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TOWARDS BETTER PROTECTION OF THE RIGHT TO EDUCATION OF CHILDREN WITH DISABILITIES IN SPAIN: CONSTITUTIONAL AMENDMENT AND IMPLEMENTATION OF THE UN COMMITTEES' DECISIONS.

Posted on 29 Aprile 2024 by [Maribel González Pascual](#)

1. On 17 February 2024, the reform of Article 49 Spanish Constitution (SC) on the rights of people with disabilities, [entered into force](#). This is the first and only “internally driven” constitutional amendment since the enactment of the Spanish Constitution in 1978. Indeed, the Spanish Constitution has only been reformed three times. The first amendment paved the way for the ratification of the Maastricht Treaty in 1992. Next, in 2011, Article 135 SC was amended to incorporate the balance budget rule in response to the euro crisis. Both amendments were thus necessitated by EU integration. Reluctance towards constitutional reform might explain why the Government tabled the proposal to amend Article 49 SC [in May 2021](#) but the Parliament passed it in 2024, despite the support for the amendment by all the [Speakers of the parliamentary Committee on Integral Policies on Disability in 2018 and the Committee of People with Disabilities](#), an organisation that monitors the implementation of the UNConvention on the Rights of Persons with Disabilities (CRPD). The new provision changes the obsolete, inadequate terminology

previously used in the Constitution, moving from a narrow pathological understanding of disability to one that incorporates social and human rights. It enshrines the principle of universal accessibility, emphasises the right to participation and underscores the special need for protection of people with disabilities, paying due regard to specific needs of women and minors. In sum, it incorporates the main principles and requirements of the CRPD into the Spanish Constitution.

Spain ratified the CRPD and its Optional Protocol on [3 December 2007](#) and the CRPD has been directly applicable in Spain since 3 May 2008. On 1 August 2011 the Spanish Parliament passed the [Legal Adaptation to the Convention on Rights of the Persons with Disabilities Act](#). Implementing the CRPD into the Spanish legal order [was initially slow](#), although the process has picked up speed in the last six years.

[To date, the legal capacity scheme](#) and the [electoral law](#) have been reformed. New rules on accessibility, including [audio-visual](#) and [cognitive](#) accessibility and the [universal design principle](#), have been instituted, and [investments up to 197 million euros](#) have been approved to improve access to public services, buildings, sport and cultural centres equipment to the public administration.

2. Growing protection of the rights of persons with disabilities can also be observed in the case law, a case in point being [the Supreme Court's 29 November 2023 judgment](#) on the right to inclusive education. Rubén, a child with Down syndrome, went to a mainstream school where, with the support of a special education assistant, he got along well with his classmates and teachers until he entered grade four. At that point, however, his fourth-grade teacher began subjecting Rubén to discrimination, neglect, and abuse and the mistreatment did not abate when Rubén entered grade five.

In June 2011, the Provincial Directorate of Education enrolled Rubén at an education centre for students with special needs against his parents' wishes. Rubén's parents filed a complaint before the pertinent domestic judicial authorities in response to the abuses he suffered in the fourth and fifth grades, but no more than a cursory investigation was conducted. His parents also unsuccessfully challenged the education authority's decision

to send him to the special education centre. Eventually, the parents filed an appeal for fundamental rights protection before the Constitutional Court and then took the case to the European Court of Human Rights (ECtHR). Both Courts found their appeal inadmissible. In a surprising move, the local authorities brought criminal charges against the parents for refusing to send their child to the specialized school, but the parents were acquitted.

Rubén and his father eventually took their case to the CRPD Committee in 2017. [On 30 September 2020](#), the CRPD Committee concluded that Spain had violated Rubén's right to inclusive education. It was the first decision of the CRPD Committee on the right to inclusive education. Following this decision, Rubén's parents filed a claim for damages against the State to implement the Committee's decision.

3. The implementation of the decisions of UN Treaty Committees under an individual complaint procedure by domestic courts [has been a controversial issue in Spain](#). In fact, no domestic mechanisms have been created to implement these decisions. The [legislation foresees the execution of the judgments of the ECtHR](#) but domestic courts (including the [Spanish Constitutional Court](#)) have traditionally maintained that UN Committees' decisions are not legally binding. In fact, the Human Rights Committee pointed out several violations in Spain of Article 14.5 of the International Covenant on Civil and Political Rights but [the Supreme and the Constitutional Courts insisted that the decisions of the UN Committees were not legally binding](#). The conflict persisted until the [Criminal Procedure Act](#) was amended in October 2015.

Meanwhile, domestic courts' application of the CRPD has gradually improved over the years. The high number of times that the Supreme Court has referenced the CRPD is extremely telling. For its part, [the Constitutional Court has also highlighted the relevance of the CRPD](#) for constitutional interpretation per Article 10.2 SC, according to which "the principles relating to the fundamental rights and liberties recognised by the Constitution shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain"

More importantly, on [17 July 2018](#), in the González Carreño case, the Supreme Court (Administrative Chamber) held that Article 24 of the [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW), and Article 1 Optional Protocol to the CEDAW make the decisions of the CEDAW Committee binding. The CEDAW was deemed part of the internal legal order (Article 96 SC) and, as a human rights treaty, it has additional normative weight (Article 10.2 SC), as it comprises part of the Spanish minimum standard of fundamental rights. Because the procedure followed by the UN Committee was clearly established and faithfully followed, Spain could have made any complaint that it considered appropriate. The lack of a mechanism for the execution of the CEDAW Committee's decision was therefore found incompatible with the Spanish constitutional order. Moreover, the decision of the Committee constituted valid grounds for seeking State liability.

The Supreme Court emphasized the specific circumstances of the case, finding: i) a serious violation of a fundamental right, neglected by the administrative and judicial authorities, ii) negligence by the justice system when processing the case and iii) a cause-effect relationship between the justice system's malfunction and the violation of the right. This judgment was ground-breaking, for it paved the way for successful implementation of the UN Committee decisions. The Supreme Court, however, did not adopt this interpretation in [subsequent cases](#), as the González Carreño case was qualified as [exotic](#) by the Spanish Government Legal Service. Still, the Constitutional Court hinted in [an order](#) that the decision of a UN Committee could provide valid grounds for seeking State liability or review of a criminal conviction.

4. In this framework, on 29 November 2023 the Supreme Court affirmed that the decision of the CRPD Committee, in the Rubén's case, represented just such a valid basis to seek the liability of the State. Following the reasoning of the González Carreño case, the Supreme Court concluded, firstly, that the decision of the CRPD Committee was legally binding, as foreseen by the CRPD and the Spanish Constitution. Secondly, it found that the violation of the rights enshrined in the CRPD constituted a violation of the fundamental rights protected in the Spanish

constitutional order. Thirdly, it noted that the State had not taken any measure to remedy the violation of Rubén's rights. Fourthly, it concluded that the right to an inclusive education necessarily encompasses the duty to explore the feasibility of reasonable accommodations that might allow a child to remain in the mainstream education system.

Spain has systematically ignored the reasonable accommodation dimension of the right to education, which is solely provided [at the request and expense of the parents](#). Even [the Spanish Constitutional Court's understanding of reasonable accommodation is very poor](#), although the Constitutional Court has improved its protection of [the rights of persons with disabilities as regards access to justice](#). Hence, the judgment of 29 November 2023 represents a major leap forward for the CRPD.

The right to education enjoys special protection in the Spanish Constitution, and [equal access and enjoyment of the right are core elements](#) of it. Nonetheless, neither the Constitutional Court [nor the legislature](#) had put in place effective guarantees for education on equal footing for children with disabilities in Spain. The judgment of the Supreme Court, along with the new [act on education](#), might eventually give rise to an understanding of the right to education in Spain that is in line with the CRPD. This new (and better) understanding of the right to education finds further backing by the reformed Article 49 SC, which emphasizes the duty to meet the needs of minors with disabilities.

The growing relevance of the rights of people with disabilities in Spain is unquestionable and, with it, the strength of the CRPD in Spain is increasing. Moreover UN Committees are bound to enjoy greater relevance, because the [Spanish Constitutional Court has recently supported that an UN Committee decision might be a valid ground to seek the liability of the State](#). Still, the specific circumstances of the case are a decisive factor of the decision of the Constitutional Court. Therefore, further judgments are required to ponder the actual strength of the UN Committees in Spain.