Report on Spain

United Nations Human Rights Council/ECOSOC

Submitted by HSLDA

About HSLDA

1. Home School Legal Defense Association (HSLDA) is a nonprofit advocacy organization with over 84,000 member families in the United States of America and around the world, including Spain. HSLDA provides legal counsel and advice to member families on compliance with homeschool regulations, advocates for homeschool freedom with National and State Governments as well as greater recognition with inter and nongovernmental organizations and entities. HSLDA engages in litigation to protect the right to home education against infringement and to advance the principle of education freedom and family autonomy. For more information about home education please visit www.hslda.org, www.ghex.world or contact the report author, HSLDA Senior Counsel Michael Donnelly at international@hslda.org.

Home Education

2. SDG 4 is about quality education and reports indicate that hundreds of millions of children all over the world are not in school and many of the reasons relate to inadequate

infrastructure. Poor areas are unable to build schools, hire teachers, provide materials, or provide the most basic inputs for institutional education. Home Education is a form of education whereby caregivers and family members (or extended family or neighbors) take on the responsibility to educate their children or the children in their care. At a time when more and more children are unable to take advantage of any education, states must not be excessively dogmatic or hostile to parents choosing alternative or different/non-institutional pedagogical approaches. This is especially true when the right of parents to decide how their children are educated is a fundamental human right.

3. Home Education is a right derived from numerous international treaties and declarations. Foremost among these is the Universal Declaration on Human Rights which enunciates that families are the fundamental group unit of society (UDHR 16.3) and that parents have a prior right to decide what kind of education their children shall receive (UDHR 26.3). The ICESCR and ICCPR impose binding international legal obligations on signatories but also provide a reference point for *jus cogen*s concepts of human rights. Article 4.2 of the ICCPR assign non-derivability to the 18.4 right of parents to ensure that their children's education conforms to their religious or philosophical convictions. Article 13.3 and 13.4 of the ICESCR reaffirms this parental right and further acknowledges that private education is a right of both parents and children. UN Special Rapporteur on the Right of Education observed:

> [I am] a strong advocate of public, free and compulsory education, [but] it should be noted that education may not be reduced to mere school attendance … Distance learning methods and home schooling represent valid options which could be developed in certain circumstances, bearing in mind that parents have the right to choose the appropriate type of education for their children, as stipulated in Article 13 of the International Covenant on Economic, Social and Cultural Rights. The promotion and development of a system of public, government-funded education should not entail the suppression of forms of education that do not require attendance at a school. (Muñoz, 2007)

4. Regrettably, there are numerous states, and even international human rights institutions, that fail to recognize the significance of the right of home education and the seriousness of failing to adequately respect and protect this right. States may not pick and choose which human rights they respect and protect. Even if a State recognizes some human rights, the fact that it is missing the mark in other areas must be pointed out. As the foundational sovereign power in the international system, states must always seek to ascertain areas of weakness in their human rights performance and undertake to improve when deficiencies are noted.

Homeschooling in Spain

5. In Spain, the right of the parent is generally assumed to include educating their children and ensuring they receive a well-rounded education[1], but this right is construed to believe that the child can only receive a well-rounded education in the public-school system. A Supreme Court Ruling explicitly states that homeschooling is not allowed without a law preventing parents from freely exercising their fundamental right to direct the education of their children. Attempts by numerous organizations in Spain have been made to influence the legislature to make specific laws without success.
6. While emphasizing parental choice and individual development in Articles 1 and 2 of the Organic Law[2], a 1994 Supreme Court case stated that:

> "A wide framework exists in this area that permits various educational options, although there is one barrier that the legislator considers insuperable: all education activity must maintain respect for constitutional principles."

7. In places in Spain such as the Basque Country, Andalusia and Catalonia, jurisprudence on the subject of legal recognition and viability of home education already exists.

[1] "Parental responsibilities: Spain Overview" E-justice.europa.eu https://e-justice.europa.eu/content_parental_responsibility-302-es-en.do?member=1#toc_1 (accessed May 4, 2019)
[2] "Disposiciones generales" Boe.es https://www.boe.es/boe/dias/2002/12/24/pdfs/A45188-45220.pdf (accessed May 3, 2019)

Cases of Persecution of Homeschooling Families in Spain

8. These cases are personally known to the author, who has knowledge of the details disclosed herein.

Sala-Gonzalez

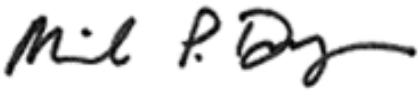
9. In 2011, the Sala-Gonzales family faced a court date over homeschooling despite the fact that social workers in the case reported favorably on the family. Spanish prosecutors insisted that the family was breaking the law by educating their child at home. In 2011, when a vague ruling by the Spain's Constitutional Court put families in a legal limbo, more Spanish homeschool families began facing issues with social workers and education authorities. Mr. and Mrs. Sala-Gonzales were offering their son the best possible education, this was not a case of truancy or educational neglect on the part of the parents. HSLDA filed a brief and an international petition for the family and the judge dismissed the case – an important victory for homeschooling families but families in Spain still await the recognition of homeschooling, and therefore, these cases are becoming more common as homeschooling becomes more globally known as an alternative form of education.

Brickey:

10. In 2018, several families contacted HSLDA in regard to their visa renewals being denied on account of their children not being enrolled in an accredited school. While many families are homeschooling due to the precarious nature of homeschooling in Spain, upon visa renewal, several members were sent a letter stating they had 30 days to show proof of education or their visas would not be renewed. US families are required to renew their visas after the first, third and fifth year of living in Spain. The Brickey family, upon receiving this notice, were forced to enroll their children into a Spanish school despite their homeschooling not only due to their moral and religious beliefs but because of the health and wellbeing of their children that could not be guaranteed in the public-school system. This was not only a choice of education but a safety issue.

Conclusion

11. There are nearly 3 million homeschooled children in the world with over 65% of them in the United States. Homeschooling in the United States is fully recognized and many countries around the world are experiencing growth in this form of education. According to research, the reasons that parents choose home education include: a concern about the environment in other schools, a desire to provide religious or moral instruction, dissatisfaction with academic instruction in other schools, to address a particular issue such as a learning disability, giftedness, school bullying or other concerns. Spanish families are turning to homeschool for these reasons as well.
12. Education is a human right as is the right of parents to choose the kind of education their children receive. Government run education is a recent historical phenomenon whereas parents have been educating their children for millennia. Technology advances continue to erode the sensibility of institutional education. Research on home education reveals that children who are homeschooled perform well academically and socially. Home education is not a danger to children or to the state. Rather, home education is a human right that offers a new pedagogical pathway to deliver quality education to children.
13. By failing to respect, protect and fulfill the right to home education, Spain is failing to meet its human rights obligations.



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