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FROM CARE TO SUBJECTHOOD: THE PARADIGM SHIFT IN THE REFORM OF ARTICLE 49 OF THE SPANISH CONSTITUTION AND ITS IMPLICATIONS

Abstract. This article presents a multidimensional analysis of the implications of the 2024 amendment to Article 49 of the Spanish Constitution, arguing that this change, extending far beyond the legal text itself, is a catalyst for profound transformations in the legal, social, and philosophical spheres. The paper demonstrates that, on the legal level, the reformed provision strengthens the case law of the courts, legitimizing the use of affirmative action and the duty to provide reasonable accommodation, as illustrated by key rulings of the Constitutional Tribunal and the Court of Justice of the EU. In the social dimension, the reform is presented as a tool to combat negative stereotypes, not only towards persons with disabilities but also towards the elderly, and as a symbolic strengthening of the role of organized civil society. Finally, in the philosophical sphere, the article analyzes how the amendment redefines the constitutional concept of dignity, moving away from the medical model towards a human rights-based paradigm. It also identifies key ethical dilemmas, such as the conflict between the principle of full autonomy and the duty of protection, which will pose a major challenge for the Spanish legal order in the coming years.

Keywords: rights of persons with disabilities, legal effects, social implications, constitutional jurisprudence, social model of disability, philosophy of law.

Introduction

In February 2024, Spain undertook the third amendment to its Constitution in its history, reforming Article 49 concerning the rights of persons with disabilities. This change, though symbolic at first glance, was the culmination of many years of efforts to align the constitution with international standards, particularly the UN Convention on the Rights of Persons with

Disabilities (CRPD). As demonstrated in separate analyses, the amendment signified a fundamental shift from a medical-assistive model to a modern, human rights-based model of protection.

This article, however, does not focus on the genesis or the legislative process of the reform itself. The primary research objective of this paper is to identify and analyze the multidimensional implications of the amendment to Art. 49 – consequences that extend beyond the legal text itself to the legal, social, and philosophical spheres. The article posits the hypothesis that the amendment, although placed in the chapter on guiding principles, has the potential to trigger a “cascade effect” legitimizing and generating a series of necessary changes throughout the legal order, which will have to adapt to the new constitutional paradigm (de Miguel Vijandi, 2024, p. 147).

To verify this hypothesis, the paper attempts to answer the following research questions: *What are the specific effects of the reform on Spanish jurisprudence and the practical application of law? What social and symbolic changes does the new constitutional norm generate? And what new ethical dilemmas and theoretical challenges does it pose for the Spanish legal system?* The analysis was conducted using the dogmatic-legal method, case law analysis, and a critical review of legal doctrine, employing an interdisciplinary approach that combines legal, social, and philosophical perspectives.

1. The Essence of the Reform. The Rhetoric of Constitutional Change

Although the aim of this article is not an in-depth legal analysis of the amendment itself, but rather its implications, for the full clarity of the argument it is necessary to present the original and new wording of Article 49. This comparison most directly shows the fundamental paradigm shift that is the starting point for further considerations.

Original Wording (1978)

Los poderes públicos realizarán una política de previsión, tratamiento, rehabilitación e integración de los disminuidos físicos, sensoriales y psíquicos, a los que prestarán la atención especializada que requieran y los ampararán especialmente para el disfrute de los derechos que este Título otorga a todos los ciudadanos.

Translation:

“The public authorities shall carry out a policy of foresight, treatment, rehabilitation, and integration of the physically, sensorially, and psychically

handicapped, to whom they shall provide the specialized attention they require and shall especially protect them for the enjoyment of the rights that this Title grants to all citizens.”

New Wording (2024)

1. Las personas con discapacidad ejercen los derechos previstos en este Título en condiciones de libertad e igualdad reales y efectivas. Se regulará por ley la protección especial que sea necesaria para dicho ejercicio.

2. Los poderes públicos impulsarán las políticas que garanticen la plena autonomía personal y la inclusión social de las personas con discapacidad, en entornos universalmente accesibles. Asimismo, fomentarán la participación de sus organizaciones, en los términos que la ley establezca. Se atenderán particularmente las necesidades específicas de las mujeres y los menores con discapacidad.

Translation:

“1. Persons with disabilities exercise the rights provided for in this Title under conditions of real and effective freedom and equality. The special protection necessary for such exercise shall be regulated by law.

2. The public authorities shall promote policies that guarantee the full personal autonomy and social inclusion of persons with disabilities, in universally accessible environments. Likewise, they shall encourage the participation of their organizations, in the terms established by law. Particular attention shall be paid to the specific needs of women and minors with disabilities.”

The reform of Article 49 of the Spanish Constitution thus consisted of completely replacing its previous, anachronistic content with a new, two-paragraph provision that reflects the shift from a medical paradigm to a human rights-based model (Saravia Méndez, 2024, p. 88). The most visible and symbolic change was the replacement of the stigmatizing term “disminuidos” (the diminished) with the neutral and internationally compliant term “personas con discapacidad” (persons with disabilities) (de la Puebla Pinilla, 2024, p. 869). As commentators emphasize, the goal was to eliminate pejorative language in favor of a formulation that prioritizes the person, not their characteristic (Martínez Maroto & Rabadán Lopez, 2024, p. 121).

However, the essence of the reform extends far beyond terminology and concerns a fundamental change in the objectives of public policies. The original provision, focused on “treatment, rehabilitation, and integration,” was replaced by a new mandate for public authorities, which are now to “promote policies that guarantee full personal autonomy and social inclusion in universally accessible environments” (Nogueira Guastavino, 2025, p. 133).

This change reflects a shift from a duty of “care” to a duty of ensuring the conditions for self-determination and full participation in social life.

Furthermore, the new text introduced two key, innovative elements. First, an intersectional perspective, mandating “particular attention to the specific needs of women and minors with disabilities,” which is a direct implementation of Articles 6 and 7 of the UN Convention (de la Puebla Pinilla, 2024, p. 871). Second, it formally strengthened the role of civil society by stating that public authorities “shall encourage the participation of their organizations” in shaping policies (Saravia Méndez, 2024, p. 107). These changes provide the foundation for a further analysis of their far-reaching implications.

2. Legal and Institutional Implications. The Logic of Enforceable Rights

The consequences of the reform should also be viewed in the broader context of the evolution of Spanish law. As some authors note, the Spanish Labour Code of 1980, created shortly after the enactment of the Constitution, approached the issue of fundamental rights in the workplace in a rather timid and reserved manner (Rojo Torrecilla, 2025, p. 79). The reform of Article 49 can thus be seen as a symbolic element of a wider process of the “constitutionalization” of labour relations and a departure from a purely contractual perception of the employer-employee relationship. Elevating the dignity of persons with disabilities to a constitutional rank is evidence of the maturation of a legal system that increasingly integrates the catalogue of fundamental rights into every sphere of social life.

The effects of the amendment to Art. 49 are worth examining in light of the interpretation presented, among others, by the Constitutional Tribunal judge, Laura Díez Bueso. She emphasizes that the new provision establishes a “new model of disability” and creates a clear “mandate for public authorities” (*mandato a los poderes públicos*) to act in favour of full autonomy and social inclusion in an accessible environment (Ibarra González, 2024, p. 429; Díez Bueso, 2024). The implementation of this mandate involves a series of future challenges, which have been identified by leading experts. These primarily include: real inclusion in the labour market, the creation of a new legal culture based on human rights, and the practical guarantee of access to justice (Díez Bueso, 2024).

The most direct effects of the reform will be visible in the legal sphere. In Spanish legal doctrine, it is emphasized that this amendment raises

the legal standing of Article 49, effectively transforming it from a guiding principle into a ‘legally enforceable fundamental right’ (de Miguel Viandi, 2024, p. 144). As Judge Juan Manuel Fernández Martínez notes, the new wording provides “strengthened protection” (*protección reforzada*) for the rights of persons with disabilities, giving citizens and judges a much more powerful tool to enforce the principle of equality (Fernández Martínez, 2024, p. 16). Although some criticize the phrase “special protection” (*protección especial*) as a manifestation of paternalism, the overall direction of the change significantly strengthens the legal position of citizens. Even before the reform, the Constitutional Tribunal, using Art. 10.2 of the Constitution and interpreting national law in light of the UN Convention, undertook the protection of the rights of persons with disabilities, linking Art. 49 with fundamental rights. It did so in cases concerning inclusive education, access to justice, and the prohibition of discrimination. As Inmaculada Jiménez-Castellanos Ballesteros argues, a key principle underpinning many of these rulings was universal accessibility (*accesibilidad universal*), which she defines as a “prerequisite for the enjoyment of all fundamental rights”. The author demonstrates how the lack of accessibility in schools (e.g., STC 10/2014) or in court proceedings (e.g., STC 77/2014) was treated by the Tribunal as a barrier to exercising fundamental rights, thus becoming a form of discrimination. The new, unequivocal wording of Article 49, which now explicitly mentions “universally accessible environments,” will therefore significantly strengthen and facilitate such a line of jurisprudence, giving citizens and judges a much more powerful tool to enforce the principle of equality (Jiménez-Castellanos Ballesteros, 2025, pp. 96–101).

The implementation of this constitutional mandate is based on two key legal instruments, the use of which has been established in the jurisprudence of the Constitutional Tribunal: affirmative action measures and the duty to provide reasonable accommodation (de la Puebla Pinilla, 2024, pp. 874–878; Larrazabal Basáñez, 2024). As for affirmative action measures (*Medidas de Acción Positiva*), these are specific regulations aimed at levelling the playing field and compensating for the disadvantages of persons with disabilities. The Constitutional Tribunal has repeatedly confirmed their constitutionality. In the field of labour law, the Tribunal ruled that the introduction of employment quotas for persons with disabilities in the public sector does not violate the principle of equality but is a realization of the constitutional mandate to remove barriers and strive for effective equality (Constitutional Tribunal Judgment 269/1994). In the area of social security, the Tribunal found the interpretation of regulations that prevented persons

on early retirement due to disability from applying for a permanent incapacity benefit, while other early retirees had this option, to be an unjustified discrimination (Constitutional Tribunal Judgments 172/2021 and 27/2023).

The second key instrument is the concept of “reasonable accommodation” (*Ajustes Razonables*), derived from international law (de la Puebla Pinilla, 2024, pp. 878–881; Larrazabal Basáñez, 2024, pp. 294, 309). It imposes upon public authorities and private entities the duty to make necessary and appropriate modifications to ensure that persons with disabilities can enjoy their rights on an equal basis with others. The refusal to provide them is considered a form of discrimination. The Spanish Constitutional Tribunal has confirmed the wide application of this principle in various areas of life. In education, the Tribunal ruled that it should be, as a rule, inclusive, and the decision to place a student in a special facility must be a last resort, supported by evidence that the necessary accommodations in a mainstream school would constitute a disproportionate burden (Constitutional Tribunal Judgment 10/2014). In labour law, the Tribunal stated that imposing a disciplinary penalty or dismissing an employee for unsatisfactory performance is illegal if the employer has not previously investigated and implemented reasonable accommodations that could solve the problem (Constitutional Tribunal Judgment 51/2021).

One of the most significant manifestations of the paradigm shift is the recent ruling of the Court of Justice of the EU in the *Ca Na Negreta* case. The Court found that Spanish regulations allowing an employer to automatically terminate an employment contract with an employee after a declaration of permanent total incapacity for work are contrary to EU law because they did not require the employer to first examine whether it was possible to provide reasonable accommodation that would allow the employee to retain employment (CJEU Judgment C-631/22). As commentators note, this ruling exposes serious shortcomings in the Spanish legal order regarding the protection of persons with disabilities and the failure to adapt the provisions on contract termination to the requirements of non-discrimination. The reform of Article 49 of the Constitution makes the need to adapt these provisions even more pressing (Gutiérrez Colominas, 2025, p. 54, 56).

Of particular importance is the duty to provide reasonable procedural accommodation to guarantee real access to justice. The Tribunal ruled, for example, that a court violated the right to a defense by issuing a default judgment without first taking steps to verify whether a person with a (suggested in the files) mental disability fully understood the consequences of their absence from the hearing (Constitutional Tribunal Judgment 77/2014). This means that courts and administrative bodies have a duty to provide so-

called “reasonable procedural accommodations” that guarantee that a person with a disability can fully understand the proceedings and be understood in them. This applies both to the use of easy-to-read language and to providing the support of sign language interpreters. A particular expression of this principle is the new figure of the “procedural facilitator” (*persona facilitadora*), introduced into Spanish law by Act 8/2021. As Carlos Fernández Pascual and Ángel Bravo del Valle explain, the facilitator is a neutral expert who acts as a “communication bridge” (*punte de comunicación*) between the person with a disability and judges, prosecutors, or the police (Fernández Pascual & Bravo del Valle, 2024, p. 29). Despite the existence of a solid legal basis, the authors indicate that this institution remains relatively unknown in the justice system and encounters resistance in practice, and its functioning relies heavily on the work of non-governmental organizations (Fernández de Buján, 2023, pp. 20–21; Fernández Pascual & Bravo del Valle, 2024, p. 34).

It must be emphasized that access to justice in the context of the new Art. 49 is a multidimensional issue. As Judge Juan Manuel Fernández Martínez notes, the use of the word “effective” (*efectivas*) in the amended provision is not accidental and is a conscious reference to the constitutional right to “effective judicial protection” (*tutela judicial efectiva*), guaranteed in Art. 24 of the Spanish Constitution (Fernández Martínez, 2024, p. 14). This means that the state not only has a duty to provide formal access to the court but must also actively remove all barriers. The author emphasizes that, alongside physical barriers, it is crucial to combat “invisible barriers,” such as a lack of sensitivity from judicial staff or the failure to understand complex legal language, which often constitute the greatest obstacle (Fernández Martínez, 2024, p. 29).

In practice, the implementation of this postulate requires the deployment of a whole spectrum of “procedural accommodations” (*ajustes del procedimiento*). These include not only, as mentioned, the figure of the facilitator, but also the duty to provide court documents in easy-to-read and understand formats (*lectura fácil*), to provide sign language interpreters, and the possibility for a person to be accompanied by someone providing emotional support during procedural acts (Fernández Martínez, 2024, pp. 31–36). Moreover, judicial bodies now have a proactive duty to ensure that a person with a disability fully understands the course and consequences of the proceedings. This duty, as the author indicates, has its source not only in Spanish jurisprudence (e.g., Constitutional Tribunal Judgment 77/2014) but also in the case law of the European Court of Human Rights (e.g., *Vaudelle v. France*), which requires courts to take additional

steps in cases where there is even a suggestion of a mental disability of a participant in the proceedings (Fernández Martínez, 2024, pp. 37–39).

At the linguistic level, it is also extremely important that the formulation states that persons with disabilities exercise their rights “under conditions of real and effective freedom and equality.” As Judge Juan Manuel Fernández Martínez points out, the use of the adjectives “real and effective” is a direct and conscious reference to Article 9.2 of the Constitution, which obliges all public authorities to promote conditions for the freedom and equality of individuals and groups to be precisely “real and effective” (Fernández Martínez, 2024, p. 14). This intertextual consistency is of great importance. It means that the protection of persons with disabilities is no longer just a goal of social policy under Art. 49 but is logically and linguistically woven into one of the fundamental duties of the social state. This implies that, from now on, any interpretation of the rights of persons with disabilities must be made through the prism of the overarching constitutional mandate to strive for substantive, not just formal, equality.

The realization of the constitutional goals of full autonomy and social inclusion requires concrete instruments, especially in the socio-professional sphere, which is key to real integration. In this context, an innovative interpretive proposal emerges, which links the reformed Art. 49 with another, often overlooked, provision of the Spanish constitution – Art. 129.2, which obliges public authorities to promote (*fomentarán*) cooperatives through appropriate legislation. As S. Larrazabal Basáñez argues, such a combined reading of both articles creates an extremely strong constitutional basis for taking “bold measures” (*medidas audaces*) aimed at supporting the employment of persons with disabilities (Larrazabal Basáñez, 2024, p. 289). It justifies the introduction of preferential treatment (e.g., in public procurement or fiscal policy) for cooperatives, and in particular for social cooperatives (*cooperativas de iniciativa social*), which specialize in the professional integration of this group. This “cooperative alternative” is all the more important because, as the author notes, the existing model of sheltered employment often fails as a “bridge” to the open labour market, becoming a form of permanent segregation for many (Larrazabal Basáñez, 2024, p. 311). Moreover, this idea is not new and has a solid basis in international law – the International Labour Organization has been pointing to cooperatives as an effective model for the professional activation of persons with disabilities in its recommendations since the 1950s (Larrazabal Basáñez, 2024, p. 291–292). The reform of Article 49 has particular implications in the sphere of labour law. As specialists emphasize, the new wording of the provision poses specific challenges for the legislator and social

partners (Legarreta, 2025, p. 146). These include, among others, the need to promote and develop workplace adaptations and tools ensuring universal accessibility in workplaces. Furthermore, the need to regulate equality plans for disability through collective bargaining is emphasized. In this context, trade unions will play a key role in defending and promoting the interests of employees with disabilities, which is consistent with their constitutional function (Legarreta, 2025, pp. 147–148). This proposal is also fully in line with current state policy directions, which makes it extremely realistic. Both the Spanish Strategy on Disability 2022–2030 and the Spanish Strategy for the Social Economy 2023–2027 explicitly point to the need to support the social economy and cooperatives as key tools for increasing the employment rate of persons with disabilities. In this way, the constitutional postulate of social inclusion from Art. 49 gains a concrete implementation tool, opening new paths for future legislative actions.

3. Social and Philosophical Implications. Redefining Dignity and Autonomy

The most profound philosophical implication of the reform of Article 49 is the redefinition of the very concept of dignity in the Spanish constitutional order. The old, medical model, focused on “treatment” and “rehabilitation,” implicitly made the fullness of dignity dependent on an individual’s abilities and “normality.” The new wording, by adopting the human rights model from the UN Convention as its basis, breaks with this approach. As Gregorio Saravia Méndez argues, it moves to a position where dignity is perceived as an “inherent and unconditional” quality, belonging to every human being, regardless of their physical, mental, or intellectual condition (Saravia Méndez, 2024, p. 88). Dignity, in this view, becomes “the right to have rights,” and the state’s goal is no longer to “fix” the individual, but to guarantee their ability to exercise these rights on an equal basis. This shift in emphasis from the individual’s characteristics to their inalienable human rights constitutes a fundamental change in the philosophy of the Spanish Constitution. This new understanding of autonomy is so expansive that in Spanish legal debate it is often linked to the right to realize an individual “life project” (*proyecto de vida*), a concept that has already been reflected in the legislation of some of Spain’s autonomous communities (Barceló, 2021).

Therefore, the act of removing the offensive word from the Constitution is a form of collective restitution of dignity. It has the potential to gradually influence the language of public debate and daily attitudes, strengthening

the social model of disability. Furthermore, the success of the reform, being the result of social advocacy, serves as an important lesson on the power of civil society. This potential extends beyond disability itself. The change in constitutional language is seen as a tool to combat deeply rooted social stereotypes that often link disability with age (Martínez Maroto & Rabadán Lopez, 2024, p. 123). As statistics show, the majority of persons with disabilities in Spain are over 65 years old (Martínez Maroto & Rabadán Lopez, 2024, p. 117). In public debate, they often fall victim to double prejudice: ageism and ableism, being perceived as dependent, unproductive, and a burden. The reform of Art. 49, by promoting a language of dignity and respect, thus becomes an important step towards building a more inclusive image not only of persons with disabilities but also of the elderly (Martínez Maroto & Rabadán Lopez, 2024, p. 136).

The change in constitutional language and the fight against stereotypes are an external manifestation of a deeper social transformation, which can be described as a shift from a “medical gaze” to a “social gaze.” As authors like Torcuato Recover Balboa explain, the old medical model located the “problem” of disability within the individual, which in practice led to their segregation in specialized institutions and absolved society of responsibility (Pérez Fernández & Recover Balboa, 2024, p. 67). The new Art. 49, with its emphasis on “social inclusion” and “universal accessibility,” makes a revolutionary reversal of this perspective. According to the social model embodied in the reform, the cause of exclusion is not the individual’s deficit, but the barriers that exist in the environment – architectural, communicational, and above all, mental (Pérez Fernández & Recover Balboa, 2024, p. 65). In this view, it is not the person with a disability who must be “rehabilitated” to adapt to society, but society that has the duty to remove barriers to become fully inclusive. This is a fundamental shift in the distribution of responsibility, which has far-reaching consequences for urban planning, education, the labour market, and all other spheres of public life.

The new constitutional paradigm also has an impact on a sphere that did not exist in 1978 – the digital world. As Judge Joaquín Delgado Martín argues, the principles of autonomy, inclusion, and universal accessibility from Art. 49 must now be applied to the digital activities of the state, including the justice system (Delgado Martín, 2024, p. 139). This means a concrete obligation to ensure that court websites, electronic communication portals, and mobile applications are fully accessible to people with various types of disabilities, in accordance with EU standards.

Moreover, the enhanced constitutional protection implies a need for the state to take special care of the safety of this group on the internet. Per-

sons with disabilities, especially intellectual or cognitive ones, may be more vulnerable to new forms of cybercrime, such as scams based on manipulation or disinformation (Delgado Martín, 2024, p. 165). Finally, the author points to the future challenge related to the implementation of artificial intelligence (AI) systems in the justice system. To avoid perpetuating existing biases and creating new “algorithmic barriers,” AI systems must be designed with a “disability perspective” (*enfoque de discapacidad*), which is a modern interpretation of the mandate arising from Art. 49 (Delgado Martín, 2024, pp. 203–204).

In practice, the constitutional mandate for “particular attention to specific needs” also implies the need for a profound reform of public services. As research presented by Ana Pilar Cruz Boluda shows, general information campaigns and support systems for victims of violence often prove to be inaccessible or ineffective for women with disabilities (Cruz Boluda, 2024, p. 160). This requires the creation of dedicated, fully accessible communication channels (e.g., in easy-to-read formats) and specialized training for staff in the justice and social assistance systems, so that they can respond to the complex needs of this group in a real, not just a declarative, way.

In the highly polarized political landscape of Spain, the way in which the amendment was carried out is significant in itself. The agreement is seen as a rare example of state policy that rose above the current dispute. Although this is likely an exception rather than a new rule, the successful amendment strengthens the legitimacy of the Constitution itself, proving that it is a “living document,” capable of evolution.

A key challenge in realizing the right to independent living is the process of deinstitutionalization, i.e., the transition from institutional care to a system of services provided in the local community. The scale of this challenge is significant; according to data from the Spanish National Statistics Institute (INE) for 2023, the national rate of persons with disabilities in residential facilities was 7.4 per 1,000 inhabitants (Instituto Nacional de Estadística, 2024). There were also large regional differences: from 18.0 in Castile and León to 3.8 in Andalusia (Guija Villa et al., 2024, pp. 295–296). This data shows that the constitutional postulate of social inclusion will require not only legislative changes but also huge investments and a transformation of the care system.

The implementation of the mandate from the new Art. 49 encounters another barrier, typical of the Spanish state model – the problem of territorial justice. As Juan Manuel Fernández López notes, the effectiveness of the protection of the rights of persons with disabilities in Spain is deeply dependent on their place of residence, due to the transfer of key competences in so-

cial and health policy to the autonomous communities (Fernández López, 2024, p. 46). This leads to a situation where access to support services, early intervention systems, or inclusive programs can vary drastically from one region to another. The amendment of Art. 49, by elevating these rights to the constitutional level, creates pressure to standardize them throughout the country. It thus becomes not only an act of protecting the individual but also a tool for fighting for the territorial cohesion of the state, posing a challenge to the central authorities to create mechanisms that will guarantee that citizens, regardless of their place of residence, can enjoy their constitutional rights in a way that is effective in fact, and not just in name.

Promoting “full personal autonomy” as a core constitutional value, however, also raises profound ethical dilemmas, especially with regard to persons with the most severe cognitive disabilities. How can unconditional respect for an individual’s will and preferences be reconciled with the state’s duty to protect their life and health when their decisions may be objectively harmful to them? This conflict between autonomy and protection is one of the most difficult practical and philosophical challenges posed by the new regulation. On the one hand, there is a risk of a return to paternalism under the pretext of protection, which would be contrary to the spirit of the reform. On the other hand, as authors analyzing this issue from a psychiatric-forensic perspective note, in the case of some mental disorders that prevent a person from consciously assessing their own situation, a lack of intervention in the name of a misunderstood autonomy would be a “form of social cruelty” (Guija Villa et al., 2024, p. 317). Finding a balance between supporting decisions and protecting from harm, without violating dignity and personhood, will be a key test of maturity for the Spanish justice system and the entire support system in the coming years.

The realization of the principle of personal autonomy, elevated to a constitutional rank, finds its key reflection in the sphere of private law, where the individual makes the most important life decisions. As Almudena Castro-Girona Martinez and Federico Cabello De Alba Jurado emphasize, in the new model, institutions of public trust, such as the notariate, play a fundamental role (Castro-Girona Martinez & Cabello De Alba Jurado, 2024, p. 237). After the abolition of the institution of incapacitation, it is the notary who bears the enormous responsibility for assessing whether a person with a disability is able to consciously and freely express their will, and for providing them with all the necessary means of support (e.g., interpreters, materials in easy-to-read formats). The notary thus becomes not only a witness to a legal act but also an “institutional support” and a guardian of real, not illusory, autonomy (Castro-Girona Martinez & Cabello De Alba

Jurado, 2024, p. 249). This change shows that the philosophical principle of self-determination, enshrined in Art. 49, requires the creation of an entire institutional ecosystem capable of realizing it in everyday life situations, such as making a will, selling real estate, or granting powers of attorney.

4. Conclusions

The analysis of the implications of the amendment to Article 49 of the Spanish Constitution shows that this is a change with momentous consequences, extending far beyond the symbolic dimension. Although there is no shortage of critical voices, perceiving the reform as largely “aesthetic” with limited legal impact (Delgado Ramos, 2025, p. 129), the prevailing belief is of its fundamental importance. Even if one were to consider it belated and legally redundant in light of the supremacy of the UN Convention, as B. Rodríguez Díaz argues, it was necessary from a symbolic perspective. Maintaining language in the Constitution that wounded the dignity of citizens constituted an “anomaly that destroyed their identity” (*identidad deteriorada*), and thus the terminological change itself was an act of justice of fundamental significance (Rodríguez Díaz, 2024, p. 255; Ferrante 2013, p. 100).

Despite these skeptical assessments, one cannot overlook the enormous “ethical and symbolic charge” that this reform carries (Díez Bueso, 2024, p. 168). The very act of removing the offensive term and enshrining the principles of autonomy and inclusion in the constitution is of fundamental importance for the dignity of millions of citizens and for the legal culture of the state. Even critics admit that it has rectified a “historical affront” (*afrenta histórica*) in terminology and finally adapted the content of the Constitution to prevailing values (Delgado Ramos, 2025, p. 133). In this sense, the change is seen as having a significant normative and political force that will serve as an impetus for further, necessary legislative changes (Sánchez París, 2022, p. 6), legitimizing and generating a series of necessary changes throughout the legal order, which will have to adapt to the new constitutional paradigm. As commentators aptly point out, Article 49 in itself “does not have the capacity for direct transformation,” but its content constitutes a clear and binding “mandate for the legislator and other public authorities,” which must be fulfilled by them (de la Puebla Pinilla, 2024, p. 871).

The true measure of this reform’s success will be its implementation in practice. The challenge for the Spanish state and society will be to translate

the lofty spirit of the new Article 49 into concrete laws, effective actions, and a real and tangible improvement in the quality of life of persons with disabilities. The Constitution has provided a powerful impetus and a solid foundation; it will now depend on the political will and commitment of all citizens whether a truly inclusive society is built on this foundation. This is best summed up by the words of the President of CERMI, Luis Cayo Pérez Bueno, who stated that the reform of Art. 49 “is not the finish line, but the starting point,” opening the way for further, necessary actions for the full realization of the rights of persons with disabilities (Pérez Bueno, 2024, p. 108).

In the assessment of the author of this paper, despite the wide spectrum of critical voices, the key significance of the reform lies not in its legislative perfection, but in its symbolic potential for a lasting change in legal and social culture. The most serious challenge to its effectiveness, however, seems to be not so much the content of the provision itself, as the lack of political will for its full and courageous implementation in ordinary legislation.

In conclusion, the reform of the Spanish Art. 49 is undoubtedly a historic success of fundamental symbolic importance. However, in the assessment of the author of this paper, its greatest and most difficult challenge lies in the very philosophical basis on which the new paradigm was founded. By so strongly emphasizing “full personal autonomy” as a central value, the reform, though progressive, risks repeating the very mistake it seeks to correct—making the fullness of rights dependent on the possession of certain abilities. As has been aptly noted in the Spanish debate, this raises the fundamental question of the status of persons with the most severe cognitive disabilities, who will never achieve this autonomy (Rodríguez Díaz, 2024, p. 279). Therefore, while implementation will be key on the legal level, on the philosophical level the greatest challenge will be to ensure that the new human rights model does not, in practice, exclude those who are unable to be “autonomous subjects,” and whose inherent dignity requires unconditional protection.

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