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TAKING CULTURAL PARTICIPATION OF PERSONS WITH DISABILITIES SERIOUSLY: THE NEW SPANISH LAW ON HIGHER EDUCATION

Posted on 23 Ottobre 2024 by [Delia Ferri](#)

In June 2024, Spain enacted a new Law on Higher Arts Education ([Ley 1/2024, de 7 de junio, por la que se regulan las enseñanzas artísticas superiores y se establece la organización y equivalencias de las enseñanzas artísticas profesionales](#)) (LHAE). Besides significantly [reshaping Spain's educational landscape in the artistic field](#), this piece of legislation is groundbreaking from a disability perspective. While the [UN Convention of the Rights of Persons with Disabilities \(CRPD\)](#) is not explicitly mentioned in the text, this brief blog post contends that the LHAE is vital to implement Article 30(2) CRPD which requires States Parties to the Convention to “take appropriate measures to enable persons with disabilities to have the opportunity to develop and utilize their creative, artistic and intellectual potential, not only for their own benefit, but also for the enrichment of society”. It also concurs to implement Article 24 CRPD on the right to education. In fact, [recent research](#) has shown that policies and practices excluding people with disabilities from arts colleges or academies entail a significant barrier that prevents people with disabilities from becoming professional artists and hampers their development as performers. In that regard, the LHAE holds vital importance to ensure that persons with

disabilities have access to artistic education and can then play a part in the artistic sector of the country. Notably, the LHAE follows (and further supports) the recent landmark constitutional amendment of Article 49 of the Spanish Constitution (SC), commented on this blog by [Maribel González Pascual](#). As discussed by González Pascual, the new wording of Article 49 SC incorporates a human rights approach to disability and enshrines the principle of accessibility, which both seem to be at the core of this new Law on Higher Arts Education.

Before zooming in on the disability facets of the LHAE, it is worth noting that it is generally premised on the recognition that “all people have the right to culture and to enjoy of the arts and cultural heritage, as established by the Spanish Constitution and the Universal Declaration of Human Rights”. It further embeds the acknowledgement that it is the responsibility of the State and the autonomous communities to ensure access to artistic education “*under conditions of equal opportunities*” (Article 4(2) LHAE -emphasis added). Further, the LHAE [is said](#) to “higher artistic education into the broader European university framework” and align with European standards. In recognizing professional artistic education and different modes of education (see in particular Article 15 LHAE), it values practical experience that supports transition into the professional artistic workforce.

Notably, the LHAE places great emphasis on substantive equality, which is not only mentioned in Article 4 but is enshrined in a series of provisions. Article 42 LHAE establishes that “ccess to higher artistic education will be governed by the constitutional principle of *equality*”. The same provision also provides that “t is up to the competent administrations to *guarantee equality of opportunities* and conditions in the exercise of the right of access to these teachings, *removing any barrier* that prevents those who meet the requirements established in this law to pursue the different studies they include”. The reference to barriers is particularly relevant in the context of disability, given that disability itself, according to the CRPD, is to be conceived as the result of interactions between the individual’s impairment and external barriers. Notably, Article 43 (on the rights concerned the academic education) establishes inter alia that students

will have the right to participate “in mobility programs, national or international, within the framework of current legislation, under conditions that guarantee equal opportunities, *paying special attention to inequalities due to socioeconomic reasons and disability*”. This provision acknowledges the difficulties experienced by students with disabilities when exercising their free movement rights and the hurdles they face, denounced multiple times by disability umbrella organizations, such as the [European Disability Forum](#).

The principle of equality finds further expression in Article 48 LHAЕ specifically titled “Equality and Non-Discrimination”. Notably paragraphs 2, 3 and 4 of this provision are specifically focused on persons with disabilities. Article 48(2) requires that educational settings are fully accessible, in that they ensure “accessibility of spaces and structures” as well as of curricula, “in order to guarantee equality of opportunities for students with disabilities, making curricular and methodological adjustments to the teaching materials, the teaching methods and the teaching system”. This paragraph fully aligns with Article 24 of the CRPD, but also with the general principle of accessibility enshrined in article 9 CRPD. It embeds a conception of accessibility as [“pragmatic” translation of equality](#). Further, while this provision does not specifically mention “reasonable accommodation”, the reference to “adjustments” hints directly to the concept of reasonable accommodation defined in Article 2 CRPD and the right to be reasonably accommodated of students with disabilities provided for Article 24 CRPD. Even more notably, Article 48(3) LHAЕ provides for a disability quota, by establishing that “educational administrations will facilitate access” to people with disabilities and that “at least 5 percent of the places offered in the degrees must be reserved for students with disabilities”. While quotas are a very widespread mechanism in relation to employment of people with disabilities, they have not been used often in relation to educational settings. Hence, Article 48(3) LHAЕ is quite significant and somewhat novel. The purpose of this provision is rather clear, and is that of overcoming the lack of artistic educational opportunities faced by persons with disabilities, and ingraining a virtuous circle. Yet, quota schemes in labour law, which have

been the most rooted tool to ensure equality, have often been criticized because ineffective and deemed to reinforce negative stereotypes and prejudices. As noted by [Waddington](#), quotas tend to be shaped by 'a welfare (or charity) model of people with disabilities', rather than a non-discrimination approach. In this respect the main criticism of quota systems is that that they hamper (instead of enhancing) awareness of abilities and capabilities of persons with disabilities. Article 48(3) hence leverages on a well-known (but heavily debated) tool, and it remains to be seen whether it will be effective in redressing the disadvantage faced by persons with disabilities in artistic education or it will end up being another ineffective and perfunctory choice of the legislator. Finally Article 48(4) specifically address Deaf people by establishing that educational administrations will ensure the use of Spanish sign languages "where necessary".

The LHAE also provides for financial support to reduce final barriers, with provisions for scholarships for talented students in higher artistic education. These general provisions are also relevant to students with disabilities who generally face higher cost and are at higher risk of social exclusion.

On the whole, besides its general merit in redesigning higher artistic education in Spain, the LHAE has the great value of recognising the vital role that persons with disabilities can play in the artistic sector if allowed to develop their creative potential, as required by the CRPD. In that connection, the LHAE can be seen as an important step in effecting the CRPD's transformative vision of persons with disabilities as fully-fledged members of society. The LHAE provision on accessibility reflects the Spanish government's commitment to strengthening a human rights approach to disability which aligns with the CRPD ethos. The introduction of a disability quota system in artistic education is somewhat novel and can be considered consistent with the CRPD obligation to enact positive actions. Even if quotas are often criticized, future will tell whether this provision will enhance participation of persons with disabilities in higher education. All in all, by addressing long-standing gaps in the protection and promotion of the right of persons with disabilities to partake in

cultural life as artists and creators, the LHAE is an important step forward and an example for that other States might decide to follow.

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