

**International School Choice and
Reform Conference 2019**



The Right to Education as a Framework for Educational Policies

Lisbon, Portugal
13 January 2019

Miguel Ángel Sancho Gargallo
European Foundation Society and Education

Recent Background



- Based on the political party in power, there have been continuous changes in the law regarding education in the past 40 years
- The law LOMCE 2013, established by the Popular party, proposed changes to the prior law established by the socialist party (LOE 2006)
- LOMCE is considered unconstitutional in many ways according to PSOE.
- A new Draft Organic Law amending Organic Law 8/2013 (LOMCE) have just been proposed by the government
- The right to education should remain outside of politics, lending security and stability to the educational system
- Three key documents: “Hearing before the Congressional Committee of Education and Vocational Training”, “Proposals for the modification of LOMCE” and the Draft Organic Law amending Organic Law 8/2013 (LOMCE)
- STC 31/2018 response to PSOE lawsuit about unconstitutionality of LOMCE

Research Methods

- Analysis of the texts and programs that reflect the policies and reforms of the new government, particularly the 2018 Hearing before the Educational Commission of the Congress, the proposal for the modification, the draft Act and subsequent discussions with stakeholders.
- Interviews with policy makers and members of the education community to further explore the scope of some of the reforms.
- Legal analysis of the constitutional texts relating to the regulation of the right to education and the most recent constitutional doctrine dealing with some of the appeals raised.
- Legal research linking the measures of government reform programs with constitutional texts and doctrine concerning the right to education and school choice to determine to what extent they contradict or find a legal basis.

Analysis of government proposals in the constitutional framework: 4 points

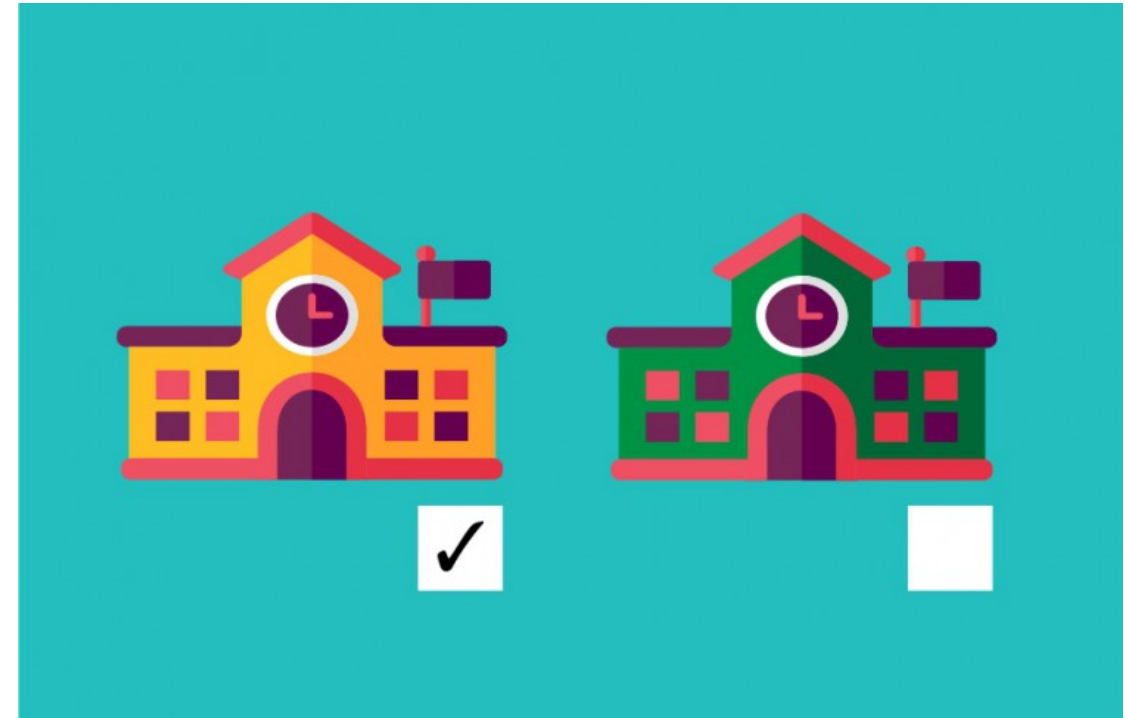
1. **The right to education and the role of parents** and other stakeholders in their capacity to promote educational institutions.
2. The choice of school based on **social demand versus planning** that articulates public education as the cornerstone of the education system.
3. Aspects that affect **the pedagogical leadership of the principal and the right of participation** by transferring competences from the headmaster to other participation bodies such as the school board.
4. Aspects relating to **pedagogical freedom and autonomy** , in particular limitations on the teaching of religion and single sex educational projects.

Balancing the student's right to education and the rights of parents and other stakeholders

- The law should recognize the rights of parents in the education of their children. It is not simply the role of the state.
- Children are born in a family and this is the environment in which they are educated rather to an emancipatory vision of the individual, as opposed to a conception of the fundamental role assigned to the family in the development of the individual and society.
- The family holds an important role in the upbringing of the student and the students should not be seen as individual subjects of education.
- This view holds legal basis in the Declaration of Human Rights (26.3), the International Pact of Economic Rights (13.3), and the International Pack of Civil and Political Rights (18.4).
- Article 27 of the constitution affirms that the state guarantees the right of the parents to decide the education of their children according to their moral and religious views.

School choice based on social demand versus state planning

- The proposed change eliminates references to “social demand” in favor of state planning with regards to the structure of the educational system.
- This change is opposed to the constitutional law because although the state guarantees education, parents have the choice of deciding the education for their children.
- The commitment of the state can be carried out by parents and institutions which can provide educational services.



Aspects that affect the pedagogical leadership of the principal

- The proposed changes allow for greater community participation in decision-making and control of educational centers.
- Although this allows for a more democratic decision-making process, diminishing the principal's authority can produce greater inefficiency and weak leadership in the school.
- This may also interfere with the mission and pedagogical project of the center particularly in subsidized schools



Aspects relating to pedagogical freedom

- The proposed changes will devalue the teaching of religion in schools.
- This will reduce the freedom of parents and students to choose for themselves the style and content of education.
- Separation of boys and girls in certain classroom settings will also be discouraged due to a desire for inclusivity and co-education.
- However, the legal basis reinforces that this is not discriminatory practice and centers of education should have the freedom to establish their own manners of teaching.



Takeaways

1. Freedom of education is part of the essential content of the right to education: the State must be the guarantor of its exercise.
2. The State must guarantee the right to education in a social context that is not always solidary and open to the needs of all citizens.
3. The State must respect the right of parents to educate their children in accordance with their religious and moral convictions.
4. The state cannot impose a certain vision of educational policy above and beyond constitutional principles and core values.
5. The liberty of creating educational centers (and their direction and core principles) should be preserved and not imposed by the state.
6. The financing of education should preserve liberty of school choice within given resources.
7. Avoid rigid planning that imposes a particular education system.
8. Awareness about the invocation of segregation in order to propose unique models against the position of the family and of the student himself, subject of the right to education.

References



- The hearing on 11 July 2018 of the Minister of Education and Vocational Training before the Congressional Committee on Education and Vocational Training
- The proposal for the modification of the Organic Law for the Improvement of Education presented by the Ministry of Education on November 7
- Draft Organic Law amending Organic Law 2/2006, of 3 May, on education, as amended by Organic Law 8/2013, of 9 December, for the Improvement of Educational Quality (LOMCE)
- Constitutional Court in its ruling of 10 April 2018. STS 31/2018
- Sancho Gargallo, M.A. (2015), *La autonomía de la escuela pública*, Madrid, Iustel, 359 pp.
- Sancho Gargallo, M.A. (2013) "Autonomy and Pluralism in the Education System: A Case Study of Spanish Public Schools in the International Context", *Journal of School Choice: Research, Theory, and Reform*, 7:1, 61-87 <http://dx.doi.org/10.1080/15582159.2013.759843>