



17.3.2021

NOTICE TO MEMBERS

Subject: Petition No 0627/2020 by Pedro José Caballero García (Spanish), on behalf of the National Catholic Parents Confederation (CONCAPA), on infringement of family rights and freedoms in the field of education

1. Summary of petition

The petitioner expresses concern at the breach of fundamental rights and freedoms such as freedom of education. He indicates that this applies in particular to the education being sought by parents for their children and the rights of pupils with special needs or some degree of disability. He also points to breaches of fundamental freedoms regarding the choice of religious education.

2. Admissibility

Declared admissible on 17 September 2020. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 17 March 2021

The Commission's observations

The petitioner denounces the proposed modification of the Spanish Organic Act on Education and solicits the EU's intervention in this regard. The petitioner points out that the draft amending act¹ allegedly lacks the consensus needed given its impact on fundamental rights, such as the freedom of education, freedom of religion or the right of parents to choose the type of education they want for their children. The petitioner considers that the adoption of such an important law during the health crisis calls into question the respect for the rule of law in Spain. In the petitioner's view, the proposed act discriminates against parts of the society based solely

¹ Proyecto de Ley Orgánica de modificación de la LOE (LOMLOE).

on ideological considerations. The petitioner also criticises the approach to replace most of the special schools for pupils with special educational needs with their inclusion into mainstream education. The petitioner invokes provisions of the Spanish Constitution, the Agreement between Spain and the Holy See, several United Nations and Council of Europe acts, as well as Article 14(3) of the Charter of Fundamental Rights of the European Union.

By virtue of Article 165 of the Treaty on the Functioning of the European Union (TFEU), the Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the organisation of education systems and the content of teaching.

Article 14(3) of the Charter of Fundamental Rights of the European Union recognises the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions. However, according to Article 51(1), the Charter applies to Member States only when they are implementing European Union law. Moreover, Article 6(1) of the Treaty on the European Union states that the provisions of the Charter shall not extend the competences of the Union as defined in the Treaties.

Based on the information available and with a view to the current state of the legislative process in question, the Commission has not been able to determine that Spain would be implementing EU law in the situation brought forward by the petitioner, nor identified any possible breach of EU law.

Concerning legislative processes, the Commission has been consistent in encouraging the broadest possible support of legal acts from the various stakeholders. Within the 2020 European Semester Country-Specific Report for Spain, the Commission has also called for a social and political consensus with regard to a potential education reform in Spain².

Furthermore, the Commission has no authority to interpret the Spanish Constitution or the international treaties between Spain and third parties that the petitioner invokes.

Finally, it has been a long-standing policy aim of the Commission to support Member States in fostering more inclusive education systems. The Council Recommendation on promoting common values, inclusive education, and the European dimension of teaching³ calls on Member States to promote inclusive education and provide the necessary support for all learners according to their particular needs, including those with special needs. This concept was again underlined in the recent Commission Communication on achieving the European Education Area by 2025⁴.

Conclusion

While reaffirming its support for inclusive legislative processes and inclusive education

² 2020 European Semester, Country-Specific Report for Spain, recital 20, available at: COM(2020) 509 final; <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1591720698631&uri=CELEX%3A52020DC0509>

³ Council Recommendation of 22 May 2018 on promoting common values, inclusive education, and the European dimension of teaching, *OJ C 195*, 7.6.2018, p. 1–5.

⁴ COM(2020) 625 final; https://ec.europa.eu/education/sites/default/files/document-library-docs/eea-communication-sept2020_en.pdf

systems, in view of the above analysis, the Commission notes that it has not been able to identify any breach of a provision of EU law on the basis of which it could take action in the present case.