

Educational Assessment and Competition: The Legal Framework of Evaluation in Spain

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I. Competition, autonomy and evaluation in the education system

Education in Spain, as in other European countries, is strongly regulated by the state. This initial statement is made without prejudice to the issue of decentralization, but rather in a broader sense of state as an organization of the political society. It should be added that, according to the Spanish Constitution, educational authorities not only have the power to decide on the main educational issues. On the contrary, they also have the responsibility of setting up educational institutions (article 27.5¹), recruiting and remunerating teachers in public education, and planning curricula that are to be taught in both public and private schools.

It can be argued that this system has led to a significant educational development which some consider to be the economical specificity of the European continent. States, however, fulfil other important tasks regarding education, such as funding some educational institutions founded by private individuals or undertakings, carrying out inspection of both public and private schools or, more recently, evaluating the achievement of institutions, teachers, managing staff and even of the education system as a whole.

Policy assessment based on results and costs has been broadly developed over the last decade as a means for improving efficiency and effectiveness. An example is the Impact Assessment board under the authority of the EU Commission President, an initiative launched in 2002². But more specifically, in the field of education policy it is the OECD Program for International Students' Assessment (PISA) that has become crucial in the eyes of citizens and, as a reflection of that social success, of policy-makers in the field of education over the last decade, too.

More or less in the same span, some politicians and pundits have insisted on the need for autonomy of educational institutions to manage their own budget, design and implement their own educational project, organise actions against school violence and, more generally, unruly behaviour on the part of pupils, and even to decide on the use of religious signs in school premises. As an effect of international policy assessment trends, a balancing pole for such autonomy is sought in multiple evaluation procedures for educational achievement.

Evaluation policy could have an enormous boost effect on competition in the education system and, more specifically, between educational institutions. Not only free competition such as it is understood

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1 Spanish Constitution, article 27.5: *The public authorities guarantee the right of all to education, through general education programming, with the effective participation of all sectors concerned and the setting-up of educational centres* (unofficial translation by the Spanish Parliament).

2 Communication from the Commission on Impact Assessment (COM/2002/0276): after policy is drafted, but before it is formally issued as law, the Impact Assessment board provides the Commission with a prevision of the economical costs that the implementation thereof would likely imply.

in EU law, but competition in a broader sense, since education is provided in most European countries mainly on the basis of the *traditional* concept of public service. This traditional concept implies that public authorities decide directly on the establishment of educational institutions, the recruitment and remuneration of teachers and the adoption of curricula, as has already been mentioned. But public authorities also provide funding for some private schools, whose number certainly varies from one country to another, and therefore it is not possible to speak of free competition in the case of these schools either. Thus, free competition in its purely economical meaning only takes place at a narrow scale, which is that of unsubsidised private institutions competing in a relevant market. In Spain, private schools that are not funded by public authorities are attended by around 5% of pupils, although there are some variations according to the different educational levels.

In a less rigorous sense, all three kinds of schools (strictly public, publicly funded private institutions and privately funded private schools) often have to compete for pupils in a relevant market, or otherwise face the risk of being shut either by the government (in the case of public institutions) or by their own proprietor. Or at least suffer budget cuts. Therefore, when it comes to educational services, the term competition may be understood to have a broader meaning than it usually has in EU legal provisions that regulate the internal market.

Strict competition between educational institutions would require that assessment results were made public and that the parents and pupils had total freedom to choose educational and training institutions. Under Spanish law the two conditions are quite broadly respected, but Parliament has not set competition as such among the aims of educational evaluation in Spanish law, and evaluation reports are accordingly not designed for that purpose. Although assessment results are disseminated, school rankings on the basis of such results are expressly prohibited, and therefore educational competition does not happen at a great scale. But there is an explanation for that outcome, and we will approach it in the end of the paper.

24 Let us now focus on some questions that should be considered when approaching the legal framework of evaluation: What should be the object of evaluation activities? What kind of evaluation (in-depth or formal) should be performed? What should be the profile of evaluating bodies (appointment on the basis of expertise or of political criteria, officials or private undertakings...)? Last, but maybe most important: how can evaluation results be used?

It is not possible to answer all these questions on a general basis or from a purely legal viewpoint. But these reflections may provide a useful context for a debate on national or regional provisions on educational assessment. Let us now focus on the PISA example and on the Spanish system of educational evaluation such as it is regulated in Title VI of the national Education Act³.

II. PISA as a reference. A critical approach to the use of assessment reports by governments and media

Every three years, OECD's PISA reports are expected with the utmost interest by media and public opinion. PISA's public success is likely one of the main reasons for recent evaluation trends all over European education systems, and therefore it is worth to analyse some of its key features and the possibilities it offers for improving policy-making activities.

A large share of PISA's success is probably due to simplifications tending to rank countries and regions on account of pupils' results. When a country's results are above those of neighbour States, there is a strong temptation for governments and media to present the fact as a triumph of a particular form of policy. If the results are worse than expected in comparison to other countries, this can instantly be used by political opponents of the party in office to attack the government's educational policy. Such risk can be perceived at both national and regional levels of government.

3 *Ley orgánica nº 2/2006, of May 3, on Education.*

However, it does not seem fair or even sensible to judge the whole educational policy of a government only on account of the PISA results by comparison with other regions or countries. There are at least two reasons for this.

Firstly, PISA measures only specific skills of pupils, and it is not easy to reduce the whole process of education to the acquisition of specific mathematical, scientific, linguistic or (if it were the case) even social and citizen-like competences. There are other highly important aspects of education that are hardly measured by PISA: creativity, values instilment, and artistic expression to name a few. Or, to put it rather bluntly, individual freedom.

The second argument not to exaggerate PISA's significance is the fact that educational policy has to be implemented in a specific society at a given historical moment. This means that not all good or bad results in PISA must necessarily be the consequence of a specific policy implemented by a government, because the situation previous to that government's term should also be considered. A government that raised literacy from 75% to 85% can be considered much more successful than another one that raised it from 98% to 99%. Yet the second education system will be more likely to have good scores according to PISA standards.

How can PISA be used to assess a specific government's policy then? There are at least two interesting (and legitimate) ways of applying the results it provides.

The first is to use PISA in the long run to compare a region's or a country's achievement the last edition of the program with its own results in previous years. This provides a historical perspective that seems necessary to adequately judge educational policy over the years.

The second is to complete the information provided by PISA with that of another highly interesting study carried out by the OECD: *Education at a glance*. A rigorous joint consideration of both studies can provide incomparable information as to the strengths and weaknesses of a political strategy on education. *Education at a glance* includes data on public and private expenditure in education, annual number of working hours of teachers and school hours of pupils, proportion of pupils that begin at each level of the system or at each type of institution, freedom to choose a school, school autonomy in different matters, how likely is it to enter the labour market... The aim of *Education at a glance* is to empirically compare policies in the states participating in the study, which may be of use for governments to orientate their actions on account of the needs they identify in their territory. It does not provide an insight into the intrinsic value of an education system, but it allows governments to gain precious information for understanding the precise reasons of good or bad results according to PISA or to any other assessment.

It is certainly not as simple as to use PISA's ranking for the purpose of immediate social communication, but proceeding as has just been suggested would very likely open a richer world of possibilities for the use of information from assessment activities. This would require, among other conditions, that governments (and media) would hire trained personnel to interpret and understand such results.

III. The legal framework of evaluation under Spanish law

It has been explained that many governments and parliaments have taken educational evaluation very seriously. In some cases, even constitutional law has been modified to include a reference, as it happened in Germany.

Regarding Spanish law, Act nº 2/2006 regulates the whole education system except for University education. On the other hand, some specific matters, such as individual rights of pupils, parents and teachers in school premises; mechanisms of participation in the education system; and the organisation of private publicly funded schools remain within the scope of an older education Act, namely Act

no. 8/1985 *on the Right to Education*⁴, part of which is still in force. But as far as the evaluation of the education system is concerned, it is the aforementioned Act nº 2/2006 that seems particularly important. Out of nine Titles of the Act, one whole Title is devoted to the “evaluation of the education system”. In this respect, Title VI contains provisions on the aim, scope, bodies in charge, types of evaluation according to the object, and dissemination of evaluation results.

One last remark concerning the scope of these provisions should be made before examining the contents thereof. As it is known, Spain has a highly decentralized legal system and education is a matter of both national and regional competence. National parliament has the power to issue statutory law in order to assure the effectiveness of fundamental rights in education and establish the *basic* legal framework of education. Self-governing communities, on the other hand, may develop national law both through law-making and implementation activities⁵. In fact, they may even issue regional acts on education, as six of them have already done. When it comes to the evaluation of education, nearly the whole of Title VI of the national Act is considered to be basic law. Self-governing communities must necessarily apply these provisions, which they may, however, develop in order to adapt to the specific reality of their schools. Communities also have the possibility of passing legislation different from the national in relation to the contents of articles 145 and 146, which regard the evaluation of teaching institutions and of school management.

A. Aim of evaluation activities

The first paragraph of article 140 of the Education Act mandates which must be the “evaluation objectives⁶” of assessment activities. They may be summarized as follows⁷:

Values to be promoted

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Firstly, educational evaluation should promote four specific values within the education system: quality, equity, transparency and efficacy. The meaning of these concepts in Spanish education law is briefly the following.

Quality is usually understood as providing the highest standard of teaching and education: improving pupils’ skills and knowledge, helping them build a healthy personality, which may in turn stress competitiveness or solidarity with other individuals. Under Spanish law it has usually kept a difficult balance with equity, since some judge that quality has been forsaken over the last decades in educational policy. One political party even tried to pass an *Act on Education Quality* in 2002, which finally never entered into force. Also the last proposal for reforming the Education Act, published in July 2012, includes a reference to ‘the improvement of educational quality’.

Equity has been one of the main principles inspiring significant reforms in educational policy in the last decades. Particularly the Education Act nº 1/1990 raised compulsory education age from 14 to 16 years of age, thus ensuring a minimum of ten years in school to every pupil. This important reform also brought some troubles due mostly to a lack of flexibility (adaptability) in school branches. Act

4 *Ley Orgánica 8/1985, de 3 de julio, del Derecho a la Educación.*

5 However, it is national authorities that are entitled to decide to which extent should education law be national, and therefore also the scope of regional law on the matter. Notwithstanding this, the Spanish Constitutional Court may be called upon to solve a dispute on whether national law has gone too far and left no possibility for regional autonomy to exist.

6 An unofficial translation to English of Act nº 2/2006 was prepared by the former Ministry of Education. It can be downloaded via the ‘Planipolis’ website of the UNESCO International Institute for Educational Planning (IIEP). However, I have occasionally not followed this translation. In those cases I have chosen to mark the Ministry’s translation using double quotes. When legal provisions have been transcribed as a whole, this has always been done from the Ministry’s unofficial translation, which can be found using the following link: http://planipolis.iiep.unesco.org/upload/Spain/Spain_LOE_eng.pdf.

7 Article 140. 1. Evaluation of the education system will have the following objectives: a) Contribute to the *quality* and *equity* of the education system. b) *Guide education policies*. c) Increase the *transparency* and *efficacy* of the education system. d) Offer information on the extent to which the targets for improvement as set by the Education Administrations have been met. e) Provide information on the extent to which the Spanish and European goals in education have been achieved, as well as on the fulfilment of the commitments regarding education made in relation to both the demands of Spanish society and the goals defined in the context of the European Union. Italics mine.

nº 2/2006 also includes Title II, which is in fact devoted to “Equity in education”. According to the provisions included in Title II, equity has different manifestations: Chapter I applies to “students with specific educational support needs”. Chapter II incorporates “compensatory measures for inequalities in education”, such as subsidies, grants or the situation of rural schools. Chapter III concerns the enrolment and admission of pupils in public and publicly funded private schools. Finally, chapter IV confers upon the Ministry of education the power to create awards and competitions for pupils, teachers and schools.

Transparency is also a broad and undetermined concept. In political theory it has often been linked with the concept of *governance* defined by Rosenau in his now classical contribution⁸. If it were connected to the process of competition between educational institutions, publishing the results of an evaluation could certainly have a powerful effect, although maybe not necessarily desirable. It should be born in mind that not all schools have the same social background and therefore the level of achievement should be measured not only according to other schools but mostly to the school’s own development over time. And maybe the core issue in autonomy and educational pluralism is precisely the idea that every school may have different needs to attend and diverse ways of fostering children’s development. Transparency has a more concrete manifestation in article 140, paragraph 1, subparagraph *d*: *Offer information on the extent to which the targets for improvement as set by the Education Administrations have been met.*

Efficacy means that the education system effectively fulfils the commitments attributed to it. Traditionally two effects are expected from the education system⁹: on one hand, to help socialise children, that is, assume as their own some of the adult society’s values (socialisation effect), and on the other hand, to qualify young people as relevant actors in the labour market (qualification effect). A more specific manifestation of efficacy appears in subparagraph *e*: *(Evaluation will) provide information on the extent to which the Spanish and European goals in education have been achieved, as well as on the fulfilment of the commitments regarding education made in relation to both the demands of Spanish society and the goals defined in the context of the European Union.*

Evaluation as guidance for educational policy

Secondly, besides the four values that were just mentioned, article 140 enshrines another principle that should be commented. In this respect, subparagraph *d* mandates that an aim of evaluation must be to “guide education policies”. This means that the results of evaluation processes ought to be taken in consideration by law-making authorities in the future.

Given the precious information that assessment activities can provide if they are thoroughly interpreted, this certainly is a very interesting approach. But this practical methodology in policy-making may also entail some risks. The aim of evaluation should certainly be to improve policy, but, conversely, efforts for improving results in evaluation processes should not be the priority in policy-making. In other words, evaluation must be an instrument for policy, and not an aim. Therefore, policy must be carefully planned so that the education system fulfils its true aims: providing instruction and instilling values.

Probably because the lawmaker was aware of some of the risks that the so-called ‘evaluation culture’ could lead to, paragraph 2 of article 140 prohibits that evaluation results be used in two particular ways:

“2. The objectives established in the previous item do not allow the use of the results of the evaluations of the education system, regardless of the state-wide or autonomous regional area where these take place, for individual assessments of students nor to establish school rankings.”

8 Rosenau, J.N. (1992), “Governance, Order, and Change in World Politics”, in: Rosenau, J.N. and Czempiel, E.O. (eds), *Governance without Government*, Cambridge University Press, Cambridge, p. 1-29.

9 Martín Criado, ‘effects and not functions’

As far as the prohibition of individual assessment is concerned, it does not seem entirely clear why the evaluation of the entire education system should be guided by a different aim than individual assessment. If the education system seeks to develop every pupil's personality and provide a certain degree of qualification to all of them (the aforementioned concept of *equity*) it is not easy to understand why individual assessments could not be used for evaluating the *efficacy* of the education system. It seems as if the lawmaker would not trust general evaluation of the education system to be entirely accurate, but at the same time did not consider individual assessment as a trustworthy sign of the education system's performance.

Despite a certain degree of contradiction, the first prohibition in article 140.2 can be better understood if the education system is considered as a dynamic sociological field¹⁰. This conception would imply that the 'outputs' of the education system (that is, instruction, qualification and, to a certain degree, socialisation), do not only depend on how educational policy is designed and what the education system actually *does*, but also on other 'given' factors such as the interests and expectations of pupils and their families regarding the education system. Therefore, temporary or even sustained bad results in pupils' achievement are not necessarily a sign that the education system is not well designed. This statement of course does not imply that educational reform should be rejected, but rather that it should be carefully planned and not just based on bad performance in, for instance, a single edition of the PISA reports.

The prohibition of establishing school rankings is more easily understandable from this perspective. I previously advocated that evaluation results should be interpreted according to the previous situation a school had. From this viewpoint it makes no sense to rank a school with a bad result in a single evaluation process together with other schools that may have diverse needs and also different starting points. This would only entail an increase in pressure on the school board and particularly on teachers to get better results almost at any cost, and most certainly face the risk of pupils fleeing the school, that is, closing it instead of solving its problems. Pupils in that area would have to move to a different school if there were sufficient places, and maybe some of the difficulties from the first school would move along with them.

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B. Scope of the evaluation

Article 141 of the Act on Education mandates that evaluation must cover almost every aspect of the education system. It reads as follows:

“Scope of the evaluation.

The evaluation will cover all education areas governed by this Law and will apply to the learning processes and results of students, teacher performance, education processes, management, the performance of schools, inspection and the Education Administrations themselves.”

One would think that only 'family education' in a strict sense is free from being formally evaluated, as even the authorities in charge of assessing the education system are themselves subjected to the evaluation impulse. Indeed, referring to the German education system, Vogel¹¹ has argued that evaluation is the new way of governing and administrating education. This approach might be closer to a so-called model of 'education governance'. The State's traditional functions would thus be substituted with lighter forms of control, which generally operate on the outputs rather than on the inputs of the

10 Martín Criado, E. (2010); Field theory may be briefly explained in the words of Martin, J.L. (2003), 'What Is Field Theory?' in: *American Journal of Sociology*, Vol. 109, No. 1, pp. 1-49: 'At any time, institutions exist in some form of alignment which lets us orient our action in an intersubjectively comprehensible way; (...) Not only is it mistaken to assume that people choose their allies and tactics, in many cases there is no reason to assume that they choose their goals. This is not because, as critics of Bourdieu have sometimes assumed, field theory implies that people are cognitively limited in their vision of what they want. It is because the only way to reach conditions that we cognize and wish for is to make use of those conditions that we have not wished for' (p. 49, article is available at www.jstor.org). The point is that, although it is arguably more powerful than a single individual, government action should also be planned with some regard to this idea.

11 Vogel, J.P. (2008), 'Neue Steuerungsinstrumente der Schulaufsicht und ihre Anwendung auf Ersatzschulen', in: Christensen, R.; Pieroth, B. (eds): *Rechtstheorie in rechtspraktischer Absicht. Freundesgabe zum 70. Geburtstag von Friedrich Müller*, Duncker & Humblot, Berlin, pp. 251-263 (251).

education process. This, on the other hand, is a general trend in many important sectors of European administrative law. Evaluation procedures would replace traditional forms of public intervention: instead of dictating instructions, design curricula and prove pupils' knowledge, these new trends propose to evaluate schools' results, provide advice and working practices and assess pupils on the basis of competences. It can be considered as an effort to allow greater autonomy for educational institutions. In any case, at the current stage of development, Vogel's conclusion that evaluation is *the new way* of governing education seems excessive, since many other 'inputs' of the education system remain in the hands of public authorities.

Be that as it may, neither Spanish law nor government practice seem entirely decided to actually *substitute* inspection and strict control by a pure evaluation system. On the contrary, evaluation is seemingly adopted as a new form of intervention that would *add* to the older ones, in many cases reinforcing them. For instance, educational inspection procedures are daily carried out by regional inspectorates that hold at least as many functions as they did traditionally (art. 151¹² of the Education Act). Furthermore, as a logical consequence of having *one* education system implemented by *seventeen* autonomous administrations, there is also a national Higher Inspectorate in charge of supervising that self-governing communities are in fact complying with national education law.

C. Assessment bodies

Article 142 is devoted to determining which authorities must be in charge of evaluation activities. The education system is still considered to be national, despite the existence of significant competences in the seventeen regions, six of which have even passed their own Education Acts. Regional *Education Acts*, however, do not differ in most cases from the options of the national legislator, who has often issued a full regulation of educational matters that in principle could be the object of concurring legislation by regional parliaments.

The first paragraph of article 142 attributes the competence for the evaluation system to the *Instituto Nacional de Evaluación Educativa*, a department currently subordinated to the Directorate General for Evaluation and Territorial Cooperation, which is part of the Ministry of Education. Similar bodies have been created by regional administrations in charge of planning and implementing education policy in order to assess the education system in their territory. Moreover, school managers and teachers must assist these regional bodies when they perform an evaluation in a particular school (article 142.3 of the national *Education Act*).

The second paragraph, in turn, mandates that regional administrations shall participate in the work of the National Institute, which in any case remains the main evaluation body in Spain. It is therefore relevant to briefly describe the Institute's functions and organisation.

12 Art. 151 refers to "the functions of education inspection": a) *Supervise and monitor, from a pedagogical and organizational perspective, the way schools operate as well as the programmes they offer.* b) *Supervise teaching and management as well as collaborate in their constant improvement.* c) *Participate in the evaluation of the education system and of its constituting elements.* d) *Ensure that schools comply with the laws, regulations and other provisions in force that affect the education system.* e) *Ensure the fulfilment and application of the principles and values stated in this Law, including those aimed at fostering equality between men and women.* f) *Advise, guide and inform the different sectors of the education community in the exercise of their rights and the fulfilment of their obligations.* g) *Issue the reports requested by the respective Education Administrations or which derive from the knowledge obtained from the educational inspection itself, through the official channels.* h) *Any other functions that may be commended to it by the Education Administrations, within its area of responsibility.* There is however another provision in article 153 that refers to the "duties and functions of the Inspectorate" itself: "To fulfil the functions of education inspection, inspectorate will have the following duties and functions: a) *Obtain first-hand knowledge of all activities carried out in schools, to which they will have free access.* b) *Examine and check the academic, pedagogical and administrative documentation of schools.* c) *Receive from other public employees and those responsible for public and private schools and education services, the collaboration necessary for the development of their activities. In the exercise of these, inspectorate will be considered a public authority.* d) *Any other functions or duties commended to them by the Education Administrations, within their area of responsibility.*

Organisation of the Institute

Both the organisation and the functions of the National Institute for Educational Evaluation are carefully regulated in Royal Decree n° 928/1993. Despite the abolition of Act n° 1/1990, which created the Institute with a different name, Decree n° 928/1993 remains still in force. The main provisions of this Decree are summarized in the following paragraphs.

A steering council and a director head the Institute. Regarding the steering council, it is the persons in charge of different directorates general in the field of education that seat in it. The vice-minister of education chairs the steering council and the director of the Institute acts as secretary. The steering council works as a link between the Institute and the ‘Conference of Education’ (the assembly of Education Ministers from the self-governing communities and the national government). It thus submits reports and plans from the Institute to the Conference and proposes how they should be published. Conversely, the steering council also decides on the actions to be taken in order to implement decisions adopted by the Conference of Education in matters of educational evaluation.

As far as the director of the Institute is concerned, it is the minister of education who, after consultation once again with the Conference of Education, has the power to appoint the director. Nothing is said about specific requirements for the appointment, and it thus seems that the minister has full discretionary power to decide on this matter. Regarding the director’s commitments, it is his or her duty to represent the Institute, propose annual and multiannual working plans to the steering council, elaborate on the working plans approved by the Conference of Education, see to the implementation of the steering council’s agreements and provide information on the Institute’s activities to the National School Council (a body for the participation of stake-holders in education).

Thirdly, the director is assisted by a scientific committee formed by up to one president and six other experts. At least in theory, these are the only members of the Institute who must necessarily have expertise in the field of educational policy and evaluation. And again, it is the minister of education who, after consulting with the Conference of Education, has the competence to appoint members to the scientific committee.

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Functions of the Institute

Royal Decree n° 257/2012, on the organic structure of the Ministry of Education, Culture and Sport, determines the general scope of competence for each of the bodies subjected to, or directed by the ministry of education. The first paragraph of article 6 states that the Directorate General for Evaluation and Territorial Cooperation shall among other functions be competent for the following tasks:

- ‘Coordination of policies for general evaluation of the education system and, in cooperation with (regional) educational administrations, achievement of “general diagnostic evaluation” procedures.’
- ‘Coordination of Spain’s participation in international evaluation procedures; participation in the design of international indicators on education and, with regard to the ministry’s subsecretary’s competences for statistics, monitoring of the EU’s initiatives in this field.’
- ‘Development of a National System of Educational Indicators and achievement of research and studies for the assessment of the education system as well as the dissemination of the results thereof.’

Moreover, these tasks are attributed to the Institute for Educational Evaluation by article 6, paragraph 2e, and thus the Institute finds itself placed under functional superiority of the Directorate General for Evaluation and Territorial Cooperation.

The most interesting achievements of the Institute have to do with the aforementioned National System of Educational Indicators, which is a report published every two years (sometimes every year) with valuable information on the education system, particularly in compulsory levels but also in child and adult education. Among the most interesting indicators there are data on *school population* (percentage

of children in compulsory education age that attend school, which kind of school they attend, origin of pupils...), on the *funding of the education system* (in relation to GDP, per pupil...) and on *educational results* (pupils' skills in the fourth of six school years in primary education, at age 15; program completion rates; employment and income rates relating to educational level completed...).

However, the Institute is also responsible for participating in and disseminating data from other reports different from the National System, such as OECD's PISA or TALIS¹³, as well as the studies by the International Association for the Evaluation of Educational Achievement (IEA) based in the Netherlands: TIMSS, PIRLS, etc.

D. Forms of evaluation

It has already been mentioned that the Spanish Act on Education aims to assessing many different elements of the education system. Specific provisions refer to general evaluation plans of the education system (A), general diagnostic evaluations of pupils (B) and evaluation of schools and of school management (D).

General evaluation of the education system

General evaluation consists on thorough gathering and treatment of data on different aspects of the education system, namely those reflected in the National System of Educational Indicators, which can be summarised in three groups: school population, funding of the education system and educational results.

The responsibility of the National Institute for defining evaluation plans has already been mentioned. Article 143 (paragraph 1) mandates that the implementation of these plans shall span several years, thus intending to assess the effects of educational policy over long periods. It is also interesting to notice that both the criteria and the procedure of the general evaluation must be made public before the beginning of the process. This would in principle allow for experts and media to judge whether data are relevant and reliable, and therefore if conclusions from an assessment are well founded.

Moreover, according to paragraph 3, data from general evaluation processes must be used for developing the National System of Education Indicators¹⁴. The National System of Indicators is intended to guide long-term policy-making, which arguably should be the aim of assessment procedures. However, policy-making on the basis of evaluation results must consider them thoroughly and as a result of several years of policy. Factors external to educational policy itself should also be considered when assessing the results from an evaluation process and planning future educational policy: economic circumstances (unemployment of parents, labour market and qualification needs, situation of private investment), cultural habits (working time, interest for education in society, forms of leisure), and technological developments (new educational possibilities based on information technologies).

As far as the process of general evaluation is concerned, administrations from the self-governing communities shall cooperate with the Institute in this respect, and thus provide the National Ministry with data from schools in their own territory. Such obligation to collaborate can only be judged

13 Teaching And Learning International Survey (TALIS) is a report by the OECD focusing on new teachers' views regarding different features of the education system and of their own preparation. The results appeared in a book by Jensen, B., et al. (2012), *The Experience of New Teachers: Results from TALIS 2008*, OECD Publishing. Available at www.oecd.org.

14 In the unofficial translation of Act nº 2/2006 it is called *State System of Education Indicators* (art. 143, par. 3).

favourably, since it is seemingly a fundamental condition for a decentralised education system to truly function¹⁵.

General “diagnostic” evaluation of pupils

Contemporary educational policy is considered to put the pupil in the centre of the education process. According to this idea it seems only natural that pupils’ skills are tested in order to understand whether the education system is appropriately fulfilling its task. In the Spanish system, four ‘basic competences’ of pupils are assessed: linguistic communication, mathematical competence, knowledge and interaction with the physical world, social and citizen’s skills¹⁶.

It is the National Institute, together with its equivalents in the self-governing communities, who must carry out these evaluation processes in order to obtain ‘representative data on both students and schools’ (article 144.1). ‘Diagnostic’ evaluations are compulsory for every school, and it is the regional administrations that must ensure they are conducted in every institution under their supervision (article 144.2). The Conference of Education (assembly of ministers of education) must in turn ensure that evaluation processes respect the same criteria in every self-governing community (article 144.1).

Regarding the aim of this specific form of evaluation, article 144.1 mandates it must be ‘of a formative and internal nature’. The use of the word ‘formative’ may be interpreted as an attempt to improve performance in every group of pupils. Indeed, ‘diagnostic’ evaluations are carried out in a strategic moment, when pupils are considered to have acquired a certain degree of maturity but there is still time in the same educational stage to make changes regarding the group. In primary school, diagnostic evaluation is conducted in the fourth out of six years (usually around the age of 10); in compulsory secondary school, in the second out of six years (usually around the age of 14). On the other hand, the use of the word ‘internal’ must be also understood as serving the purposes of the educational institution where the evaluation process has been conducted. This means that, again, the law forbids that the results of evaluations be used for ranking schools (article 144.3) and that it is the regional government that will decide how to disseminate such results in order to prevent damage to the school.

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Evaluation of schools and of school management

Both evaluation of schools and of school management are considered as part of regional autonomy in the field of education. As has been mentioned, self-governing communities are responsible for implementing the national ministry’s policies as well as their own. The functioning of schools is therefore a matter subjected to regional administrations competence, and thus provisions in the national law are not considered to be ‘basic’ in the meaning of article 149.1 of the Spanish Constitution. This means that self-governing communities can decide to pass different laws, which, given the general formulation and the flexibility of the provisions in articles 145 (on school evaluation) and 146 (on school management evaluation), is not likely to be the case. However, some communities have passed their own education Acts, and most of them include specific provisions that actually develop the contents of national law without necessarily deviating from them.

15 However, this is probably not sufficient. For instance in Germany, despite intense territorial cooperation through the *Kultusministerkonferenz*, the *Länder* are often criticised for splitting education into sixteen different systems. Notwithstanding this criticism, it can be argued that intrafederal cooperation remains a necessity for educational policy to be effective. At other times, they are criticised for the opposite, that is, relying too much on cooperation and neglecting both policy innovation and their specific cultural and economic background [Nettesheim (2006), ‘Wettbewerb föderalismus und Grundgesetz’]. It is not possible to go deeper into this debate now, which has been documented in Pablo Meix’s PhD thesis, *Análisis normativo y competencial de la educación en dos modelos políticos descentralizados: España y Alemania un estudio de Derecho Comparado a la luz del Derecho Europeo*, University of Cantabria, Spain, 2012. On structural problems entailed by excessive requirements for cooperation in the German federal constitution, see generally Darnstädt, T. (2004): *Die Konsensfalle. Wie das Grundgesetz Reformen blockiert*, DVA, Stuttgart.

16 See Ministerio de Educación (2011a), *Evaluación General de Diagnóstico 2010. Educación Secundaria Obligatoria. Segundo Curso. Informe de Resultados*, Ministry of Education of Spain, Madrid, pp. 21-36 and Ministerio de Educación (2010), *Evaluación General de Diagnóstico 2009. Educación Primaria. Cuarto Curso. Informe de Resultados*, Ministry of Education of Spain, Madrid, pp. 16-33.

Regarding the evaluation of schools, article 145 stresses the need that plans by the educational administrations take into account the socio-economic situation of parents, students, school environment and of the school resources. As has been mentioned above, the aim of evaluation activities should not be to rank schools according to their pupils' achievement in external evaluations, but to improve daily work in schools and policymaking bodies. In this respect, article 145.2 mandates educational administrations to 'support and facilitate self-evaluation by schools'.

As far as school management is concerned, article 146 simply empowers educational administrations to 'draw up plans to assess management' of schools. Again, this provision requires further development by regional authorities before such assessment can be implemented.

E. Dissemination of evaluation results

After regulating all these assessment procedures, the national Education Act mandates that the government annually present results from the National System of Educational Indicators and from general diagnostic evaluations to the national parliament. Recommendations by assessment bodies and by the National School Council must also be presented before parliament (article 147.1).

But apart from informing the parliament, the ministry of education has the obligation to make certain results of evaluation available to the public opinion. Indeed, the ministry must publish information from the National System of Indicators as well as conclusions drawn by the National Institute of Evaluation in cooperation with regional educational administrations (article 147.2). This means that results from assessment activities are not to be used in order to publicly rank schools or pupils, but only to improve policy and school work and, in terms of political *transparency*, inform citizens of the global performance of the education system. But it should be understood that, due to their technical complexity, results from assessment procedures could only be truly explained after rigorous study.

IV. Conclusions

Assessment of education on the basis of pupils' achievement is an important part of general assessment activities, but it should not be considered as the only relevant point when judging whether an education system is adequately performing its tasks. This is the main reason for the prohibition of school rankings on the basis of assessment procedures, as it would have a disastrous effect on schools with social difficulties.

Even in a country like Spain, where 25 to 35% of pupils attend private schools (often publicly-funded schools, but still), education remains one of the main responsibilities of the state. It is also the case in practically every European country comparable in size. Private schools exist on the basis of specific philosophical and religious convictions, but public schools generally ensure a perfectly pluralistic and open environment and therefore there seems to be no reason for changing the system's foundations.

Moreover, comparative legal theory shows how important it is to understand the whole logic of a political and legal system before importing one particular solution from another legal culture¹⁷. In an environment dominated by public action, where most schools receive teachers through general selection procedures and curricula are nationally and regionally defined, pure competition does not appear in its natural environment. Educational assessment, however, can be extremely useful if it is carefully designed and results are well studied before planning new educational policies. But there are some features that could be improved in the Spanish system.

Firstly, an exaggerate 'culture of evaluation' can be a threat to education's true aims, which should be to instruct pupils and help them grow up to be free and fully developed adults. If schools and teachers are constantly concerned with the pressure of the next evaluation process, there is a risk that they

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neglect every pupil's education in every stage¹⁸. In this respect, pupils are assessed for international reports such as PISA at the age of 15, but the Spanish system has conducted another evaluation process the year before (general diagnostic evaluation in compulsory secondary education) and four years before that (general diagnostic evaluation in primary education). In addition, the national Ministry of Education is planning to introduce compulsory general exams at the end of each stage: primary, compulsory secondary and non-compulsory secondary education. Pupils (and their teachers) would have to endure major assessments at the age of 10, another of at the age of 11, then 14, PISA at 15, another one at 16 and, if they decide to continue studying, another one around the age of 18.

Secondly, educational assessment plans is a highly technical process, and thus trained experts should perform it. From this perspective, it remains unclear why the Minister of Education could appoint the director of the National Institute for Educational Evaluation without necessarily having regard to his or her expertise. The Minister also appoints the experts in the scientific committee of the Institute. Establishing a rigorous professional body would probably prove more adequate. The use of evaluation results is a different matter that has to be decided on account of political criteria, but this is not the case with the performance of evaluation procedures, which should be conducted strictly on the basis of professional expertise and technical knowledge.

Thirdly, there is a risk that planning long-term education policy on the basis of evaluation results does not provide satisfactory results. The education system is a sociological field, and thus educational outcomes are not only the result of educational policy, but also of external circumstances. This does not mean that educational reform should be rejected, but only that it must take into consideration many other influences that make education an extremely complex field. This idea has already been thoroughly explained and it is not necessary to further elaborate on it at this stage.

It can thus be concluded that, while competition is not (and should not be) the aim of assessment activities in Spanish education and mostly in other European systems, evaluation can prove an extremely useful instrument for designing educational policy. However, governments should not consider improving evaluation results as an aim of educational policy, as this view would turn the whole system upside down.

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18 Martín Rebollo and Recio Muñoz point at the excessive bureaucracy of Spanish universities as one of the problematic features nowadays. See Martín Rebollo, L. and Recio Muñoz, T. (2011): 'Bewitched, bothered and bewildered' in *El Cronista del Estado Social y Democrático de Derecho*, n.º. 23, pp. 50-59 (p. 56). These authors, far from concentrating on this matter, deliver a general reflection on the current situation of the whole higher education system.

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