

RELIGION IN PUBLIC EDUCATION. SPAIN

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I. GENERAL BACKGROUND

1. Facts and Figures

1.1. Demography¹

The total number of students enrolled in schools authorized by the Educational Authorities is 7,632,961. According to the different stages and cycles, they are divided as follows: Nursery school, 1,848,180; Primary school, 2,721,357; Obligatory Secondary Education, or Junior High School (designated as OSE hereafter, ages 12-16), 1,809,133; Bachillerato, or Senior High School, 637,582 and Professional Education, 585,561 (in both cases ages 16-18). As compared with the previous school year, there have been increases in Nursery school (2.7% more) and Professional Education (7.8% more). A slight reduction in the number of OSE students has also been detected (0.1% less).

1.2. Number of Private and Public Schools in the Country

In the whole of Spain, 67.3% of students attend public schools. The rest, 32.7%, attend private schools, 20% attend schools chartered by the Educational Authorities and 12.7% attend totally independent private schools.

The number of authorized schools at each level of education is as follows. At Nursery School level, of a total of 6,947, 3,477 schools are public and 3,470 are private, chartered or not. At the Primary School level, there is a total of 10,302 schools (some of which also include those at Nursery School level). Of these, 9,825 are public and 477 are private. 2,269 schools offer both Primary School and OSE. Of these, 653 are public and 1,616 are private. 4,669 schools offer OSE, Senior High School (Bachillerato) and Professional Education. Of these, 3,898 are public and 771 are private. Lastly, there are centers that offer every level of non-university education except for Nursery School, in other words, Primary, OSE, Senior High School and Professional Education. There are 1,323 of these and all, except 2, are private. In all, there are 26,033 non-university educational institutions in Spain, of which 18,089 are public and 7,944 are private.

It is also critical to point out the importance in the private school sector of the Catholic school system. The owners of these schools are the church hierarchy, religious orders or congregations, and Catholic associations recognized as such by the Catholic Church².

¹ The information and numbers given correspond to the 2009-2010 school year as published by the Department of Statistics of the Spanish Ministry of Education. They are available on the webpage <http://www.educacion.es/mecd/estadisticas/educativas/dece/Datos.Cifras.web.pdf>

² The data offered here correspond to the 2009-2010 school year. They can be consulted at <http://www2.escuelascaticas.es/estadisticas.pdf>.

Catholic schools represent 37.8% of the private school sector and 11.1% of the total of public and private schools together. Enrollment in Catholic schools is 1,387,835³ students. It is important to note that the majority of Catholic Schools, approximately 93%, have some kind of charter connection with the Administration. Of a total of 2,630 Catholic schools, 2,430 are chartered⁴.

1.3. Description of the General School System

The present Spanish educational system is regulated by the *Ley organica 2/2006 de 3 de mayo, de Educación (Organic Law of Education 2/2006 of May 3)* which divides non-university education into four levels. Nursery School, which is voluntary, goes from a child's birth up to the child's sixth birthday. At this point, Primary School begins. Its duration is 6 years and lasts till the age of 12, and it is obligatory and free. The principal subjects studied in this cycle are artistic education, physical education, environmental studies, Spanish language and literature, a foreign language and mathematics. The OSE is also obligatory and free, lasts four years, and goes from the age of 12 until the age of 16. The subjects include natural sciences, physical education, social sciences, Spanish language and literature, a foreign language, mathematics, plastic arts, music and technology. Once the student has finished his/her obligatory education, (s)he can choose to stop studying or choose either to do the Bachillerato (Senior High School), which prepares one for university, or to spend two years in various cycles of Professional Education. The Bachillerato, which also lasts two years, up to the age of 18, is divided into four areas of specialization: arts, science and technology, humanities, and social studies. There are also common subjects, which all students must take: physical education, philosophy and citizenship, history of philosophy, Spanish history, language and literature and a foreign language. The native languages of the Spanish regions (autonomous communities) must be taught in their territory as a compulsive subject.

The types of educational institutions authorized by state authorities to give non-university courses may be publicly or privately owned. In the first case, they have different names depending on the type of courses taught: "Nursery Schools" at kindergarten level, Primary Education Schools at the primary level, and "*Institutos*" or High Schools, in which OSE, Bachillerato and Professional Education courses are taught. Private schools can enter into an agreement with the Authorities to offer one or more of the levels of education, as long as they satisfy local schooling needs in the area where they are situated. Through this agreement, they receive public funding for the maintenance of the school. In many cases, the Educational Authorities pay the salaries of the teachers who work in these schools. In this case, tuition is free for the students, the criteria for admission are similar to those of public schools, the principal one being the proximity of the school to the student's home. Also, the parents, teachers and students participate in the organization and running of the schools through an organism called the School Council ("Consejo Escolar").

³ Distribution by level: Nursery School, 281,787 pupils, Primary School, 535,483 pupils, OSE, 415,602 students, Senior High School, 103,203 students and, lastly, Professional Education, 51,760 students.

⁴ Distribution by level: Nursery School, of a total of 2,293, 2,126 have some kind of charter relationship; Primary School, 2,100 out of 2,136 have the same, in OSE, it is 1,963 out of 2,001, Senior High School, 777 out of 803 and in Professional Education, 640 out of 649. It is important to take into account that most Catholic schools offer the full range of non-university levels.

2. Religion as a Subject of Instruction and its Substitutes

2.1. Religious Instruction (i.e. Confessional Teaching)

The Agreement on Education and Cultural Affairs of 3 Jan.1979 between the Spanish State and the Holy See, establishes the obligatory subject of “Catholic Religion” to be included in the curricula of Primary Education, OSE, Senior High School and Professional Education. This subject is obligatory in all schools, but it is voluntary for the students. It is to be considered of the same importance as other basic disciplines⁵. The church hierarchy establishes the content of the courses and suggests the textbooks to be used⁶. The Spanish Episcopal Conference has assumed this task. The Ministry of Education approves the content, makes them public by ministerial decree⁷ and approves the textbooks on this subject to be used every year. The Spanish Constitutional Court has declared that the system of insertion of the teaching of Catholic religion into the educational system is a manifestation of the cooperation of the public administration with different religions – Article 16.3 of the Spanish Constitution – in order to make it possible for parents to give their children a religious and moral education corresponding to their convictions – Article 27.3 of the Spanish Constitution⁸.

A question that has been one of the most extraordinarily controversial issues ever since the approval of the present Constitution is that of the legal status of the Catholic religion teachers in public schools. The Agreement on education establishes that it is the educational authorities who select the people who are to teach this subject from among those proposed by the bishop of each diocese⁹. The State undertakes to pay the teachers of Catholic religion the same salary as that of assistant teachers with temporary contracts¹⁰. The jurisprudence of the Spanish Supreme Court determined that the legal status of the teacher is that of an employment relationship, limited to the duration of one academic year, with the educational authorities who own the school. If this person is not proposed again for the following year, this will not constitute a dismissal, but rather a termination of contract due to the expiry of the agreed time period¹¹. This legal principle is reflected in educational legislation: Organic Law 2/2006 of May 3 determines that the renewal (of the contract) will take place automatically every year, unless the Church specifically expresses its wish to replace the teacher, and that this dismissal will take place as determined by law¹². In ruling 38/2007, the Spanish Constitutional Court determined that it was constitutional that it should be the various religious organizations who select the person who is to teach the subject of religion, and that in determining the suitability of this person, the religious organization is allowed to evaluate the candidate not only on the basis of his knowledge, but also on that of his personal conduct. Nevertheless, the non-renewal of a teacher’s contract for the following academic year must be based on religious

⁵ Article II of the Agreement.

⁶ Article VI of the Agreement.

⁷ This was established in the decrees of October 5, 1993, for Bachillerato and Professional Education, and of June 6, 2007 for Nursery School, Primary School and OSE.

⁸ Sentence 38/2007 of the Constitutional Court, fifth juridical principle.

⁹ Article III of the Agreement.

¹⁰ This was accorded in the agreements signed between the Spanish Episcopal Conference and the Ministry of Education on May 20, 1993 and February 26, 1999.

¹¹ In reference to this, see, among others, the sentence of the Spanish Supreme Court of June 7, 2000.

¹² Additional Clause 3.3.

motives, and this can be investigated by a court of law. The bishops' proposal must consist of the names of various suitable people so that the Authorities can choose from among them on the basis of their merit and personal capacities, as laid out in Article 103.3 of the Spanish Constitution, as conditions for their incorporation into the Administration. The jurisprudence of the Spanish Supreme and Constitutional Courts is implemented by the Royal Decree 696/2007 of June 1¹³.

The faiths or denominations that have signed an agreement with the Spanish State, the Evangelical, Jewish and Islamic Federations, approved by the respective laws of November 10, 1992, are authorized to teach religion classes in public and chartered schools, in the latter, only if they are not contrary to the philosophy of the school. These different Federations have the right to approve the contents and the textbooks which must also have been previously authorized by the Administration. The State undertakes to provide suitable spaces where religious instruction may take place¹⁴. However, unlike what occurs with the teaching of the Catholic religion, the subjects of Evangelical, Jewish or Islamic religion are not taught during school hours.

The teachers are to be proposed by the Federations. Ever since the signing of the Agreements between the Ministry of Education and the Evangelical Federation and the Islamic Commission of March 1st. 1996¹⁵, if there happen to be more than ten students in the course or educational level who wish to receive religious instruction, the State undertakes to hire a teacher. In this case, the legal situation of these Evangelical or Islamic teachers will be the same as that described for the Catholic religion teachers. Their situation will also be regulated by the above-mentioned Royal Decree 696/2007 of June 1st.

2.2. *Instruction about Religions*

The present educational system only teaches about different religions, their influence in culture, art or world history, at the OSE level¹⁶ and as an optional subject for those students who do not choose the alternative of Catholic religion. The norms of implementation of Organic Law 2/2006 of Education of 3 May, which determine the minimum requirements for the OSE, mention, as an optional alternative to the Catholic religion class, "History and Culture of Religions", whose contents emphasize the monotheistic religions, and their artistic and cultural manifestations, as well as their relationship to presently existing States. The Spanish Supreme Court has ruled that the teaching of this subject does not violate the constitutional right to ideological freedom and, consequently, to not receive teachings contrary to one's personal convictions. According to the Supreme Court, the study of

¹³ Thus, for example, Point 6 establishes that access to a position must correspond to a series of objective criteria which shall be examined by the competent authorities, these include, teaching experience, academic degrees, and training courses completed. Point 7 regulates the termination of contract, naming, among its causes those described in the Workers' Statutes, an administrative decision as a consequence of disciplinary proceedings, as well as the "revocation in accordance to law of accreditation or unsuitability to teach religion classes according to the criteria of the religious organization which approved it".

¹⁴ See Article 8 in each of the Agreements.

¹⁵ Approved by the Resolutions of April 23' 1996.

¹⁶ See Royal Decree 1631/2006 of –December 29 and Order ECE/2220/2007 of July 12, Annex II

religions as an academic subject, taught on an intellectual and objective level, does not constitute indoctrination nor does it impose any ideology or belief¹⁷.

2.3. *Ethics*

Organic Law 1/1990 of October 3 on the general organization of the educational system, establishes an education based on democratic values and peaceful coexistence as a cross-cultural subject; in other words, in the absence of a specific course on this subject, different subjects were inserted into courses in the humanities which educated the students in the values which, in accord with the Constitution, favour freedom, responsibility, democratic citizenship, solidarity, tolerance, equality and justice.

While recognizing the cross-cultural character of ethical education, Organic Education Law 2/2006 of 3 May, introduces a specific additional course called “Education for Citizenship and Human Rights” in every year of Primary, OSE, and Senior High School¹⁸. The aims of this subject, as defined by the law, which considers it a fundamental subject, are to promote “the full development of the personality and affective capacity of the students, training them in the respect of fundamental rights and freedoms, the affective equality between men and women, the recognition of affective-sexual diversity, as well as a critical evaluation of the inequalities that will permit the overcoming of sexist behaviour”. Its specific contents are set out by several Royal Decrees that define the minimum content¹⁹ and leave the specific development of these contents to the Autonomous (Regional) Communities.

Aside from the content of these courses, another controversial aspect corresponds to the criteria and qualifications for teaching these courses. These criteria go beyond the mere transmission of knowledge and require the student to assume and formulate his own values. Thus, the grade obtained not only depends on the knowledge assimilated, but also on the attitudes of the student that show that (s)he also shares these values.

When various organizations of parents appealed to the courts against the obligatory nature of what they consider to be an ideological subject that attacks the right of parents to educate their children according to their own convictions, the Supreme Court ruled in various sentences dated February 11, 2009, that no kind of indoctrination is being imposed because the contents of the courses refer to the values that underlie the Spanish Constitution and, therefore, it is legitimate to encourage the feelings and attitudes which favour the practical application of the constitutional values.

¹⁷ Ruling of the Supreme Court of January 25, 2005. The Constitutional Court has also stated that the study of Canon Law as a scientific subject in Law studies is not against the individual freedom of beliefs proclaimed in article 16 of the Spanish Constitution (Sentence 359/1985). The Parliamentary Assembly of the European Council has also insisted on the necessity of knowing different religions and their roles in modern society [Resolution 1396 (1999) “Religion and Democracy”].

¹⁸ In the fourth course of OSE it receives the name of “Ethical-Civic Education” and in Senior High School it is called “Philosophy and Citizenship”.

¹⁹ See Royal Decrees 1513/2006 of December 7, 1538/2006 of December 15, 1631/2006 of December 29 and 1467/2007 of November 2.

2.4. *Religion within the Framework of Literature, History, Philosophy, Art and Language Classes*

The historical and social importance of the Catholic Church in Spain has determined that a great number of manifestations in all spheres of thought and creativity have been directly or indirectly influenced by the Christian religion and the special point of view of this religion was held and is still maintained by the Catholic Church. For this reason, the Christian religion is present to a greater or lesser degree in all humanistic disciplines. This, of course, is reflected in the contents and textbooks of subjects such as art, philosophy, history, literature, etc.

II. RELIGIOUSLY MOTIVATED BEHAVIOUR IN PUBLIC SCHOOLS

1. *Religion within the Framework of Working Conditions of Teachers and Other Staff*

Article IV of the Agreement on Education and Religious Affairs signed by the Holy See and the Spanish State on January 3, 1979, inserts into the curricula of Teacher Training Schools the subject “Catholic Doctrine and the Teaching thereof”. This subject, which is optional for the students, is to be taught in the same conditions as other fundamental subjects, and this is reflected in the number of credits assigned to it²⁰. Its contents as well as its textbooks are determined by the Spanish Episcopal Conference. The professors, as occurs in the non-university levels, are chosen by the university academic authorities from among those proposed as suitable by the bishops.

Aside from the possibility of attending courses offered on Catholic doctrine and morals, neither specific religious knowledge nor beliefs are required, nor do they play a role in the selection of teachers and the carrying out of their functions at any level of the educational system.

2. *Religious Symbols in Schools*

The presence of crucifixes in the classrooms of public schools has become the object of growing controversy in society. There is no general rule applicable to the whole of Spain.

As education is one of the responsibilities that the central government has transferred to the autonomous communities²¹, the situation relative to the presence or not of crucifixes in schools varies depending on the policy followed in each region. In some of these, such as Catalonia or the Basque Country, the crucifixes have been removed in accordance with the internal directives issued by the educational authorities. In the regions in which the crucifixes have been maintained, there have been some decisions of courts of law which, it must be said, have not established clear and uniform jurisprudence regarding the constitutionality of the presence of static symbols in schools.

²⁰ In a communiqué sent by the General Administration of Academic Organization on November 5, 1980 to the Rectors, these are informed that the students of the Teacher Training Schools must take no less than 180 hours of courses in Catholic doctrine to be considered qualified to teach the Catholic religion.

²¹ In the Autonomous Cities of Ceuta and Melilla, education still is directed by the Ministry of Education.

Both the sentence of October 15, 2002, of the Superior Court of Justice of Madrid and that of September 20, 2007 of the Superior Court of Justice of Castilla-Leon, maintain that the crucifixes can be considered either as religious symbols which violate the right to religious freedom of parents or students of non-Christian faiths, or elements of purely cultural or pedagogical value whose mere presence does not represent an attempt to proselytize if it is not accompanied by religious indoctrination. Since the constitutionality or unconstitutionality of crucifixes has not been definitely established, it is the organisms governing education that have to decide whether to keep them or not. According to the first ruling cited, that of October 15, 2002, it is the Educational Administration which owns the school that is competent to make a decision about this. The sentence of the Superior Court of Justice of Castilla-Leon considers that it is the School Council, the highest entity responsible for evaluating pedagogical elements in each school, which is responsible for deciding this question.

Two years later, this same Court, in a ruling of December 14, 2009, chose to consider that the mere existence of crucifixes may violate the rights of parents to transmit their religious and moral values to their children as well as the ideological and religious freedom of parents or children. Therefore, the crucifixes must be removed if the parents so request, but if they do not do so, they may remain because the Spanish Constitution also says that the religious beliefs of Spanish society must be taken into account. (Art. 16.3). Notwithstanding, the European Court of Human Rights Decision *Lautsi* versus *Italy*, of November 3, 2009, will certainly have an increasing influence in future Spanish rulings.

As for other traditional Catholic displays in schools such as the setting up of nativity crèches at Christmas time, the Superior Court of Justice of Murcia, in a ruling of November 30, 2009, rejected the claim of a public-school teacher requesting that they be removed because they violate the right to equality and religious freedom. In the eyes of the Court, the Spanish state is not secular, but rather non-denominational. Therefore the neutrality it must maintain in relation to religious beliefs cannot go against the rights and freedoms of its citizens. The removal of the crèche in question would represent a negative discrimination against Catholic parents and students who are the majority in the school.

3. Religious Garments

The specific regulations of public schools relative to education do not usually contain prohibitions of certain kinds of apparel of religious significance. Rather they mention the general obligation to show respect and decorum. However, referring to expression of one's own religion, both laws about education and the regulations resulting from these proclaim the students' right to religious freedom, and these include the right to display external symbols of their beliefs²². The cases involving the Islamic headscarf or *hijab* have been solved up until now by respecting the rights of Muslim girls. It must be noted that in Spanish cities such as Ceuta and Melilla, almost half the female students in school are of Moroccan origin and wear the *hijab* and there have been no problems. In those cases on the Spanish peninsula in which a student has been initially expelled from school, the educational authorities have considered

²² See Article 6.3 of Organic Law 8/1985 of July 3 which regulates the right to an education and Article 16.1 of Royal Decree 732/1995 of May 5 defines the rights and duties of students and the norms of coexistence in schools. Most of the Spanish autonomous communities have also special regulations about the rights and duties of students in their territory.

that priority must be given to the right to receive an education, to religious freedom and to cultural identity, and ordered the readmission of the student. Nevertheless, the question remains controversial and has had important repercussions in the media. There is no jurisprudence relative to the disciplinary measures that could be adopted against Islamic students who decided to wear garments of religious significance. There have been no reports so far of incompatibility between these and specific educational activities. If such cases were to occur, for example in physical education classes, swimming, laboratory work, etc, the priority of the right to an education and the obligation to attend classes would prevail over the right to wear a headscarf.

There have been no cases reported of public school teachers having been dismissed for wearing garments with a religious significance.

4. The Possibility of Blessing School Buildings

In private schools, it depends on the philosophy of the school and the decision of its owner.

In public schools, the non-religious character of the State prevents religious blessings from taking place. Nevertheless the Order of August 4, 1980, which regulates religious attendance and religious rites in schools, establishes that special areas be designated in these schools where students wishing to participate can gather, and religious rites can be celebrated. If these exist, it is the religious authorities who determine what needs to be done to provide this space with a sacred character. If these are Catholic churches and chapels where religious services take place, the specific authorization of the bishop must be obtained and then a blessing takes place²³.

5. Special Issues

Conceived as an aid for parents to exercise their right to educate and train their children in their own moral and religious beliefs (Art. 27.3 of the Spanish Constitution), the above-mentioned Order of August 4, 1980 regulates religious attendance in schools. As we have already mentioned, in schools, special areas are to be prepared for students who wish to attend and for religious services to be celebrated. (Art. 1). The chapels already used for religious services are to be reserved for this purpose without this impeding their eventual use for other educational activities (Art. 3). As for the organization of this religious attendance, this is to be agreed between the hierarchy of the church or religious organization and the educational authorities (Art. 2).

²³ Canons 1215 and 1217 of the Code of Canon Law.

III. OPTING OUT OF SCHOOL OBLIGATIONS FOR RELIGIOUS REASONS

1. Religious Holidays: Possibility of and Conditions for Taking Off the Relevant Days

The Workers' Statute²⁴ states in general terms that the weekly day of rest shall be Sunday (Art.37). Although the origin of this precept is religious, the Constitutional Court has stated that this weekly day of rest should be considered as secular and not religious²⁵.

Referring to nationally observed holidays whose origin is the commemoration of a religious event in the religious tradition of the majority of Spaniards, the Catholic faith, the Workers' Statute establishes the limit of 14 holidays of either a secular or religious nature²⁶. Among these, and obligatory for all of Spain, is Christmas. The other religious holidays, as described in Article III of the Agreement on Legal Affairs with the Holy See, are to be determined by common agreement of church and secular authorities. Consequently, as established by Article 45 of the Royal Decree of July 28, 1983, which develops Article 37 of the Workers' Statute²⁷, the government is to establish the holidays for each year. The religious holidays will be established by agreement with the Episcopal Conference.

In schools, for those religions, other than the Catholic, which have an agreement with the State, an effort is made to make their holidays compatible with the general regulations described above by excusing them from attending classes. In the Agreement with the Evangelical Federation, students of the Adventist faith and of other denominations that have Saturday as their day of rest are excused from classes "from sunset on Friday until sunset on Saturday", if requested by the student or the person charged with the custody of the student (Art. 12.2). Also instead of Sunday, for Jewish students the weekly day of rest is Friday afternoon and all of Saturday. On these days and on the High Holidays of Judaism, students are dispensed from attending classes or taking examinations (Arts. 12.1 and 2). For Muslims, students are excused from classes in the same way on Islamic holidays and Fridays from 1:30 to 4:30 p.m. (Arts. 12.1 and 2).

2. Opting Out of Religious Instruction or Instruction about Religion

In general lines, while their children are minors, the State guarantees the parents the right to give their children the religious and moral education according to their personal convictions²⁸. Adulthood is reached at the age of 18, after this, individuals obtain their full civil and political rights among which is the right to have their own religious convictions²⁹.

In addition to this, Spanish law, in accord with international agreements, recognizes the right of religious freedom for minors. Article 6 of Organic Law 1/1996 of January 15, on the legal protection of minors states that "the minor has a right to freedom of ideology, conscience and religion". The parents have the right and the duty to cooperate so that the

²⁴ See Legislative Royal Decree 1/1995 of March 24, in which the revised text of the Law of the Workers' Statute is approved.

²⁵ Sentence 19/1985 of February 13 of the Constitutional Court.

²⁶ The Autonomous Regional Communities can replace some of the holidays by celebrations specific to the Community.

²⁷ Elaborated in accordance with Royal Decree 1346/1989 of November 3.

²⁸ Article 27.3 of the Spanish Constitution and Article 4.1 of Organic Law 8/1985 of July 3, which regulates the right to an education.

²⁹ Article 1 of Organic Law 1/1996 of January 15, on legal protection of minors.

minor may exercise this right in a way that contributes to his general development. In Education, Article 6.3 of Organic Law 8/1985 of July 3, which regulates education, recognizes the right of students to “respect of their freedom of conscience, and their religious and moral convictions as set out in the Spanish Constitution”. And in this same sense, Article 16.1 of Royal Decree 732/195 of May 5, which establishes the rights and duties of students as well as the rules of social coexistence in schools – along with the specific regulation enacted by the Spanish autonomous communities – proclaims the right of students to respect for their freedom of conscience and religious and moral convictions.

The Spanish legal system does not specify the ages as of which students are allowed to exercise their rights in the educational system. In the case of disagreement between parents and children, the case must be presented to a local judge, who will resolve the conflict giving priority to the interests of the minor and considering his degree of maturity³⁰.

3. Opting Out of Specific Subjects

Spanish law has considered two kinds of cases in which students are exempted from attendance and qualification in specific subjects for philosophical or religious reasons.

In the first case, a student’s parents requested exemption from the obligation to attend sex education classes, which are a part of the subject of Natural Sciences in the eighth level of Primary Education, because the contents of the explanations were contrary to their religious and moral convictions. The Superior Court of Justice of Cantabria, in its ruling of March 23, 1998 rejected the parents’ claim. The sentence points out that once a school’s plan of study has been approved, its contents become obligatory for all students and teachers; therefore attendance and participation in these activities is mandatory. The right of parents to determine the education of their children has as its limit the rights of the other members of the school community. Parents cannot predetermine the contents of the study plan of a public school in accordance with their own philosophy; however, they always have the freedom to choose a specific kind of education by exercising their right to choose a suitable school.

In the second case, some parents requested exemption from the obligation to attend and be examined in the subject “Education for Citizenship and Human Rights” because they considered its contents to be contrary to their religious and moral convictions. After several contradictory sentences in inferior courts, the Spanish Supreme Court in a ruling of February 11, 2009 rejected the petition. For the Supreme Court, parents have the right (Art. 27.3 of the Spanish Constitution) to request the annulment of the standards that regulate obligatory subject matter when these conflict with their right to determine what religious or moral teachings they wish their children to receive, but they do not have the right to request excuses and exemptions. According to Article 27.2 of the same text, the Public Authorities are obliged to achieve the educational goal of developing the student’s personality in respect of democratic principles and human rights, and this obligation limits the rights of the parents, as long as the contents of the courses do not constitute indoctrination. The Court considers that

³⁰ However, practice indicates that as the students near adulthood, (s)he decides whether or not to take the course in Catholic religion. According to the statistics for each stage of education, if in Elementary Education 74% of the pupils choose Catholic religion, in OSE enrolment drops to 44.7% and in *Bachillerato* to 37%. (The data produced by the Office of Statistics of the Episcopal Conference may be consulted in the webpage of the Spanish Episcopal Conference).

“Education for Citizenship”, in the minimum contents determined by the norms established by the Education Law, contains the necessary information presented in an objective and plural way and, therefore, does not constitute indoctrination, neither does it intend to replace the beliefs of the parents with a kind of civic ethics.

4. Religiously Motivated Homeschooling

Unlike the laws of other European countries, Spanish law does not envisage the possibility of parents educating their children at home. Obligatory schooling between the ages of 6 and 16 prevails although no one has been penalized for practising home-schooling.

Ruling 260/1994 of October 3 of the Spanish Constitutional Court resolved the sanction requested by the Generalitat of Catalonia, which had assumed temporary guardianship of some minors whose parents belonged to the religious group the Children of God, because, among other reasons, the children were not enrolled in school. The parents claimed that, for them, the family is a basic element in the education they want to give their children in accord with their faith, and that they supply this education in their home. Furthermore, in Catalonia, classes are taught in the Catalan language and the children only speak English. The Court in a rather succinct exposition, considered that there was not sufficient justification for removing the children from their parents’ custody and putting them in the custody of the Administration.

Nevertheless, in the last paragraph of the Ruling, and, we insist, without any legally coercive effect, recognizes that “the deprivation of custody in no way diminishes or eliminates the authority of the Generalitat to guarantee the appropriate education of the minors ... Only if the exercise of that right were effectively impeded could the right invoked by the plaintiff be considered to have been violated, and this cannot be deduced from the case documents.”

Since then, in decisions of lower courts, parents who had schooled their children at home have been absolved of the accusation of not fulfilling the duties inherent to parental custody. In a Sentence of October 9, 2009 of Criminal Court nº 10 of Teruel, the judge, without touching on the subject of the obligation to school children or the advantages of home-schooling, considers that, in this case, parents who educate their children at home according to the standards and methods established by the Association for Free Education, do not violate the duty of parents to school their children. On the contrary, they have shown that they are personally implicated in the transmission of knowledge and moral and ethical training, as well as seeking recognition of their children’s academic level by the public school system. The psychiatric reports show that the minors are emotionally normal and display a reasonable degree of socialization.

The general framework of the Spanish case law exposed has changed after the decisive ruling of the Constitutional Court dated on December 2º, 2010.

The plaintiff defends home-schooling as a constitutional right based in Article 27 of the Spanish Constitution; it is, in his opinion, a pedagogic measure against the low level and the wrongdoing of the official education. The Constitutional Court does not consider the practice of home-schooling a constitutional right. The parents’ right of education is safeguarded by the

possibility to choose the school for their children and to teach them outside the school time. On the contrary, the option in the Spanish legal system of obligatory schooling from six to sixteen years old is, as the Constitutional Court stated, a reasonable and a proportional measure in order to satisfy the constitutional aim about the right of education. Certainly, the Spanish legislator could rule the possibility of allowing parents the education of their children at home under control of the state. Anyway, the Court considers that home-schooling is a worse option than the obligatory schooling under the constitutional requirements: the last accomplishes the need for the socialization of children, which is an essential part of “full development of [the] human personality of minors” (Article 27.2 of Spanish Constitution). As a result the Ruling rejected the petition of the plaintiff because it lacked constitutional content. No doubt this Sentence is a turning point as to home-schooling in Spain.