created by the Administration, as well as the right of families to choose the type of education they want for their children.

MEASURES AIMED AT LIMITING FREEDOM OF CHOICE BETWEEN VARIOUS PEDAGOGICAL OPTIONS.

Paragraph 83:

"In order to promote equal rights and opportunities and promote effective equality between men and women, centres partially or wholly supported by public funds shall develop the principle of co-education at all educational stages, in accordance with the provisions of Organic Law 3/2007 of 22 March, for the effective equality of women and men, and shall not separate students by their gender".

(DA 25a.1 LOMLOE).

It eliminates the current possibility of concluded differentiated education centres, recognized in the former article 84.3 of the LOE and endorsed by judgment of the Constitutional Court 31/2018.

ADDITIONAL Provision 4a of the LOMLOE:

Evolution of the schooling of students with special educational needs. A significant part of the families affected have seen in the maintenance of this D.A. confirmation of the progressive elimination of

special education centres, to progressively move all pupils to ordinary centres under the premise of an alleged inclusive education.. Parents, as first managers of their children's education and better connoisseurs of their situation and personal evolution, want to continue to have the right to choose the pedagogical option they consider most beneficial to their children.

Elimination of Spanish as a vehicular language in education. The reform eliminates the concept of "vehicular language" so that the Autonomous Communities with their own co-official language may demand *de iure* that all schooling, except the subject of The Castellana Language, be taught in the co-official language, regardless of the mother tongue of the students, even for students with special educational needs. This measure could result in the pedagogical option of choosing the mother tongue as the basis language of teaching, as recommended by UNESCO and other international organizations.

MEASURES AIMED AT LIMITING THE RIGHT OF CHOICE OF SUBJECTS OF CONFESSIONAL RELIGION, DEGRADING THEIR ACADEMIC VALUE AND HINDERING THEIR CHOICE.

The subjects of Confessional Religion in Spain are mandatory for centres and voluntary choice for families. This option is therefore derived from an international pact, the A)sane between the español Estado Eand the Santa Sede on teaching and culturalaffairs (3/1/1979). But they get in the way of their choice by eliminating their computable character for certain aspects and eliminating the so-far existing alternative subject. We note that the current configuration was fully endorsedby Judgment of the Constitutional Court 31/2018,citedabove.