

I. ESTUDIOS

**SINGLE-SEX EDUCATION Vs
COEDUCATION IN SPAIN. A MATTER
OF LEGISLATION?**

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Fecha recepción: 16/03/2022
Fecha aceptación: 06/09/2022

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I hope, gentlemen, that you will recognize that women have their own destiny; that their first natural duties are to themselves (...) that their happiness and personal dignity must be the essential objective of their education, and that as a consequence of this way of being they possesses the same right to education as men, understanding the word education in the broadest sense of all that can be attributed to it. (Emilia Pardo Bazán, 1892).

1. INTRODUCTION

The controversy surrounding single-sex education is a relatively recent issue. Little more than a century ago, in Spain, education was taught separately by sex. Not only did boys and girls receive different training, but they also acquired it in different places. This wasn't a result of having to choose a pedagogical option. Boys and girls had different educations because they were preparing for a different future. In this learning environment, a woman's education was determined by her role as a wife and a mother². Gradually, this changed. Towards the end of the 19th century, the first movements in favor of coeducation began to surface, though the

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² «The basic education that women should have, was reduced to submitting to the fulfillment of the qualities that were considered to adorn them. Education had to ensure that women were passive beings who did not question what was established for them», Segura Graiño, C. (2007), «La educación de las mujeres en el tránsito de la edad media a la modernidad», en *Historia de la educación: Revista interuniversitaria*, N.º 26, p. 80. En el mismo sentido, Elizabeth S. et al. (1980), «The Education of Feminists: The Case for Single-Sex Schools», en Dale Spender & Elizabeth Sarah eds., *Learning to lose: sexism and education*, pp. 55-66.

social roles that justified single-sex education were not brought into question, not even by the defenders of these movements. So much so that, even when coeducation was implemented, specific subjects were still reserved for girls³. It is widely accepted that with the Second Republic a boost was given to mixed education⁴ which, in 1936, accounted for approximately 30% of all public schools in the country⁵. The introduction of a mixed system is parallel to the progress of women's rights⁶ and toward the end of the 20th century teaching in mixed schools became the norm in countries like ours.

The approval of the Ley General de Educación (LGE) in the 1970s paved the way for mixed education. And, as in other parts of the world, single-sex education was seen as something obsolete that was gradually disappearing⁷. The resurgence of single-sex education in the U.S. had a correlative success in the countries under its influence⁸. But this time separate educations were not about adapting the teachings to the student's futures. The reasons for separate educations were different. Defenders of single-sex education claimed that a student's learning abilities vary depending on their sex, that students learn differently depending on their gender. They argued that by separating them by sex, students' results would improve. Those who argue in favor of coeducation consider it essential to educate by example, that education goes beyond mere instruction, students should grow academically but also personally. This style of education is compatible with any educational stage and doesn't make a distinction, classrooms should be occupied by students of both sexes, from early childhood to university level.

In Spain, for the first time, in 2006, with the approval of the «Ley Orgánica 2/2006, de 3 de mayo, de Educación» (LOE), single-sex education was placed at the center of debate: the LOE would make it a factor to be considered in order to determine financial aid given to private schools that receive financial aid from the state.

³ As Ballarín points out, Francisco Giner, architect of la Institución Libre de Enseñanza, who defended the principle of coeducation. However, he stated in 1889: «It is essential... to develop with special care all that particular sphere of education that has to prepare women to fulfill their mission in the family and in society as a wife, as a mother and as a initiator of all those works of charity, love and enchantment that assign her a place entirely her own and irreplaceable in external life itself». Ballarín Domingo, P. (2004). «Género y políticas educativas», en XXI. *Revista de Educación*, N°6 (2004), p.36.

⁴ For all, Op. cit. ut. supr. , p.36.

⁵ Subirats, M. (2010), «¿Coeducación o escuela segregada? Un viejo y persistente debate», en *Revista de la Asociación de Sociología de la Educación (www.ase.es/rase)*, vol. 3, N° 1, enero, p.144.

⁶ Subirats develops this idea in op. cit. ut. supr. pp. 143-158.

⁷ Salomone R. (2013), «Education rights and wrongs in the debate over single-sex schooling», at *Boston University Law Review*, Vol. 93, p.974.

⁸ Calvo Charro, M. (2013), «Los colegios diferenciados por sexo en Estados Unidos: constitucionalidad y actualidad de una tendencia imparable», en *Revista de Derecho Político*, N°86, enero-abril 2013, pp.161-162.

In this article, we do not intend to analyze the differences between the sexes. It is not our aim to find out if men and women, boys and girls, do, in fact, learn differently. Nor do we want to analyze whether coeducation favors equality or, on the contrary, whether it is single-sex education that achieves it. We will also leave out of the debate the differences between a mixed school or coeducation —terms that we will use interchangeably— and their objectives⁹. Without questioning the models from a pedagogical perspective, we will try to analyze the possibility of implementing them in the Spanish system considering existent regulations.

In December 2020, the «Ley Orgánica 3/2020, de 29 de diciembre, por la que se modifica la Ley Orgánica 2/2006, de 3 de mayo, de Educación» (LOMLOE) was passed. With a clear declaration of intentions, the LOMLOE anticipates in its preamble that, considering the criticism and controversy the «Ley Orgánica 8/2013, de 9 de diciembre, para la mejora de la calidad educativa» (LOMCE) faced in the social and educational fields, it was deemed necessary to «reverse the changes promoted by the LOMCE, especially those that faced the most opposition. It highlights the importance of adapting the law to the demands of the times and, as the main objective, it points to the search for gender equality «through co-education». In this sense, the law seeks to promote effective equality of women and men throughout all stages of education, improving «the prevention of violence against women and respect for diversity of sexual orientation, introducing educational and professional guidance in secondary education from an inclusive and non-sexist perspective». Appealed before the Constitutional Court by the political parties of PP and VOX, the LOMLOE was exposed in its early days to a climate of opposition, similar to that faced by other reforms. Regarding single-sex education, it provided in its Twenty-fifth Additional Provision for the promotion of effective equality between men and women that «the centers supported partially or totally with public funds will implement the principle of co-education throughout all educational stages.» This affirmation forces state-funded centers to abandon the system of single-sex education that had been declared constitutional just two years before by the Constitutional Court (TC). We will attempt, in the next section, through the analysis of the legislative and jurisprudential evolution, to predict the future of the legal regime of single-sex education in Spain.

2. THE ORIGINS OF EDUCATION: A RIGHT ONLY FOR BOYS

Education is considered, in the 21st century, a fundamental right and an essential mechanism that enables the exercise of other rights. It enjoys international

⁹ The difference between the two issues is not the object of our study, although we are aware of some doctrinal positions in this regard. This is pointed out, among others, by Gordillo, E. (2015), «Historia de la educación mixta y su difusión en la educación formal occidental», en *Rev. hist.educ.lati-noam* - Vol. 17 N° 25, julio - diciembre 2015, p.111.

legal protection. The Universal Declaration of Human Rights (UDHR)¹⁰, the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹¹ and the Convention on the Rights of the Child (CRC)¹² are clear examples of this. It is also recognized in the Charter of Fundamental Rights of the European Union. Similarly, we find the right to education in the first part of the Spanish Constitution. But this has not always been the case, especially for one half of society. Navas Sánchez¹³ states that, in the subject that concerns us today, there are certain «circumstances that give it a particular character». And, among them, she points out the tradition of sexism in our schools. I fully agree with the author in this diagnosis, and, for this reason, I hope the reader will forgive me for abusing the space I will devote to this section by borrowing the work of education historians

Despite works such as that of Comenius¹⁴, who in his *Magna Didactics*¹⁵ explored the need for men and women to receive the same schooling, the reality is that girls were excluded from the education received by the male sex¹⁶. All this despite the fact that females had the same «agile and capable understanding of science.» Juan Luis

¹⁰ UN General Assembly. (1948). Universal Declaration of Human Rights (217 [III] A). Paris.

¹¹ International Covenant on Civil and Political Rights. Adopted and open for signature, ratification and accession by the General Assembly in its resolution 2200 A (XXI), of December 16, 1966.

¹² General Assembly, Convention on the Rights of the Child, November 20, 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at this address: <https://www.refworld.org/es/docid/50ac92492.html> [Accessed on April 29, 2022]

¹³ Navas Sánchez, M. (2019), «¿Diferenciar o segregar por razón de sexo? A propósito de la constitucionalidad de la educación diferenciada por sexo y su financiación pública. Comentario a la STC 31/2018 y conexas», en *Teoría y realidad constitucional*, N.º 43, p. 493.

¹⁴ Regarding the education of women in the previous era and during the Enlightenment, it is of great interest to contrast the work of Cristina Hernández Casado in which she collects, together with the bibliographical references, the works dedicated to the issue. Hernández Casado, C. (2017), «Educación femenina en el siglo XVIII: proyecto de exposición», <https://eprints.ucm.es/id/eprint/43455/1/DT2017-08.pdf>, [Accessed on April 29th, 2022].

¹⁵ «Comenius, for good reason, is considered the first promoter of education for all; that is, women and men must be educated, «they must be admitted to schools [...] all equally» (p. 30); and this because «all have been born men [...] with the same main purpose [:] that they be men; [...] rational creatures, lords of other creatures, express image of their creator [...] instructed in letters, virtue and religion». Thus, the one who makes all equal and before whom all human beings are equal, due to their dignity and divinity, is God. As, and by grace, he «wants to be known, loved and praised by all (p. 30)». Vargas, G. (2021), «Los presupuestos filosóficos en la Didáctica magna de Juan Amós Comenio —Comenio, 350 años—», en *Pedagogía y Saberes*, N.º 54, p. 77. <https://doi.org/10.17227/pys.num54-11525>. (22 abril 2022).

¹⁶ After affirming in chapter VIII, the need to create schools because, *as the pool for the fish and the nursery for the trees are essential, schools are necessary for the youth*, Comenius affirms in the following chapter that schools should meet to all youth of both sexes. In our opinion, the following statement by Comenius is a gem: «There is no reason why the female sex (and I will say something in particular about this) should be absolutely excluded from scientific studies (whether they are given in the Latin language or in native language). Comenius, JA, *Magna Didactics*, Akal, Reprint 2021, trans. Saturnino López Fishes, Introd. Mariano Fernández Enguita, p.73.

Vives argued that the lack of training in girls was justified because learning in the Faith served the female sex in the same way as the male¹⁷.

In any case, both sexes were somewhat equal until the French Revolution. Education was considered a privilege for the wealthy, not a right. As a result of the Enlightenment, education was configured as the main tool to build a new social order, turning education into a crucial instrument¹⁸. However, it was an instrument that was not made available to everyone. Women were overlooked by most enlightened thinkers, and, as Enguita rightly points out, those who did take them into account did not always recognize them as potential learners¹⁹. It would be unfair, however, not to acknowledge the exception: Condorcet²⁰. The enlightened movement reached Spain in the seventeenth century, and with it came the creation of the Academies, the works of Campomanes, Feijoo and Jovellanos and, of course, the creation of new educational institutions, didn't promote women's education either. Although girls' education was regulated, in subjects relating to «handicrafts»²¹, the eighteenth century did not change the established system or the marginalization of women in the field of education. The status of women in schools remained unchanged throughout the 19th century²². However, with José Bonaparte, in 1809 the Decree of December 29th was approved,²³ establishing the creation of a House of Education for girls in each province of the Kingdom. Until then this education existed and was carried out by nuns in convents²⁴.

¹⁷ Although it is true that the behavior of women had not been totally marginalized in previous works, it is also true that there was no purpose in such works or mandates to instruct them. Thus says John Justinian: «I do not fail to know what the glorious Saint Paul writes to Timothy and the Corinthians about the lives of women, much less ignore what Saint Cyprinian, Saint Jerome, Saint Augustine later wrote...». Juan Justiniano, Prologue of Juan Justiniano on the instruction of the woman christiana, in, Vives, J.L., trad. Juan Justiniano, Instrucción de la muger christiana, pp. XIV-XVI, https://bivaldi.gva.es/catalogo_imagenes/grupo.do?path=1015795 (22 abril 2022). Fray Luis de León en *La perfecta casada* hizo algo similar explicando los deberes y tareas de la mujer como esposa y madre, en https://www.cervantesvirtual.com/obra-visor/la-perfecta-casada--1/html/ffbbf57a-82b1-11df-acc7-002185ce6064_3.html, [Accessed on April 29th, 2022].

¹⁸ Enguita, Mariano F. (1988), «Society and education in the legacy of illustration: Credit and debit», in Enguita, Mariano F. (1988), «Sociedad y educación en el legado de la ilustración: Crédito y débito», en Educación e Ilustración. Dos siglos de reformas en la enseñanza. Ponencias, Colección de Investigación, 24, Ministerio de Educación Cultura y Deporte, Madrid, pp. 139-140.

¹⁹ Op. cit. ut del. P. 146.

²⁰ Condorcet, Marquis de Jean-Antoine-Nicolas de Caritat . (1791), « Five memoires sur l'instruction publique». Retrieved from http://www.uqac.ca/Classiques_des_sciences_sociales/ de los progresos del espíritu humano. Madrid: Editora nacional.

²¹ Sarasúa, C. (2002), «Aprendiendo a ser mujeres: las escuelas de niñas en la España del siglo XIX», en *Cuadernos de Historia Contemporánea*, Vol. 24, p. 287.

²² This is how Segura Graiño collects it, Segura Graiño, C. (2007), «La educación de las mujeres...», op. cit. p. 80.

²³ Gaceta de Madrid, viernes 29 de diciembre de 1809, núm. 336, pp. 1595 y 1596.

²⁴ Another decree on the same day would try to put an end to that practice. *Decree that prohibits the convents of nuns from administering educands, and that allows those that currently exist to remain in them until*

It is widely accepted that the foundation of the Spanish educational system was established in the Constitution of 1812. However, as Boixareu rightly indicates²⁵, the Cadiz text did not respond to the egalitarian theses Condorcet defended²⁶. The works of Torres del Moral, who already pointed out that Condorcet features the need for education as something common to both sexes, become relevant, since no arguments in favor of maintaining the distinction can be found²⁷. What has been considered as the first Spanish Constitution has been highly esteemed for abandoning the principles of the old regime, promoting freedom and equality²⁸. The abundance of articles on education highlights its fundamental deficiency: half of the population was forgotten in its drafting. The female sex did not participate in «universal» instruction²⁹, in fact, female training was demoted to private or domestic subjects³⁰. Soon afterwards, in 1821, the General Regulation of Public Instruction was passed³¹. The Regulation provides for the need to establish public schools that teach girls to read and write. However, the interest in girls' schooling was not for their scientific or cultural preparation, but for «what society considered their natural function: running a house, raising their children, teaching them to pray, cook, take care of her husband, sew, stocking, spin and weave, lace, embroider and mend»³².

the establishment of the houses of education, in the *Prontuario de las leyes y decretos del Rey Nuestro Señor Don José Napoleón I desde el año 1808*. Tomo I (formato PDF), p. 472-473, <https://www.cervantesvirtual.com/obra/prontuario-de-las-leyes-y-decretos-del-rey-nuestro-senor-don-jose-napoleon-i-desde-el-ano-1808-tomo-i/>, [Accessed on April 29th, 2022].

²⁵ Boixareu, M. (2015), «Condorcet en España», en *Langue(s) & Parole: revista de filología francesa y románica*, Nº. 1, (Ejemplar dedicado a: La laïcité / coord. por Manuel Tost Planet), p.113.

²⁶ In his work *five mémoires sur l'instruction publique*, is committed to an equal education for men and women. It suggests that discrimination based on birth, race, sex and economic hardship cannot prevail. The first of the memories in its last section clarifies that education must be the same for men and women. Condorcet, Marquis de Jean-Antoine-Nicolas de Caritat (1791), «Cinq memoires...», op. cit. p. 45.

²⁷ Torres Del Moral, A. (1980), *Bosquejo de un cuadro histórico de los progresos del espíritu humano*, *Jean Antoine Nicolas de Caritat Condorcet*, Ed. Preparada por Antonio Torres del Moral, Madrid, Editora nacional, p. 33.

²⁸ Suárez Pertierra, G. (2015), «Antecedentes históricos. Constitucionalismo Español. Fuentes del Derecho eclesiástico español», en *Derecho eclesiástico del Estado*, AAVV, coord. por Gustavo Suárez Pertierra, Tirant Lo Blanc, p. 104.

²⁹ This is how it is collected in «Teaching boys and girls: Differentiated education». The Quintana report exposes this reality crudely: «...The Board understands that, contrary to the education of men, which should be public, that of women must be private and domestic (...) since the happiness of both sexes results from their correct disposition, they were not for now under our inspection, nor have they been entrusted to us», Cfr. Rodríguez Moya, A. (2019), «Enseñar a niños y niñas: La educación diferenciada», en Ana Fernández Coronado (Coord.), *Integrados. Claves jurídicas: derecho a la educación, diversidad religiosa y cohesión social*, 2019, n.284, p. 249.

³⁰ Arraque Hontagas, C. (2013), «La educación en la Constitución de 1812: Antecedentes y consecuencias», en *Revista de la Facultad de Ciencias Jurídicas y Sociales de Elche*, Vol. I, Nº especial, p. 10.

³¹ <https://legishca.edu.umh.es/1821/06/29/1821-06-29-reglamento-de-instruccion-publica/> [Accessed on May 3rd, 2022].

³² Sarasúa, C. (2002), «Aprendiendo a ser mujeres...», op. cit., p.286.

In 1857 the Public Instruction Law emerged. Known as the Moyano Law, it strengthened the system and maintain the differences in curriculums between boys and girls³³. The reality of the matter is that, despite the abundance of regulation, including the regulations found in the constitution, in the 19th century single-sex education was prevalent, and this lasted well into the 20th century. During the first decades of the twentieth century coeducation was promoted, following the theories defended by the New School. In the Pedagogical Congress of 1892, Emilia Pardo Bazán³⁴ defended coeducation, to no avail. Likewise, Francisco Giner de los Ríos was a defender of coeducation, implementing it in the *Institución Libre de Enseñanza*³⁵. The truth of the matter is that, aside from a few exceptions, boys and girls received standardized education separately. The 20th century brought about changes in this regard, and some of the legislation issued throughout this period increased the training of women, even up to university-level³⁶. The brief period that constituted the Second Republic did not allow for the consolidation of the mixed school system that was reflected in the Decree of August 28th, 1931, for Official Secondary Education Centers³⁷. Despite these attempts, the reality was that the main effort was to achieve policies focused on universality from a social perspective rather than gender. By 1936 almost 30% of schools were mixed. With General Franco's dictatorship, education separated by sex was reintroduced, a system that lasted well into the 1970s.

³³ Art. 5. In elementary and higher education for girls, the studies referred to in the sixth paragraph of art. 2nd and the first and third paragraphs of art. 4th, being replaced with: First. sex work. Second. Drawing elements applied to the same tasks. Ley de Instrucción Pública de 9 de septiembre de 1857. Gaceta de Madrid, núm. 1710 de 10 de septiembre de 1857.

³⁴ She participated in «the Spanish-Portuguese-American Pedagogical Congress of 1892» (Labra 1893, Capel Martínez 1982, Fernández Poza 2007), as president of table V, in which she presented a suggestive memoir entitled «The education of men and women» on October 16; He also summarized the conclusions of the aforementioned report (October 17) and the presentations and reports of section V (October 19). The table of section V of the Congress was formed by Emilia Pardo Bazán, Berta Wilhelmi, Asunción Vela, María Fernández and Dr. Concepción Aleixandre; Five framework papers were presented in it by Emilia Pardo Bazán, Carmen Rojo, Concepción Arenal, Santos María Robledo and Ángel Pulido / Joaquín Sama.

³⁵ «Don Francisco and, with him, the other institutionalists considered it harmful to artificially separate the sexes at school; Rather, coexistence in the classroom was an indispensable basis for building future mutual respect between men and women and for consecrating the ideal of comprehensive education.» Vázquez Ramil, R. (2016), «Francisco Giner de los Ríos y la educación de la mujer: consideraciones teóricas y perspectiva práctica», en *INDIVISA. Boletín de Estudios e Investigación*, nº16, p.71.

³⁶ Cf. Subreviola Ovejas, I. (2012), «Coeducación: un derecho y un deber del profesorado», en *Revista Electrónica Interuniversitaria de Formación del Profesorado*, Nº 15 (3), 59–67.

³⁷ Gaceta de Madrid núm. 241 de 1931. Boletín Ordinario.

3. MIXED EDUCATION IN SPANISH REGULATIONS

3.1. *The General Education Law*

The sixties were years of reform and «modernization» in Spain and the country was also growing from a demographic perspective³⁸. Despite all the changes, however, the reality was that Spain continued to fall short in many aspects relating to education³⁹. The transition process in Spain had begun⁴⁰. Furthermore, with the death of Francisco Franco, the change in the political model took place, Spain ceased to be a dictatorship to become a Social and Democratic State of Law⁴¹.

General Reform of the Spanish Educational System emerged as a result of the desire for expansion towards the end of the Franco regime. And, due to this need for renewal, the LGE, also known as the Palasí Law, was approved⁴². The LGE has been considered the first step towards changing the system, the transition from a «dictatorship education» to «democracy education»⁴³. Whether true or not, what we can assert, in agreement with Tiana Ferrer, is that «the LGE was an attempt to modernize the Spanish educational system, part of a project to modernize the productive apparatus and the social body and favored by the international situation»⁴⁴.

³⁸ From 1960 to 1980 the Spanish population increased from 30,583,466 to 37,742,561. Teresa Menacho Montes, Anna María Cabré Pla, Andreu Domingo i Valls, *Demografía y crecimiento de la población española durante el siglo XX*, en *Mediterráneo económico*, N° 1, 2002 (Ejemplar dedicado a: Procesos migratorios, economía y personas / coord. por Manuel Pimentel Siles), p.122.

³⁹ Delgado-Granados, P. (2021), «La Ley General de Educación en la memoria: del reconocimiento a la negación», en *Historia y Memoria de la Educación*, N° 14, p. 297.

⁴⁰ Casanova, J. (1994), «Las enseñanzas de la transición democrática en España», en *AYER*, N° 15, p.20.

⁴¹ This is what Casanova points out when he points out that «the staggering, partly conscious, partly fortuitous, of the tasks of the reform made it possible to solve them consecutively, thus avoiding what Claus Offe has called *the dilemma of simultaneity*», op. cit. ut. supr., p.17.

⁴² José Luís Villar Palasí was Minister of Education and Science between 1968 and 1973, the period in which the General Education Law was approved. «Those years of the transition from the 60s to the 70s, we lived intensely in the University the echoes of May 68 and, in the midst of all this, a sign of profound renewal for education in Spain emerged: the Villar Palasí law (...)». Cañón Loyes, C. (2012), «In memoriam. José Luis Villar Palasí, Educar para la innovación», en *Padres y maestros*, junio, n°345, p.5.

⁴³ Fernández-Soria and Sevilla Merino reflect this position echoing the following works: Emilio Martínez en el obituario «Ricardo Díez Hochleitner, un español universal» (El País, 2 de abril de 2020), y Cabrera Montoya, B. (2007), «Políticas educativas en clave histórica: La LOGSE de 1990 frente a la LGE de 1970», en *Tempora*, N° 10, p.161 y Fernández-Soria, J. M. y Sevilla Merino, D. (2021), «Introducción. A los 50 años de la Ley General de Educación», en *Historia y Memoria de la Educación*, N°14, pp. 11-21.

⁴⁴ Tiana Ferrer, A. (1992), «Presentación. La Ley General de Educación, veinte años después. Elementos para una revisión», en *Revista de Educación* N° ext. «La Ley General de Educación veinte años después», p. 9.

Nineteenth-century Spain was fading, and new educational models came to light⁴⁵. The new law aimed to implement the principle of equal opportunities. Did this principle include a prohibition of discrimination based on sex? In our opinion it did, though not explicitly. This law included among its objectives the participation of the entire Spanish population in education, without any exception. Its intention was to «offer everyone equal educational opportunities, with no limitations other than the ability to study»⁴⁶. And in its second article it declared that «all» Spanish citizens have the right to receive a general education and that that basic general education was compulsory and free of charge for all. It establishes basic education as a fundamental public service. When the legal text specifies the basic conditions of the organization of education of Preschool, General Basic and High School Centers, it does not make any provision to separate boys and girls, nor does it forbid it. Without distinction between the students, it didn't include any discrimination for female or male teachers. And, finally, the obligation to implement Basic General Education (EGB) centers through regional plans that establish equal opportunities «in all aspects» is created. Although the LGE did not refer to any division in educational centers and remained faithful to the attitudes of the regime in many aspects, it did put an end to the differentiated curriculums. This laid the foundation for the transformation of public schools, with single-sex education, into mixed schools. As a consequence of common training in the same areas, and the progressive disappearance of subjects «only for girls», educational establishments implemented the coeducation system throughout the 1970's⁴⁷. It seemed that single-sex education would disappear organically. But nothing could be further from the truth.

3.2. *The Laws of Democracy*

In 1978, with the approval of the Constitution, equality and education are included as fundamental rights. In addition to the consideration of equality as a fundamental right, equality is recognized in our legal system as a constitutional principle⁴⁸. Both the Organic Law 1/2004, of December 28, on Comprehensive Protection Measures against Gender Violence, and the Organic Law 3/2007, of

⁴⁵ Blat Gimeno, J. (1992), «Apuntes sobre la elaboración y aplicación de la reforma educativa de 1968-1970», en *Revista de Educación. La Ley de Educación, veinte años después*, N° ext. p.292.

⁴⁶ Ley 14/1970, de 4 de agosto, General de Educación y Financiamiento de la Reforma Educativa. BOE» núm. 187, de 6 de agosto de 1970.

⁴⁷ Cortada Andreu, E. (1999), «De las escuelas de niñas a las políticas de igualdad», en *Cuadernos de Pedagogía*, N° 286, diciembre, p.5.

⁴⁸ On education and the higher values of the order: Vidal Prado, C. (2021), «Educación y valores superiores del ordenamiento: igualdad y libertad», en *IgualdadES*, 4, pp. 255-285. Sobre equidad y libertad, el mismo autor en: Vidal Prado, C. (2021), «El derecho a la educación de los migrantes», en Porras Ramírez, J.M. y Requena de Torre, D. (coord.), *La inclusión de los migrantes en la Unión Europea y España. Estudio de sus derechos*, Aranzadi Thomson Reuters, pp. 147-178.

March 22, for the Effective Equality of Women and Men, have meant that equality has experienced an important legislative progress, but the «legislative inflation» in education is unrivaled in the Spanish legal system.

Since 1980, many laws have been approved regarding the right to education. The LOMLOE which is the newest organic law in this area, published in December 2020⁴⁹.

In this short but intense process of transformation of the educational system, same-sex education seemed to become an essential characteristic of the Spanish public-school model. Private centers that received funding from the State were joining in the change, and schools with a long-standing tradition of single-sex education became co-educational⁵⁰. A detailed study of the legislation in this area shows that the first educational laws showed a great concern for the encouragement of equality policies. However, they do not prohibit or marginalize the single-sex school model. In reality, as with so many regulations, the new system was heir to a past in which education was separated, both physically (girls and boys were separated, in different centers or classrooms), and content-wise. As was common, the change into a model of effective equality could not be carried out abruptly. Gradually, differentiated schools became limited to the private sphere and, as Celador points out, were considered «a legitimate manifestation of the right to create a center and endow it with its own ideology or character, guaranteed by articles 27.1 and 6 CE.»⁵¹

Coeducation now the norm⁵², the reality of the matter is that, since 1978, schools had been kept separate by sex, within the same center or in different centers⁵³. The

⁴⁹ Rodríguez Moya, A. (2012), «Derecho a la educación y libertad de enseñanza», en *Derecho eclesiástico del Estado*, AAVV, coord. por Gustavo Suárez Pertierra, Tirant Lo Blanc, p. 204.

⁵⁰ Since 1985, the religious orders belonging to the Catholic Church with the longest educational tradition have been converting their centers, once for boys or girls, into mixed centers. This happened naturally, without causing any social upheaval.

⁵¹ Celador Angón, O. (2020), «El modelo de educación diferenciada en la reciente doctrina constitucional», en *Derechos y libertades: Revista de Filosofía del Derecho y derechos humanos*, N° 42, pp. 27-60; Celador Angón, O. (2018), «Educación diferenciada y servicio público», en M.- Vaquer Caballería, A. M. Moreno Molina, A. Descalzo González, J. L. (Coords.), *Estudios de Derecho Público en homenaje a Luciano Parejo Alfonso*, Vol. 2. Valencia: Tirant lo Blanc, p. 1896.

⁵² As Aláez Corral points out, since the approval of the LGE, mixed education has been the most common system in our country. Aláez Corral, B. (2008), «Límites constitucionales a la educación diferenciada por razón de sexo en los centros escolares sostenidos con fondos públicos», en *Estudios sobre la Constitución española. Homenaje al profesor Jordi Solé Tura*, Congreso de los Diputados, vol. 2, p.995.

⁵³ In this section I will use some previous publications: Rodríguez Moya, A. (2015), «Derecho a la educación y libertad de enseñanza», Op. cit. pp. 197-213. Rodríguez Moya, A. (2019), «Enseñar a niños y niñas», Op. cit., pp. 243-277; Rodríguez Moya, A. (2021), «¿Y si enseñáramos religión?», en Dionisio Llamazares Fernández, José María Contreras Mazarío, Óscar Celador Angón, María Cruz Llamazares Calzadilla, Almudena Rodríguez Moya, Fernando Amerigo Cuervo-Arango, *El Derecho eclesiástico del Estado: en homenaje al profesor Dr. Gustavo Suárez Pertierra*, pp. 727-750 and Rodríguez Moya, A. (2022), Escuela, factor religioso y gestión de la diversidad, en Almudena Rodríguez Moya, Concha Antón Rubio; José Daniel Pelayo Olmedo (coord.), *CONVIV@ula: ¿preparados para lo diverso?*, Observatorio del Pluralismo Religioso en España.

first laws of democracy neither supported nor prohibited single-sex education. Thus, with a marked interest in the search for equality, the LODE paves the way for those sectors of the population that previously were not as present in the classrooms, in fact, the female presence increased exponentially: less than ten years later the number of female students would be equal to the number of male students, and the already obsolete idea of demoting women to the domestic sphere was left behind. However, this law did not contain specific provisions on the issue of equality in education. Neither would the LOGSE. Although it is true that it placed the «first and fundamental objective of education (...) to provide boys and girls, (...) with a thorough training that allows them to shape their own identity, as well as build a conception of reality that integrate both the knowledge and an ethical and moral assessment», it also sought the promotion of equality. To this avail, it recognizes education as a decisive instrument for the elimination of negative stereotypes. It suggests that «in the preparation of such educational materials, the overcoming of all kinds of discriminatory stereotypes will be encouraged, emphasizing equal rights between the sexes»⁵⁴. A new organic law was approved in 2002, still with no reference to single-sex education: the LOCE⁵⁵. However, it would never be effectively implemented. The peaceful coexistence of mixed schools and single-sex schools would disappear by 2006⁵⁶. With a clear interest in promoting the coeducation model, the LOE is the law that cites equality the most in our most recent history and makes it a principle of the Spanish educational system⁵⁷. But the truth is that, since its passing, the public perception of single-sex education would change forever. The debate was centered around art. 84 of the LOE. This article regulated the admissions of students to those centers. Authorities were to regulate the admission of students to public and private schools in such a way that the right to education, and the access to that education under equal conditions and freedom of choice of school by parents or guardians would be guaranteed. This prediction, considering the third section of the same article, left little room for interpretation⁵⁸, since it

⁵⁴ Ley Orgánica 1/1990, de 3 de octubre, de Ordenación General del Sistema Educativo, Boletín Oficial del Estado, núm. 238. Recuperado en <https://www.boe.es/boe/dias/1990/10/04/pdfs/A28927-28942.pdf>

⁵⁵ Ley Orgánica 10/2002, de 23 de diciembre, de Calidad de la Educación, Boletín Oficial del Estado, núm. 307, Recuperado en <https://www.boe.es/boe/dias/2002/12/24/pdfs/A45188-45220.pdf>

⁵⁶ González-Varas Ibáñez, A. (2012), «Régimen jurídico de la educación diferenciada en España», en *Revista General de Derecho Canónico y Derecho Eclesiástico del Estado*, N° 31, p.2.

⁵⁷ Ley Orgánica 2/2006, de 3 de mayo, de Educación, Boletín Oficial del Estado, núm. 106, <https://www.boe.es/buscar/pdf/2006/BOE-A-2006-7899-consolidado.pdf>, [Accessed on April 22nd, 2022].

⁵⁸ As González Varas collects, there are authors such as Calvo charro and Moreno Botella who do not share this opinion. M. Calvo Charro understands that from the tenor of article 84.3 of the LOE it cannot be inferred that this rule prohibits single-sex education or its financing. Calvo Charro, M. (2007), «Apoyo de la jurisprudencia española a la educación diferenciada como una opción legítima dentro de la libertad de elección de centro docente de los padres», en *La Ley*, Sección Doctrina (Ref. D-113), p. 1642. En el mismo sentido, Moreno Botella, G. (2009), «Educación diferenciada, ideario y

seemed to limit the possibility of obtaining or renewing educational agreements with single-sex education centers, since the law stated that «in no case will there be discrimination on the basis of birth, race, sex, religion, opinion or any other personal or social condition or circumstance». Interestingly, previous regulations such as the LODE or the LOCE, had not cited sex as a reason for discrimination⁵⁹. This is surprising, to say the least, since sex is one of the quintessential reasons for discrimination, especially when it comes to education, as our study of its history has shown us. The «Real Decreto (RD) 1635/2009» was even more specific than the LOE, linking this reason for discrimination directly and openly with admission. The only requirements that may be demanded will be those derived from age or those made compulsory by the academic ordinance for a certain course for which a place is requested⁶⁰. Without the intention to create a monopoly of the mixed school or eliminate single-sex education, the law tries to consolidate equality in all aspects of educational activity and supports coeducation in its Twenty-fifth Additional Provision⁶¹. The decree considers that which we could call a «right to preferential attention» to mixed centers.

In 2013 the LOMCE modified the controversial article of the LOE (although not the Twenty-Fifth Additional Provision). The legislator clarified that «the admission of male and female students or the organization of education differentiated by sex does not constitute discrimination, provided that the education they provide is carried out in accordance with the provisions of article 2 of the Convention on the fight against discrimination in the field of education, approved by the General Convention of UNESCO on December 14, 1960. In no case can the choice of education differentiated by sex imply for families, male and female students, and schools a less favorable treatment, nor can it constitute a disadvantage, at the time of subscribing agreements with the educational Administrations or in any other aspect. For these purposes, the centers must present in their educational prospectus the educational reasons that motivate the election of said system, as well as the academic

libre elección de centro», en *Revista General de Derecho Canónico y Eclesiástico del Estado*, en www.iustel.com, p. 13 y ss., González-Varas Ibáñez, A. (2012), «Régimen jurídico ...», op. cit., nota 13, p.5.

⁵⁹ Centenera Sánchez-Seco, F. (2014), «Educación diferenciada y conciertos educativos: algunas consideraciones a partir de la jurisprudencia del Tribunal Supremo de los últimos años», en *Anuario de derecho eclesiástico del Estado*, Nº 30, p.771.

⁶⁰ Real Decreto 1635/2009, de 30 de octubre, por el que se regulan la admisión de los alumnos en centros públicos y privados concertados, los requisitos que han de cumplir los centros que impartan el primer ciclo de la educación infantil y la atención al alumnado con necesidad específica de apoyo educativo en el ámbito de gestión del Ministerio de Educación. BOE» núm. 265, de 3 de noviembre de 2009.

⁶¹ «Twenty-fifth additional provision. Promotion of effective equality between men and women. In order to promote equal rights and opportunities and promote effective equality between men and women, the centers that develop the principle of co-education in all educational stages, will be the object of preferential and priority attention in the application of the provisions contained in this Law, without prejudice to the provisions of the international agreements signed by Spain». Ley Orgánica 2/2006, de 3 de mayo, de Educación, «BOE» núm. 106, de 04/05/2006. [Accessed on May 12th, 2022].

measures they implement to promote equality⁶². The legislation experiences a shift in December 2020. The approval of the LOMLOE was done with the intention of returning to the model the LOE embodied and rendered the modification of this article by the LOMCE null and void. It fervently supported the promotion of coeducation and will transform preferential attention into an obligation. It is an established tradition in our most recent democracy that the opposition resort to educational regulations. The LOMLOE would not suffer a different fate. The Popular Party⁶³ (PP) and Vox⁶⁴ filed two appeals of unconstitutionality against the LOMLOE⁶⁵.

4. DIFFERENTIATED EDUCATION

4.1. *A constitutional choice*

It is very interesting to point out that, since the LOE was approved, the old debate on the traditional single-sex education model would turn around. The controversy, which was once about the need to end —or not— the single-sex curriculum, now focuses on the possible discrimination single-sex education model promotes, even

⁶² Ley Orgánica 8/2013, de 9 de diciembre, para la mejora de la calidad educativa. BOE» núm. 295, de 10 de diciembre de 2013.

⁶³ Appeal of unconstitutionality number 1828-2021, promoted by more than fifty deputies of the Popular Parliamentary Group in Congress, against sections 1, 8 bis, 10, 12, 16, 17, 27, 28, 29, 50, 55 bis, 56, 78, 81 bis, 83 and 89 of the sole article and the third and fourth additional provisions of the Ley Orgánica 3/2020, de 29 de diciembre, por la que se modifica la Ley Orgánica 2/2006, de 3 de mayo, de Educación.

⁶⁴ Unconstitutionality appeal number 1760-2021, promoted by more than fifty deputies of the Vox Parliamentary Group in the Congress of Deputies, against the Ley Orgánica 3/2020, de 29 de diciembre, por la que se modifica la Ley Orgánica 2/2006, de 3 de mayo, de Educación.

⁶⁵ The appeals presented by the Parliamentary Group of the Popular Party and by the Vox Parliamentary Group of the Congress of Deputies were presented to contest various precepts of the Organic Law 3/2020, of December 29, which modified the Organic Law 2/2006, of May 3, on Education. The Plenary of the Constitutional Court deemed the appeals of unconstitutionality admissible. This is stated in informative note No. 39/2021, which specifies that «The Plenary Session of the Constitutional Court has admitted for processing the appeals of unconstitutionality presented by the Parliamentary Group of the Popular Party and by the Vox Parliamentary Group of the Congress of the Deputies, respectively, against various precepts of Organic Law 3/2020, of December 29, which modifies Organic Law 2/2006, of May 3, on Education. The Court has agreed to transfer the lawsuit and the documents presented to the Congress of Deputies, the Senate and the Government so that they can appear in person in the process and formulate the allegations they deem appropriate. The appellants consider that the aforementioned rule may violate the Constitution in matters such as the teaching of religion, the vehicular language or the schooling of students with special educational needs, among others. Likewise, both parties challenge the law due to defects in its processing.» It can be consulted at: https://www.tribunalconstitucional.es/NotasDePrensaDocumentos/NP_2021_039/NOTA%20INFORMATIVA%20N%C2%BA%2039-2021.pdf, [Accessed on May 11th, 2022].

questioning its constitutionality. A second issue must be added to this approach. If it is recognized as constitutional⁶⁶, should public resources be used for its financing?⁶⁷ Is it possible to end public contracts with educational institutions due to a failure to promote coeducation? To find an answer, it is necessary to carry out an analysis of the different positions within the doctrine and constitutional jurisprudence.

Traditionally, to determine if there was a place for single-sex education in our legal system, the doctrine weighed the right to education and the right to freedom of education. Vidal Prado argues that it is not correct to attempt to seek a hierarchy between the different sections of article 27. The author does not express, specifically, that the idea that equality should have greater recognition than freedom can be inferred from article 27.2. It isn't correct to compare freedom and equality and give more importance to one or the other either. The concretions of both principles in specific rights (creation of centers, right to an ideology, etc.), must be carried out within the limits of fundamental rights and other constitutional principles⁶⁸. As Vidal Prado rightly points out «many of the conflicts we witness in the field of social policies that refer to the role of the State when it comes to guaranteeing certain benefits are based on the relationship between two higher values of our legal system as are equality and freedom⁶⁹. This is the first time that the right to education and freedom of teaching have been simultaneously recognized in an attempt to reconcile the principles of freedom and equality⁷⁰. The constitution in article 27.1 guarantees, on the one hand, the right of citizens to receive education and, on the other hand, their right to impart it⁷¹. Aláez attaches importance to the fact that article 27

⁶⁶ I find it very difficult to reconcile constitutionality with the impossibility of financing schools «because they practice discrimination in the admission process.» Either it is recognized that there is no discrimination or the rest of the arguments will start from a fallacious premise.

⁶⁷ As Celador points out, «School centers that opt for the differentiated education model are a legitimate manifestation of freedom of education, and in this context of the right of individuals to open a center and endow it with its own ideology or character; what is not so clear *a priori* is the extent to which public resources can be used to finance an educational option that could harm the mandate of equality and non-discrimination, among other reasons for reasons of sex, which is ordered by article 14 CE». Celador Angón, O. (2020), «El modelo de educación diferenciada...», op. cit., p. 29.

⁶⁸ Vidal Prado, C. (2021), «Educación y valores superiores ...», op. cit., p. 259. Navas Sánchez understands that, in the SSTC 31/2018, with respect to art. 27.2 CE, the TC identifies equality as a negative limit—and not as a mere principle—for private or subsidized educational centers. Navas Sánchez, M. M. (2021), «La educación diferenciada por razón de sexo ante el derecho constitucional. Un debate con múltiples voces: legislación, doctrina y jurisprudencia». *IgualdadES*, 4, pp. 239-253. doi: <https://doi.org/10.18042/cepc/IgdES.4.08>. En el mismo sentido, Navas Sánchez, M. M. (2022), «Educación e igualdad. Cuando el objetivo constitucional no es sólo educar en igualdad sino también para la igualdad», en Aláez Corral, B. y Bastida Freijedo, F.J. (coords.), *Educación y libertad en la democracia constitucional. Actas del XVIII congresos de la Asociación de Constitucionalistas de España*, Valencia, Tirant Lo Blanc, pp. 173-202.

⁶⁹ Ibid.

⁷⁰ Lorenzo Vázquez, P. (2001), *Libertad religiosa y enseñanza en la Constitución*, Madrid, Centro de Estudios Políticos y Constitucionales, p.31.

⁷¹ Garrido Falla, F. (1980), *Comentarios a la Constitución*, Cívitas p. 343.

first and foremost recognizes the right to education, although, in order to make it effective, freedom of education must also be guaranteed. In short, it could be said that the right to education would use freedom of education to be fully exercised⁷². Thus, the right to education is completed, from an ideological perspective, by the array of rights that make up the freedom of education: the right of parents to choose the education they want for their children (27.3. CE); the right to academic freedom (20.1.c. CE) and the right to create educational centers (27.6.).

Segregated education did not respond, in its origins, to any objective other than educating boys and girls for their future obligations. Preparing boys for the role of provider, and girls for a role in the domestic sphere. This is not the reason why these schools exist nowadays⁷³. If we accept that single-sex education «is a manifestation of the freedom of management and organization of educational centers referred to in article 27.6 of the Constitution or, more specifically, is shown as a characteristic that defines the character of a center»⁷⁴, it is necessary to study this constitutional right. Therefore, in our work it is vital to specify what is meant by «school ideology». The TC, from early times⁷⁵, already understood that ideology could include, in addition to the religious and moral aspects of educational activity, the different aspects of its activity and, more recently, in the iconic ruling STC 31/2018⁷⁶. Thus, we could understand as part of freedom of ideology the right to

⁷² Aláez Corral, B. (2009), «El ideario educativo constitucional ...», op. cit., p.35.

⁷³ As I already collected in the work cited in n. 18: It is commonplace that single-sex education has sparked a controversial debate. An example that confirms our statement can be found in the following works: Aláez Corral, B. (2009), «El ideario educativo constitucional como fundamento de la exclusión de la educación diferenciada por razón de sexo de la financiación pública», en *Revista Española de Derecho Constitucional*, N° 86, pp. 31-64.; Calvo Charro, M. (2013), «Los colegios diferenciados por sexo ...», op. cit., pp. 159- 194.; Celador Angón, O. (2020), «El modelo de educación diferenciada ...», op. cit., pp.27-60.; Celador Angón, O. (2018), «Educación diferenciada ...», op. cit., pp. 1895-1914.; Celador Angón, O. (2015), Educación diferenciada y régimen de conciertos en la LOMCE, Laicidad y libertades: escritos jurídicos, N° 15, 1, 2015, pp. 19-43.; González-Varas Ibáñez, A. (2012), «Régimen jurídico ...», op. cit.; Lorenzo Rodríguez-Armas, M. (2015), «La educación para la igualdad y la controversia política y jurídica existente en España entre la educación coeducativa y la escolarización diferenciada por sexos», en *El Cronista del Estado Social y Democrático de Derecho*, N° 50, pp. 68-77.; Moreno Botella, G., (2017), «Educación separada por sexos y conciertos educativos en la STS de 4 de mayo de 2017», en *Diario La Ley*, N.º 9054.; Navas Sánchez, M. (2019), «¿Diferenciar o segregar ...», op. cit. pp. 473-498.; Saldaña Díaz, M. N. (2006), «La educación en igualdad y para la igualdad entre los géneros en el marco normativo de las naciones unidas, la unión europea y constitucional español», en *Revista de Educación, Universidad de Huelva*, N.º 8, pp. 201-218.; Subirats M. (2010), «¿Coeducación o escuela segregada? Un viejo y persistente debate», *Revista de Sociología de la Educación-RASE*, vol. 3, N° 1, pp. 143-158.; Vidal Prado, C. (2019), «Educación diferenciada y Tribunal Constitucional», en *Revista general de derecho constitucional*, N° 29, entre otros.

⁷⁴ González-Varas Ibáñez, A. (2012), «Régimen jurídico ...», op. cit., p.4.

⁷⁵ 5/1981, of February 13, FJ 8

⁷⁶ «On the other hand, from the point of view of the constitutional coverage of single-sex education, we must remember that it is a pedagogical option of voluntary adoption by the centers and of free choice by parents and, where appropriate, by students. students. As such, it is part of the educational

configure the conception of the educational community, the pedagogical criteria, the management model, etc. On the other hand, the opposite position understands ideology as a mere consolidation of the right recognized in art. 27.3 of the Spanish Constitution. Through ideology, parents would be able to know the type of education that the center imparts from a moral and religious perspective. Judge D. Francisco Tomás y Valiente expressed himself in this regard in his⁷⁷ dissenting vote of STC 81/1981. The thesis supported by the dissenting magistrates, and which we find most convincing, links the «ideology» of a center with its own character, «but not to any of its characteristics, such as those of a pedagogical or linguistic nature, sports or other similar disciplines, but, very specifically, the ideology is the expression of the ideological character of a center. The art. 27.6. of the Constitution recognizes «the freedom to create educational centers for individuals and legal entities», as confirmed by the Supreme Court in its ruling of February 15, 1986. In it, the court endorses that art. 27.6 is the primary manifestation of freedom of education, but always must respect constitutional principles.

As Celador makes clear, the passing of the LOE and, specifically, the mandates that prohibited discrimination based on sex in access to centers opened an important debate in court⁷⁸. As early as 2008, the Supreme Court (TS), recognized the single-sex education model as lawful in our legal system and considered it a valid legislative policy⁷⁹. Thus, the legislator could set aside this type of education in favor of an educational policy in which the objective is coeducation. The TS understood that coeducation, specifically for state-funded centers, is not part of the essential content of the right to education, nor is it part of the essential content of the right to govern centers. Based on this premise, the Supreme Court infers that state-funded centers must implement a mixed education system, since it is for the educational authority that funds these centers to decide about admissions to these centers. This ruling marked the course that the Supreme Court would follow from then on. The fact that the laws that regulated the admission system in the public school and the state-funded one had not contemplated sex as one of the reasons of discrimination until that moment is noteworthy. The LOE affects the search for equality in its twenty-fifth additional provision, granting preferential and priority access to the centers that implement co-education in all educational stages. The author warns that, «although the judgments of the 3rd Chamber of the Supreme Court that formally change the

ideology or character of the educational centers that opt for such an educational formula. STS 31/2018, FJ.8.

⁷⁷ To which the magistrates D. Ángel Latorre Segura, D. Manuel Díez de Velasco and D. Plácido Fernández Viagas adhered.

⁷⁸ The Supreme Court had «to rule, on the one hand, on the resources raised by those centers to which the Autonomous Communities have denied their request for concerts in application of the LOE; and on the other, on those cases in which the debate has been the renewal of the concert that these centers enjoyed», Celador Angón, O. (2018), «Educación diferenciada ...», op. cit., p.1095. El mismo autor en: Celador Angón, O. (2020), «El modelo de educación diferenciada ...», op. cit., pp. 27-60.

⁷⁹ STS 2370/2008 of April 16, 2008.

jurisprudential doctrine on the legality of educational agreements with centers that practice single-sex education are those of July 23 and 24, 2012, issued in appeals numbers 4591/2011 and 5423/2011, there is in fact an earlier one, that of February 24, 2010, issued in the appeal no. 2223/2008»⁸⁰.

In 2018, the TC settled the question of the constitutionality of single-sex education for the time being, in its response to the appeal of unconstitutionality 1406-2014. This was filed by more than fifty deputies of the Socialist Parliamentary Group in Congress in relation to various precepts of Organic Law 8/2013, of December 9, for the improvement of educational quality, and was resolved by the plenary session of the Constitutional Court in the Judgment 31/2018 of April 10, 2018. In addition to other issues, the appellants challenged the second and third paragraphs of art. 84.3 LOE, which followed the new provisions established by the LOMCE.

The TC, to resolve the appeal, refers to the international treaties and agreements ratified by Spain, as required by article 10.2 CE and points out that the LOMCE itself is protected by them⁸¹. The TC concludes that the analysis of these international texts excludes the discriminatory nature of the single-sex education model. At the same time, it indicates that this protection is a minimum that the Constitution can increase. The TC recognizes that, from a strictly literal perspective of art. 14 CE, the separation of students by sex does generate a legal differentiation between boys and girls when it comes to access to education in schools. However, the TC also makes it clear that this difference responds to a pedagogical model or method that is not discriminatory in itself. Additionally, these criteria of discrimination can be used exceptionally by the legislator in order to justify a legal differentiation, although in such cases the standard of control, when judging the legitimacy of the difference and the requirements of proportionality, is much stricter, and the test to prove the justified nature of the differentiation is more rigorous. Thus, educational centers that opt for single-sex education must prove the anti-discriminatory purpose of their teaching in their educational projects. In short, it can be interpreted that discrimination in access to educational centers is possible because they offer a pedagogical method that respects constitutional principles.

⁸⁰ Míguez Macho, L. (2015), «La polémica sobre la compatibilidad con el principio constitucional de no discriminación por razón de sexo de los conciertos de la administración con los centros que imparten educación diferenciada», en *Persona y Derecho*, N° 72, pp.254-258.

⁸¹ «Article 2 of the Convention on the fight against discrimination of UNESCO, of 1960 Which affirms that single-sex education does not constitute discrimination as long as it is developed in accordance with the provisions of that article. In other words, provided that «those systems or establishments offer equivalent facilities for access to education, have an equally qualified teaching staff, as well as school premises and equipment of equal quality and allow the same study programs or equivalent programs to be followed». The judgment includes other international texts in its analysis: the International Covenant on Economic, Social and Cultural Rights, adopted by the United Nations General Assembly on December 16, 1966, and the Convention on the Elimination of All Forms of Discrimination against Woman, of December 18, 1979».

The court argues that the Constitution recognizes freedom of education, and any educational model where the objective of its implementation is the thorough development of the human personality and respect for fundamental principles and rights and freedoms is in accordance with it. In this sense, it can be interpreted that the single-sex education system is, in fact, in accordance with the constitution.

The TC considers that a differentiated education is part of an educational ideology. It is also connected with the right of parents to choose the religious and moral schooling they want for their children. However, it specifies that the right recognized in art. 27.3 is different from the right to choose a particular institution, even though they share an obvious connection. In summary: «From a constitutional perspective, it should be noted that it constitutes «a part of the ideology or character of the center that chooses this educational formula» that can be considered constitutional, the same way any other «educational model that has as its objective the full development of the human personality and respect for the fundamental principles and rights and freedoms recognized in article 27.2 CE» (FJ 4 a).

<ladillo>4.2. The question of the state-funded private schools

Often, the issue of this type of schools is addressed as if it were an inseparable issue from single-sex education. We have already seen that the LOE regulated the admission of students to public and private schools. It would be possible to extract from the LOMLOE an intention to return to the situation created by the LOE. With the approval of the LOMLOE, the possibility was opened again for the Autonomous Communities to deny the possibility of single-sex education centers funded in part by the state.

Thus, in the first section of the twenty-fifth Additional Provision for the Promotion of Effective Equality Between Men and Women, it is established that «in order to favor equal rights and opportunities and promote effective equality between men and women, the centers supported partially or totally with public funds will implement coeducation in all educational stages, in accordance with the provisions of Organic Law 3/2007, of March 22nd, for the effective equality of women and men, and will not separate students by their gender»⁸².

As Centenera has already stated⁸³, «at the beginning of the previous decade, once the process that enabled autonomous communities to legislate in matters of education was concluded, the denial of educational public contracts in certain autonomous contexts could be observed, for those schools that implemented a system of differentiated education». This wasn't true for all single-sex institutions, though. While many public authorities renewed their concerts with single-sex education centers without any problems, others canceled them⁸⁴, because of the belief that admission, or not, to school, based on sex, was a reason for discrimination according

⁸² Ley Orgánica 3/2020, de 29 de diciembre, por la que se modifica la Ley Orgánica 2/2006, de 3 de mayo, de Educación. «BOE» núm. 340, de 30 de diciembre de 2020.

⁸³ Centenera Sánchez-Seco, F. (2014), «Educación diferenciada y conciertos ...», op. cit., p. 768.

⁸⁴ Andalucía, Castilla La Mancha, Cataluña, Asturias or Cantabria are some examples.

to the LOE. The issue became controversial and reached the courts, generating diverse rulings, which increased the social debate. It is still interesting to us that it was understood as discriminatory in access to centers on the basis of sex exclusively to this kind of schools. If we are truly facing discrimination based on sex, is the ownership of the center relevant when it comes to access to education? The reality is that the possibility that educational centers that educate boys and girls separately was not considered unconstitutional. But it is still surprising that schools that rely exclusively on private funds are usually excluded from the debate⁸⁵.

In Celador's opinion, the Supreme Court and the Constitutional Court «have participated in this debate as mere spectators, in accordance with the role that our legal system attributes to both authorities.» Suffice it to say in this regard that, according to the Constitutional Court, both the LOE (and consequently Organic Law 3/2020 on Education) and the LOMCE were consistent with the provisions of the 1960 UNESCO Convention, even though in both cases the legislator interpreted the text of the Convention to enable (or not) the funding of single-sex education with public resources (Celador 2021)⁸⁶. Thus, part of the TS doctrine will focus the debate on the right of admission and not on the educational modality invoked by the defenders of single-sex education, treating them as two separate matters. In its judgment of April 23, 2008, the Supreme Court indicates that one of the limitations of the right of management is derived from state action and protected by the aid that is recognized in art. 27.9 of the EC to the centers that meet the requirements established by law. According to the Court, this enables the legislator «to establish legal conditions and limitations with respect to said Centers. Therefore, even accepting that the Constitutional Court does not make an exhaustive list of the decision-making powers that positively delimit the essential content of the law, the power to decide on the admission of students is not among those listed by STC 77 /1985»⁸⁷.

As Míguez Macho points out, the 2008 ruling, and, specifically, the eighth argument of this ruling will mark the course that the Supreme Court followed from then on⁸⁸. It comes as a surprise to the TS that the rules that regulate the admission system in public and concerted schools hadn't contemplated sex as a possible motive for discrimination against students until then (arts. 20.2 and 53 of the LODE, 3 of the Royal Decree and, later, article 72.3 of the Organic Law 10/2002, of December 23, on Quality of Education). We would like to point out that neither did the public sector. Although this no longer took place when the ruling was made public, art. 84.3 of the Organic Law, 2/2006 of May 3rd on Education, did in fact allude to sex as one of the reasons for discrimination at the time of admission. This law, as we

⁸⁵ This is rightly suggested by Vidal Prado in Vidal Prado, C. (2021), «Educación y valores ...», op. cit., p. 259.

⁸⁶ Celador Angón, O. (2020), «El modelo de educación diferenciada ...», op. cit. pp. 27-60.

⁸⁷ STS 2370/2008 of April 16, 2008.

⁸⁸ Míguez Macho, L. (2015), «La polémica ...», op. cit., 254-258.

have already mentioned, reinforces the idea of equality in its twenty-fifth additional provision. It should be observed, therefore, as an action that grants preferential attention to those educational centers that include coeducation in their educational projects.

Celador underlines the importance of dissenting votes in this issue, specifically, that of Judge Martí García in supporting the arguments of the doctrine related to the recognition of single-sex education⁸⁹. In reality, the Supreme Court has not changed its position, it enforces the existing law at every point in time. The Court does not consider the single-sex education system contrary to the constitution, though it does consider that it is the legislator who has the power to recognize it, or not, depending on the educational policy that it wishes to apply to configure the admission regime. Some authors have seen in the Supreme Court's arguments an attempt to reduce the problem of single-sex education to a question of legal configuration related to the system of admission of students, and in our opinion, admission is decisive to the configuration of single-sex schools, but not in the case of single-sex schools with mixed admission and separate training.⁹⁰ Based on the arguments of the Supreme Court, the appellants of judgment 31/2018 considered the segregated education model to be unconstitutional, but, even if it were constitutional, «the educational administrations should be able to deny the agreement to those who develop this type of education, since it violates the articles 14, 9.2 and 27.2 CE».

The TS in its sentence 1957/2017 explains that «private centers that wish to benefit from public funding, must comply with the legal requirements established for this purpose, which is nothing but a consequence of article 27.9 of the Constitution that makes a direct reference to the requirements established by law. This explains that the schools' fundamental right to receive aid, is a right subject to compliance with these requirements, so it is a right of legal configuration». In our opinion, if single-sex education is a constitutional model, that meets the legal requirements should be treated in the same way as other schools. The TC emphasizes this idea when it explains that «only in the event that the single-sex education regime was unconstitutional, could the legislator's option of treating both pedagogical models equally in the field of educational concerts be objected to». In this way, it can be considered that the TC assumes that single-sex education should see representation in state-funded schools since it is a legitimate and constitutional option. Because of this statement, which in our opinion guarantees

⁸⁹ This is how Celador highlights it: The decisions of the Supreme Court in this area have been the subject of various particularly relevant dissenting votes, since the legislator rescued this position when he drafted the LOMCE, and to a certain extent the position of these magistrates reflects the doctrinal position favorable to that single-sex education centers can benefit from the concert regime. Celador Angón, O. (2018), «Educación diferenciada ...», op. cit., p. 1907. In the same vein, Míguez Macho, L. (2015), «La polémica...», op. cit., p. 257 et seq.

⁹⁰ Vidal Prado, C. (2019), «Educación diferenciada y Tribunal Constitucional», en *Revista general de derecho constitucional*, N° 29 y González Varas Ibáñez, A. (2012), «Régimen jurídico ...», op. cit.

the constitutionality of single-sex education in state-funded schools, the TC is accused of exceeding its jurisdiction, since it vetoes the removal of a policy that excludes single-sex education for the foreseeable future⁹¹. The issue that arises from this is whether coeducation can be a legal requirement. In our opinion, this is not possible. Forcing state-funded schools to implement coeducation, would make it impossible to offer single-sex education and would generate discrimination against private centers. If the model is constitutional, it should have the same right to obtain state funding.

We believe that ruling 74/2018 somehow reflects these arguments. In it, the TC recalls that a single-sex education system is a non-discriminatory pedagogical option [in this regard, greatly: STC 31/2018, FJ 4 a)]. Therefore, it cannot be interpreted that the original wording of article 84.3 LOE intended to exclude this system from the public aid regime. In our opinion, this argument continues to be valid for the wording of the LOMLOE. The Court was clear when it stated that the denial of the renewal of public contracts based exclusively on the pedagogical option of the educational center constituted an interference in the educational freedom of the parents of the students of the Torrevelo school (art. 27, first and third paragraphs CE), although it added that «there was no legal coverage in article 84.3 LOE» in reference to the regulations, it also included the fact that: «single-sex education is a constitutional pedagogical option where public financing depends on what the organic legislator establishes at each moment». Furthermore, and examining whether discrimination can be present in the single-sex education system, the TC pointed out that «if any undue difference in treatment existed, it would only be attributable to the particular school in which it occurred and would not be attributable to the model itself. Therefore, the premise upon which the appellants base their argument, that single-sex education implies discrimination, is untrue,» (FJ 4). Did it contradict what seemed to be inferred from STC 31/2018? We believe the answer is simple: education can be differentiated but access must be mixed. In any case, this question may find its answer in the ruling issued by the TC before the unconstitutionality appeals that Vox and the Popular Party have filed against LO 3/2020, of December 29th.

⁹¹ This is what the Vice President of the Court, Mrs. Encarnación Roca Trías, makes known in her concurring opinion. The vice president understands that part of the arguments of the sentence limit the legitimate options of the legislator in this matter. He understands that it is up to the legislator to regulate the conditions of public financing for educational centers and not for the TC, in this sense the particular vote of Mr. Fernando Valdés Dal-Ré will coincide with that to which the magistrate Mr. Cándido Conde-Pumpido Tourón adheres. According to this reasoning, «single-sex education centers will be able to access the public financing system in equal conditions with the rest of the educational centers; Said access will be conditioned by compliance with the criteria or requirements established in ordinary legislation, but without the character of the center as a single-sex education center being an obstacle to said access». Rodríguez Moya, A, «Enseñar a niños y niñas ...», op. cit., p. 271.

5. CONCLUSIONS

It is a known fact that the greatest social advances in the last two centuries and, indubitably, some educational ones, have gone hand in hand with coeducation or mixed education⁹². It is not my intention to convey to the reader that there is a causal link but, to say the least, it is a coincidence that is worth reviewing. At the time of the approval of the Constitution, illiteracy exceeded six million people, almost two thirds of which were women. At the time of publication of the LOE, the context had changed noticeably. The number of university graduates had increased, it had multiplied by 3.3, and female university graduates outnumbered male graduates by more than 6%, constituting 53.22% of the total number of graduates.

After a period of decline of single-sex education, in the 1970s, movements in favor of returning to that tradition began to increase. And the theories behind these movements differed. From feminist movements that accused mixed education of having adopted the previous model to movements that based their arguments on strictly pedagogical reasons. In both cases, with the intention of adapting teaching to the aptitudes of students based on their sex. They declared that, with the separation of boys and girls, the results improved for both. The fact that the differences are only appreciated regarding the students' sex, without considering other circumstances, is noteworthy. In this sense, in our opinion, there is no true differentiated education adapted to students. The aim of this separation is made ineffective by standardizing the groups that are segregated, as if all boys and girls matured in the same way. On the other hand, it seems that all these differences are suddenly neutralized when it comes to university. The defenders of this type of pedagogical options do not find different treatment in the entrance exam significant, nor do they consider separate classrooms when it comes to higher education. This school of thought has had an immediate response from the defenders of coeducation, who affirm that it is necessary to educate by example. With coexistence, boys and girls receive a comprehensive education that goes beyond mere instruction. The defenders of this type of teaching maintain that learning differences depend on individual students, not on their sex. Educational theories have had a marked presence in the legal and jurisprudential areas, and we believe it necessary to list a few milestones to support our arguments, and perhaps even predict the future of single-sex education.

After the approval of different educational norms, the LOE showed timid support for coeducation. The wording that the 2006 legislator chose to put to the article that regulated school admissions, together with the Twenty-Fifth Additional Provision of the law, in which preferential attention to centers implemented coeducation was recognized, were interpreted as a direct attack to single-sex centers and caused the withdrawal of state funding for these schools in some autonomous communities. After considerable controversy in the courts, the Supreme Court

⁹² Subirats, M. (2010), *¿Coeducación...?*, op. cit., p.145.

recognized the educational model of single-sex education to be compatible with the constitutional text and left the option of deciding in favor of coeducation or mixed education in the hands of the legislator, it would depend on the educational policies to be implemented. With its ruling, the TS set a limit: single-sex education schools could not be prohibited in Spain, although the legislator could favor one or the other option. It could be inferred from this ruling that the scope of action the legislator enjoys refers to the public or concerted school. It wouldn't be until 2018 that we would learn the TC's opinion, as a result of the 2013 reform of the Spanish educational model with what is known as the «Wert's Law».

The modification of these mandates by the LOMCE, in favor of single-sex education, was met by the filing of an appeal of unconstitutionality promoted by over fifty deputies of the Socialist Parliamentary Group in Congress, which concluded in a ruling in which the TC declared the constitutionality of the model. The court understood that an analysis of international law on the subject determined that single-sex education does not constitute discrimination if the education provided is in accordance with the provisions of the 1960 UNESCO Convention and, additionally, considers it a minimum that the legislation can broaden. This recognition would abound in the jurisprudence of the TS: differentiated teaching should be at least recognized. It is the legislator who must determine if it is applicable to state-funded schools or should be restricted to private education.

In our opinion, it is difficult to reconcile any of the arguments of the TC with other previous rulings of the Supreme Court. The TC, in its ruling, seems to disagree with the doctrine that understands that coeducation is part of the right to educational ideology of article 27.2. In our opinion, it also moves away from its own doctrine. We must remember that in its 133/2010 ruling the court stated the following: «Education must aim at the full development of the human personality while respecting the democratic principles of coexistence and fundamental rights and freedoms».

In the legal arguments it can be found that, from a strictly literal perspective of art. 14, the separation of students by sex generates a legal differentiation between boys and girls when it comes to access to school, but it is justified because it responds to a pedagogical method. It is true that the defenders of single-sex education base their arguments on precisely that notion: the difference or differences between the sexes in learning. In this case, single-sex education is considered a «pedagogical option» that bridges the gap in learning differences between boys and girls. This statement notwithstanding⁹³, we cannot overlook the fact that the Court indicates that, in its doctrine, it has accepted, exceptionally, some discriminatory situations, allowing legal differentiation⁹⁴. In these cases, the standard of control when analyzing

⁹³ This is one option discussed in pedagogy, there is no unanimity.

⁹⁴ In relation to sex, among others, SSTC 103/1983, of November 22, FJ 6; 128/1987, of July 26, FJ 7; 229/1992, of December 14, FJ 2; 126/1997, of July 3, FJ 8.

the legitimacy of the difference and the proportionality of the action must be stricter and accredited and justified more rigorously⁹⁵. Thus, the promotion of equality by these centers must be confirmed, they must specify how they mean to achieve this in their educational prospectus and any restrictions to access are implemented to favor said educational prospectus.

Access to school has shaped the chosen pedagogical model significantly, whether it be segregated education or coeducation. Discrimination in access has been understood as an inseparable part of the segregated education model. The exercise of the right to education under segregated education therefore consisted of two components: access and then the pedagogical activity and method. What in the Anglo-Saxon world is called «same sex schools» involves accepting only students of one or the other sex. The separation between «what is studied», and «how» or «with whom» it is studied, is the foundation of the same-sex model. Bearing in mind the fact that the nature of single-sex education demands this discrimination in access to school, it could seem this pedagogical model is unconstitutional. In our opinion, if discrimination in access is avoided and education is offered in mixed schools, nothing can be objected from a constitutional perspective. This could seem contradictory, but in reality, it isn't. The same sex model is recognized as constitutional and can be implemented, however, restricted access could not be. From the second article of the Convention on the fight against discrimination in the sphere of education, which is consistent with our legal system, it could be interpreted that the most appropriate system would be on in which single-sex education is offered in schools that admit both boys and girls. Equality in access and separation in instruction would be our proposal. In this sense, and this must be emphasized, the LOMLOE leaves no doubts since it expressly states in its twenty-fifth additional provision, that they will not separate their students by gender. Was this clarification necessary if it already excluded from funding the centers that do not develop coeducation? In our opinion, the legislator is aware that there are schools that separate in classrooms and single-sex schools and uses the word coeducation deliberately. Aware of the differences between coeducation and coeducation, it refers to the latter to avoid misunderstandings. In this way, he cuts off any possibility of obtaining funding for centers that want to practice sex-differentiated education.

Assuming that the educational ideology could include, besides the religious and moral aspects of the educational activity, among others, the right to configure the conception of the educational community, the pedagogical criteria, the management model, etc., we believe that the same cannot occur in this case. Since it is not possible to generate discriminations that are not oriented to the reason that justifies it, and this is none other than the creation of «a merely instrumental and pedagogical system, based on the idea of optimizing the potential of each of the sexes» and not on

⁹⁵ SSTC 126/1997, of July 3, FJ 8, citing SSTC 229/1992, of December 14, FJ 4; 75/1983, of August 3, FFJJ 6 and 7; 209/1988, of November 10, FJ 6.

«a certain conception of life or worldview with a philosophical, moral or ideological content»⁹⁶. It is necessary to clarify that, although it is common to understand that the pedagogical model can permeate all the activity of the center, it is not necessary to identify ideology with pedagogical model. In fact, it is the same TC that says that this pedagogical model constitutes only «a part of the ideology». If it were to extend to other aspects of education, as the German Federal Supreme Court does⁹⁷, the mere expression of the academic measures to be developed to promote equality would not suffice.

Our Constitutional Court states that the separation of students constitutes a legal «differentiation» in access and is allowed so that this pedagogical method can be exercised and refers to its doctrine to point out that it has accepted other grounds of discrimination for its exceptional use as a criterion of legal differentiation.⁹⁸ In these cases, the standard of control when analyzing the legitimacy of the differences enforced and the proportionality of the situation must be much stricter and must be accredited and justified more rigorously⁹⁹. It recognizes the existence of discrimination in the admission process based on sex but validates it on the basis that the education offered is framed as a pedagogical option of an instrumental nature to optimize the skills and abilities that seem to be different in both sexes. Understood that the ideology could include, in addition to the religious and moral aspects of the educational activity, the different aspects of its activity, among others, the right to configure the conception of the educational community, the pedagogical criteria, the management model, etc. Provided, of course, that all of them can be adapted to the constitutional principles. The TC does not seem to notice that in order to offer education adapted to the sexes it is not necessary to limit access, it would be enough if they were schools for boys and girls that separate their students by buildings or classrooms with the sole purpose of instructing students according to the skills and abilities of both sexes. It is not essential that these be boys' or girls' schools. In fact, the justification for this type of education is to separate in order to achieve a better transmission of knowledge. To turn it into a mere physical separation without any pedagogical objective would invalidate the defense of the model itself. This is not

⁹⁶ FJ 4, SSTC 31/2018 of April 10. Although, it is true that this does not seem to coincide with what the same Court said in SSTC 74/2018 in which it recognized that differentiated education is integrated in «the right of parents to choose the center and the type of education of their children (art. 27, first and third paragraphs EC)» (FJ 5) or, to make it even more clear, that «it refers to the «content of freedom» of Article 27 EC and, in what matters here specifically, the right of parents to choose the center and type of education of their children (art. 27, first and third paragraphs EC)» (FJ 6). We will await the decision of the TC on the appeals filed by VOX and PP against the LOMLOE.

⁹⁷ That is how Esteve Pardo points it out. Esteve Pardo, J. (2013), «Paradojas de la discriminación en materia educativa. A propósito de la Sentencia del Tribunal Supremo Federal Alemán de 30 de enero de 2013 sobre el modelo de educación diferenciada», en *El Cronista del Estado Social y Democrático de Derecho*, N.º. 37, pp. 5 y 6.

⁹⁸ Vid. N. 94.

⁹⁹ Vid. N. 95.

at all an unreasonable thought since schools like this already exist in Spain. In fact, the LOE brought with itself the creation of new educational centers that admit both sexes, although boys and girls are later separated by different buildings or classrooms and a differentiated education for one and the other is promoted.

The issue of state-funded private schools remains to be resolved. The LOMLOE seems to restrict public funding to educational centers that implement coeducation. We concur with Vidal¹⁰⁰ in that this is an independent issue from whether the constitution of said centers is public or private. The chosen pedagogical method cannot determine their access to public funding. Single-sex education —whether we approve of it or not— is a constitutional option and, therefore, is a valid option in our legal system. Its application cannot be the reason for the loss or denial of access to public funding. If this were the case, the Government would be exceeding its jurisdiction and would be determining the pedagogical method, interfering with the exercise of the right to freedom of creation of educational centers, which remain at the service of the right to education. It is not just about the freedom of business and, therefore, in our opinion, to ensure that a single-sex education system is in accordance with the Constitution, there may be no discrimination in access to it.

In short, although we do not share all the arguments of the TC in favor of the single-sex school, we understand, however, that the power of the organic legislator is not enough to prevent access to state-funding for all the centers that provide single-sex education, only those that do not meet the requirements set by the legislator may be left out. Our highest court has already stated that a separate education does not have to have discrimination as its purpose, although the separation of the sexes is reminiscent of past times. However, we do believe that it may contribute to perpetuate stereotypes associated with classical single-sex education.

FINAL NOTE

The content of this article was delivered on July 12, 2022, with the publication of Law 15/2022, on Equal Treatment and Non-discrimination. Bearing in mind that the LOMLOE directly alluded to Organic Law 3/2007, of March 22, for the effective equality of women and men it is worthwhile to give a minimal account of the changes that Law 15/2022 introduces. The new law marks a clear position and follows the line that was once marked by the LOE and that has been confirmed by the LOMLOE: to deny funding to differentiated education centers. In our opinion, one of the clauses of the regulation is key. In order to obtain funding it establishes that it is a matter of guaranteeing the absence of discrimination. Although the accusation of discrimination of the differentiated education schools has been discredited by the TC, it can be interpreted that these are not to be affected by the

¹⁰⁰ Vidal Prado, C. (2021), «Educación y valores superiores ...», op. cit., pp 272-279.

legislator's prescription. The law also establishes that Educational Administrations must guarantee the absence of discrimination «on the grounds set forth in this law, and in any case, in the criteria and practices on admission and permanence in the use and enjoyment of educational services, regardless of the ownership of the centers that provide them». It reinforces this provision by establishing that educational centers that exclude groups or individuals from admission to the same, discriminating against them on the grounds of any of the causes established in this law, would not be eligible for any public funding. As we have already pointed out, discrimination in the admission process becomes the center of the debate.

Título

Educación diferenciada vs. coeducación en España. ¿Una opción legislativa?

Sumario:

1. INTRODUCCIÓN. 2. LOS ORÍGENES DE LA EDUCACIÓN: UN DERECHO SÓLO PARA NIÑOS. 3. LA EDUCACIÓN MIXTA EN LA NORMATIVA ESPAÑOLA. 3.1. La ley general de educación. 3.2. Las leyes de la democracia. 4. LA EDUCACIÓN DIFERENCIADA. UNA OPCIÓN CONSTITUCIONAL. 4.1 Una opción constitucional. 4.2. La cuestión de los conciertos. 5. CONCLUSIONES.

Resumen:

La educación diferenciada responde a una tradición cuyo arraigo fue disminuyendo durante el final del siglo XIX y principios del XX. El papel de la coeducación ha sido ensombrecido por el resurgir de las enseñanzas separando a niños y niñas. Los planteamientos que apuntalan este tipo de educación son ahora distintos y alejados de aquel modelo basado en construir y promover las diferencias entre sexos. La educación diferenciada ha sido avalada por el Tribunal Constitucional, pero aún queda camino por recorrer. Es preciso delimitar la competencia del legislador para implantar un régimen obligatorio de coeducación para los centros públicos y concertados, o, incluso, privados.

Abstract:

Single-sex education responds to a tradition whose roots were diminishing during the end of the 19th century and the beginning of the 20th. The role of coeducation has been overshadowed by the resurgence of teachings that separate boys and girls. The approaches that support this type of edu-

cation are now different and far from that model based on building and promoting differences between the sexes. Single-sex education has been endorsed by the Constitutional Court, but there is still a long way to go. It is necessary to delimit the competence of the legislator to implement a compulsory system of co-education for public and state-funded centers, or even private ones.

Palabras clave:

Educación diferenciada; coeducación; constitucionalidad; legislador y financiación pública.

Key words:

Single-sex education; coeducation; constitutionality; legislator and public financing.