

# The participation of parents in the protection system: The case of the Spanish legislation

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## Abstract

Working with the families of origin of children and adolescents (CA) who are in the CA protection system is essential to achieve reunification, which is the ultimate objective when planning foster care; it is a scientific, social and professional challenge that must be included in the legislation of each country. For this, it is essential that the laws consider and regulate the participation of families in decision-making during foster care and subsequent reunification processes. We analysed 22 laws enacted through Spanish legislation, both national and regional, that regulate the protection of children. The study focuses on analysing how the Spanish legislation contemplates the participation of parents during foster care and subsequent reunification. The Spanish legislative texts do not expressly, clearly and effectively include the participation of parents. They are limited to the punctual recognition of acts of notification and hearing and, where appropriate, of opposition to certain resolutions. Spain lacks a general legal framework that supports and guarantees the necessary participation of the family in the protection system. The focus on the recognition of the rights of CA in laws as a result of international pressure has relegated the legal protection of the rights of parents, mainly in their right to be heard.

## KEYWORDS

child welfare, family welfare, legal documents, parents' rights, participation, protection system

## 1 | INTRODUCTION

Faced with a situation of abandonment caused by acts of domestic abuse or neglect, the protection of children and adolescents (CA) consists of temporarily separating the CA from their family of origin. Reunification is the most common objective when planning foster care (Fernández, 2013). Therefore, working with the family of origin is an indispensable condition that sets in motion the measure of foster care or residential care.

In the field of child protection, it is considered that the parents of protected children should express themselves, be heard and participate in the decisions and actions that concern them and their children

(Lafantaisie et al., 2020; Slettebø, 2013). Although the truth is that there is a long way to go to adopt this participatory approach within child and adolescent protection services.

Research on current international practices shows how they are characterized by very low levels of participation. Research on protection services professionals in Israel shows that the desires of parents and children during this process are scarcely considered, since professionals do not take into account their contributions in risk assessments (Arad-Davidson & Benbenishty, 2008). In another study, where 828 professionals from the protection services of Israel, Holland, Northern Ireland and Spain participated, it is shown how the opinion of parents was not considered by professionals in any of the countries

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(Benbenishty et al., 2015). Similarly, Palmer et al. (2006), in a study in which 66 interviews were conducted with parents in Canada, indicated that families receive very little information from protective services. Likewise, Smithson and Gibson (2016) point out that parents feel judged and self-conscious, emotionally little understood and stressed by the treatment they receive from the services of the protection system and frustrated because they have not been taken into account in decision-making. In Spain, a study with 135 participants—professionals, parents and children of the protection system—also showed a lack of participation and information both at the time of the establishment of the protection measure and at the time of returning home (Balsells et al., 2017, 2019).

The scientific literature confirms how parents' participation faces powerful barriers in the practice of professionals, administrators and the organization of protection systems (Jackson et al., 2017; Seim & Slettebo, 2017; Serbati, 2017). According to Lacharité (2015) and Toros et al. (2018), these obstacles arise mainly from cohabitation or even the clash of two different discourses. In the one hand, a traditional discourse that privileges the perspective of professionals who make decisions to protect CA from their parents and in the other hand a more progressive discourse in which a vision of the protection of CA is privileged as a shared responsibility between their family and professionals. In the first discourse, the CA are protected from the behaviours of parents and their “behaviours judged individually”; in the second discourse, the CA are protected by supporting family groups and local communities in their collective responsibility to ensure the safety and well-being of children (Lacharité, 2015).

It is in this second discourse that a more important place is given to participation and implies a firm belief that (1) families have the full right to participate in the decisions that affect them, (2) they are competent to make decisions provided they have the necessary information and support and (3) decisions made within the family are more likely to be successful than those imposed by external agents (Burford & Hudson, 2002). Only a system based on these beliefs will favour listening to their own vision of reality, as well as their way of understanding the care of their children and establishing a joint vision of the strengths, weaknesses and resources to respond adjusted to the needs of the children is the way forward (Balsells et al., 2022).

## 2 | LEGISLATION AS A FRAMEWORK FOR FAMILY PARTICIPATION IN THE CHILD PROTECTION SYSTEM: THE SPANISH CASE

However, according to the proposal by Lacharité et al. (2021), the participatory approach in the protection system is a paradigm shift that requires redefining the different dimensions involved: collaboration and institutional partnership, organizational governance, the voices of parents and children, attention to family diversity and the formation of professionals. This framework is necessary to achieve the involvement of all family members, in which social service professionals and the family work together and based on the quality of their relationship (Toros et al., 2018).

‘Organizational governance’ is understood as legislation, regulations and administrative and judicial procedures, which have to establish the point of view of families as fundamental in institutional actions.

In Spain, the return to the home is the objective of any measure of temporary separation and justifies the development and implementation of plans and programs for the recovery of the family environment (Balsells et al., 2018). This is what the Spanish legislation considers when it prioritizes the family life of CA (articles 2.2.c, 11.2.b and 12.3), *Organic Law 1/1996, of 15 January, on the Legal Protection of Minors, partially amending the Civil Code and the Civil Procedure Act [Ley Orgánica 1/1996, de 15 de enero de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil—LOPJM, LE1]* and maintains that, in the case of separation caused by abandonment, the main objective should be ‘reintegration into their own family’ (art. 172 ter 2) *Civil Code (Código Civil—CC, LE2)* as long as the previous assessment proposes a prognosis with the possibility of returning (art. 19 bis 3 LOPJM, LE1).

Considering reunification as an objective, the Public Entity that assumes the guardianship of CA must, once declared abandonment (art. 172.1 CC, LE2), ‘develop an individualized protection plan that includes the objectives, the forecast and the term of the measures of protection. Intervention to be adopted with the family of origin’ (art. 19 bis 1 LOPJM, LE1) as well as a family reunification program (art. 19 bis 2 LOPJM, LE1).

The protection laws in force in Spain address the issue of reunification into the family of origin of CA from a positive perspective. They propose proposing the development and implementation of individualized plans whose objective should be the return with their biological family and that focus, precisely, on their recovery (Martín, 2017). In this sense, Spanish legislation specifies the recovery of the family in a series of circumstances that must concur for reunification to be proposed: (a) a positive evolution objectively sufficient to re-establish family coexistence, (b) family ties have been maintained, (c) the purpose of performing parental responsibilities adequately concurs and (d) there is a technical report stating that the return does not involve significant risks for the child (art. 19 bis LOPJM, LE1).

Consequently, both the individualized protection plan and the family reunification program should contain, in addition to the intervention tools necessary to ensure the care of CA, the details of all the actions of support, guidance, training and assistance to the family so that, with their participation, the recovery of a safe family environment that allows reunification is possible (Cortada, 2017).

In this way, detailed and realistic planning is essential, adapted both to the needs of CA and to the needs and potential of the family: The sooner the changes that must be produced to enable the return, as well as the means and actions for this, are defined with the parents, the greater the chances of it occurring. Even more so considering the short term—2 years—that the law grants to maintain the temporary measure of protection and achieve reunification (art. 173 bis 2 c) (CC, LE2).

The impact of protection legislation in Spain (Ministerio de Derechos Sociales y Agenda 2030, 2020) is specified in a total of 49 171

open files of CA in foster care. The most common cause for which a minor was incorporated into the protection system was neglect (45%), followed by emotional abuse (33%), physical abuse (16%) and sexual abuse (6%).

The majority of children in Spain—a total of 18 892—were in foster families (53%) and 16 991 were in residential care (47%). The type of foster care in extended families predominates, with 12 115 cases compared with 6777 in another family (Ministerio de Derechos Sociales y Agenda 2030, 2020). This predominance of foster care in extended families can be justified, along with the absence of foster families, because it strongly extols family ties (Massons-Ribas et al., 2021).

More than 80% of CA who have been in foster care do not return to their biological family before coming of age. This implies that, even though the return with the biological family is the main purpose of abandonment, less than 20% of CA return to their family of origin (Ministerio de Derechos Sociales y Agenda 2030, 2020).

### 3 | METHODS

The objective of this research is to analyse what the legislation establishes for parent's participation in the Spanish legal system and propose the necessary revisions that allow the advancement of the legislation in the direction of the participatory approach. The purpose is to answer the following questions: What are the situations in which the law calls for parents to participate? What is the scope of this participation? Are there legal gaps in the legal system that hinder the participation of parents?

#### 3.1 | Search and screening of legal texts

A total of 22 existing laws were analysed (see Appendices):

- the *Organic Law 1/1996, of 15 January, on the Legal Protection of Minors, partially amending the Civil Code and the Civil Procedure Act (Ley Orgánica 1/1996, de 15 de enero de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil—LOPJM, LE1)*, which constitutes the legal framework of protection that links all public powers, institutions specifically related to CA, parents and family members and citizens in general;
- the *Organic Law 8/2021, of 4 June, on the comprehensive protection of CA against violence (Ley Orgánica 8/2021, de 5 de junio, de protección integral a la infancia y a la adolescencia frente a la violencia—LO 8/2021—LE4)*, which represents a further step in the protection of CA in cases of violence and in the adaptation of state regulations for the protection of CA to the precepts of the Convention on the Rights of the Child (CRC);
- the *Spanish Civil Code (CC, LE2)* that establishes, as far as we are concerned, the regulation of the person and the family with a state character;

- the *Law 1/2000, of 7 January, on Civil Procedure (Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil - LEC, LE3)* that affects the procedural regulation of certain aspects of the abandonment in the judicial sphere;
- the 17 laws for the protection of CA developed by the Autonomous Communities (ACs) within the framework of their competencies;
- the *Civil Code of Catalonia (LA7)*, which contains, in its Book II, a detailed regulation of the abandonment and its consequences.

The quantity and variety of the legal texts indicated responds to the political-territorial organization of Spain in 17 Autonomous Communities, with their respective legislative powers as a result of the distribution made by the *Spanish Constitution (Constitución Española—CE)*. According to the same, different laws that regulate the protection of children and the rights of CA coexist in Spain: the special legislation on the protection of CA developed by all the autonomous communities is subject to the principles and criteria of state organic laws and is exclusively applied to its territory.

#### 3.2 | Content analysis using a category system

Content analysis was the main methodology for the analysis of the laws and was developed as described below:

- A system of textual categories was developed through coding based on the proposal by Bouma et al. (2018) that divides the right of participation of CA into three dimensions: informing, listening and involving.
- Based on this categorization, a first analysis was prepared by selecting paragraphs, fragments and significant citations within the previously selected legal texts. Next, the category system was reviewed and modified by three researchers following a bottom-up direction in the process of textual analysis.
- Once the category system was specified and defined (Table 1), each law was coded independently by two researchers. The elements of agreement and disagreement were sought, and negative data were also coded. Subsequently, the discrepancies were analysed, and an agreement was reached.

#### 3.3 | Internal and external validity

To ensure the internal and external validity of the content analysis, the following actions were carried out:

- a. Consistency check: The description of the categories, the construction of the codes and the first exploratory content analysis (finding the text that belonged to the designated categories) were performed by the three researchers, separately and independently, for the subsequent verification of the degree of agreement. Each of

**TABLE 1** System of categories of the participation of parents, definition and examples.

Categories	Definition	Examples
(Inform) Notify and/or communicate	Legal act by which an administrative or judicial resolution is formally made known to the recipient	<ul style="list-style-type: none"> <li>• The administrative resolution that declares the situation of abandonment and the measures adopted <i>will be notified in legal form to the parents</i>, guardians or caregivers and to the affected minor if they have sufficient maturity and, in any case, if they are older than twelve years, immediately without exceeding the maximum period of forty-eight hours. (art. 172.1 CC, LE2)</li> <li>• Any admission to foster care of a child or adolescent in a centre <i>must be notified in writing, immediately, to the parents not deprived of parental authority</i> or to the people who have been assigned guardianship or custody and, likewise, it must be communicated to the Public Prosecutor. (art.164.5 LA13)</li> <li>• Once the measure (residential foster care) is adopted, it will be immediately <i>communicated</i> in writing to the parents, guardians, caregivers and the Public Prosecutor, as well as to the minor himself if he has sufficient judgement. (art. 88.3 LA15)</li> </ul>
(Listen) Hearing	Action in administrative or judicial process of listening to the allegations of the interested parties. It is a right and a procedural principle.	<ul style="list-style-type: none"> <li>• The public entity may agree, motivated, in the interest of the minor, the temporary suspension of visits and communications of this with the minor's parents and other people of the minor's extended family or relatives, <i>after the hearing for those affected</i> and the minor if he/she has sufficient maturity and, in any case, if is older than twelve years, with immediate notification to the Public Prosecutor. (art. 68.1 LA15)</li> <li>• Likewise, prior to the taking of evidence, if facts occurred or are alleged after the previous hearing, <i>the parties will be heard and the proposal and admission of evidence</i> provided for in Article 286 will be heard. (art. 433.1 LEC, LE3)</li> <li>• In the file (of reintegration), which may be initiated ex officio or at the request of at least one of the holders of parental authority, <i>a hearing will necessarily be given to the parents of the minor</i> and must expressly state the commitment of both, or of one of them, to adequately exercise the functions inherent to parental authority (art. 56.2 LA15)</li> </ul>
(Influence) Challenge	Oppose an administrative or judicial resolution. Request the substitution, cancellation or modification of the adopted resolution.	<ul style="list-style-type: none"> <li>• The resolution motivated by which the protection measures are agreed, which puts an end to the administrative procedure, will be immediately notified to the parents, guardians, caregivers or relatives who have recently lived with the minor, <i>who may challenge the competent authority on the measure adopted</i>, without prejudice to its immediate effectiveness. (art.5.3 LA18)</li> <li>• The minors affected by the resolution, <i>the parents</i>, guardians, foster carers, caregivers, the Public Prosecutor and those persons who the law expressly recognizes have such legitimacy, <i>shall be entitled to formulate opposition to administrative decisions regarding the protection of minors</i>, provided that they have a legitimate and direct interest in such resolution (art. 780.1 LEC, LE3)</li> <li>• The abandonment may be <i>revoked, at the request of those who have suspended the exercise of parental authority or ordinary guardianship, when they request it</i> within two years of the notification of the resolution for which it was declared; or ex officio, at any time. For this, it will be necessary to verify the causes that motivated it have disappeared and that the remaining conditions for family reunification required in article 121 of this law requires. (art. 109. 4 LA10)</li> </ul>

the researchers coded the text in the same way, all with the same understanding of both the category and the laws.

- b. Credibility control (validation of the codes by experts): once the categories and analysis codes were designed, two researchers who carried out this process presented their proposal to two external individuals for the validation of the codes by judges, taking into account the theoretical framework on child participation and that of parents.

## 4 | RESULTS

The analysis of the legislation in force in Spain allows us to affirm that in Spanish texts, there is no express, clear and effective recognition of the participation of parents. Thus, although art. 2.5.c LOPJM (LE1), collecting the mandate of art. 9.2 CRC, requires the participation of parents in the adoption of any measure in the interest of the minor, whether judicial or administrative, the truth is that, declared the abandonment, their participation is limited to specific actions with a very limited, or null, incidence in the measures adopted.

The results have allowed to identify three main categories of participation in Spanish legislation, which are defined in the following table (Table 1).

Participation, in the strict sense, can only be understood from the recognition of the three dimensions that comprise it: the right to information, to express their opinion and be heard and to have their voice duly considered in matters that concern them. However, Spanish law does not include references to the participation of parents in the assessment processes, decision-making or, much less, the process of change. In contrast, the laws limit the punctual recognition of acts of notification and hearing and, where appropriate, of opposition to certain resolutions—and only for a limited time.

In this sense, the terms used in the texts analysed to refer to the participation of parents—notify and communicate, hearing and challenge—reduce this right to simple administrative or procedural proceedings without any binding consequence in the decision adopted. They constitute the minimum expression of participation and give an idea, despite the importance of parents in foster care and reunification, of the limited scope of their voice in the process of improvement.

Thus, it is observed that, unlike what happens in the case of CA (Massons-Ribas et al. (2021)), the details of work with the family do not have a general legal framework that imposes, or even contemplates, their participation. In addition, not only in decision-making but also much less in its construction process and subsequent impact.

Thus, regardless of the degree of updating of the legislation for the protection of CA of the different ACs and despite their disparate regulation, we can affirm that the vast majority agree on the precarious recognition of the participation of parents. Consequently, to extrapolate the categorization proposal based on Bouma et al. (2018), an important adaptation has been necessary to better adapt it to its actual content.

### 4.1 | Inform. The right to information as a first step to exercise the right of participation by parents

The right to information, as the first dimension of participation, is the essential requirement to ensure its effectiveness: correct information on the reason and scope of the situation of abandonment, on the content and term of the protection measure adopted and on the improvement to be achieved and the actions to be carried out for it constitutes the initial element of participation. This is established by art. 22 LOPJM (LE1), which states that the public authorities must ‘inform parents, guardians or caregivers about the situation of minors when there is no judicial resolution that prohibits it.’

However, the right to information as an integral dimension of the participation of parents is not included in Spanish law. From the analysis of the expressions used in the laws analysed to refer to the information (notification, communication), the first evidence of the limited meaning given to it can be extracted. Thus, the analysis of Spanish legislation and of the ACs shows us that the treatment of the information that the public authorities must provide to the parents is limited to the ‘notification’ in legal form of those decisions adopted by administrative or judicial bodies in relation to the main actions of the situation of abandonment: the administrative resolution declaring the situation of abandonment and the measures adopted (art. 172.1 CC and art. 172 ter 1 CC, LE2); the administrative resolution adopted to delegate custody for the purpose of adoption—when it is found that the return of the CA with their family of origin will not be possible—(art. 176 bis 1 CC, LE2); any guardianship delegation for stays, week-end outings or vacations (art. 172 ter 3 CC, LE2); the administrative resolution by which the reunification is appropriate (art. 121.2 Valencia, LA10) and those judicial resolutions that are produced in the processes of challenge and opposition to the previous ones.

It would only be possible to point out some specificity in certain ACs, always limited to notifications or mandatory communications that are extended, where appropriate, to certain situations such as changes or variations produced in the exercise of guardianship (art. 110.3 Valencia, LA10) or, specifically, a transfer of the centre (art. 65.6 Galicia, LA12, art. 86.9 Castile-León, LA5 and art. 60.6 Navarra, LA8).

As seen, these actions of notification or communication, even providing information to the parents, are limited to mere specific acts that make known an adopted resolution, without being integrated into any participatory process. These acts do not constitute the initial requirement for listening but are configured as the final point of an external decision-making process: To fulfil its function in participation, the information should not be specified in an isolated and obligatory act but rather and should be configured as part of a cyclical process in the service of achieving the desired results.

### 4.2 | Listen. The right of parents to be heard

Listening is an essential element to correctly interpret and apply, in each case, the will of the parents, always preserving the best interests

of the CA. Thus, the realization of the right to be heard should not remain in mere listening, even within the framework of a guaranteed process.

The legislation analysed shows how the anticipation of listening to the parents in the reunification process—with the abandonment declared and the separation of the CA from their family of origin—is a concrete and residual act. In reality, listening is limited, mostly, to cases contemplated in procedural legislation in judicial environments and fundamentally in the processes of challenge of administrative decisions of abandonment and establishment and cessation of protection measures.

Thus, apart from mandatory listening in the judicial sphere according to procedural rules, Spanish legislation only provides for hearing parents when the Public Entity intends to temporarily suspend visits and communications with their children (art. 161 CC, LE2) or in cases of cessation of foster care (art. 173.4 b) (CC, LE2).

It is not stated in Spanish legislation that their opinion is required in the development of the Individualized Protection Plan or the Family Reintegration Program—which contains all the objectives to be achieved, the deadlines and the actions to be implemented for their achievement—and where participation should be fundamental. Only in La Rioja is it expected to give a hearing to the parents when the file of reunification of the child and youth into the family of origin is initiated (art. 56.2 La Rioja, LA15).

### 4.3 | Influence. The right to have the opinion of parents taken into account in the decision adopted

The influence of the parents in decision-making implies that the opinions and wills expressed in the listening are taken into account in the resolutions, measures or agreements adopted. In the context of child protection, and specifically in abandonment, this would mean that parents should be integrated into the overall process of identification of abuse, intervention, monitoring, evaluation of interventions and verification of results.

However, in Spanish legislation, this is not the case: Information and listening to parents in cases of abandonment constitute, as has been pointed out, specific and final actions that are not integrated into a process of participation.

They are formal requirements in external decision-making. Therefore, they cannot be considered participation since they are not actions that influence the outcome of the final decisions.

In this same sense, it should be noted that the 2015 reform of state protection legislation eliminates an aspect in which the opinion of the parents had a clear and immediate impact: According to art. 173.2 CC (LE2), in its wording prior to the reform, it is stated that the consent of the family of origin was essential when the proposed protection measure was foster care. This consent had to be formalized in writing in a document that had to contain the modality of foster care and expected duration, the rights and duties of each of the parties, the monitoring that, depending on the purpose of the foster care, should be carried out by the public entity and the commitment of collaboration of the foster family.

The absence of consent prevented the establishment of the proposed foster care, thus giving the opinion of the family of origin a clear impact on the final result.

However, the 2015 amendment eliminates this requirement, with the art. 173.2 CC (LE2) changing to require only the consent of the foster family and the foster child for the establishment of foster care but not that of the family of origin. The regional laws subsequent to the 2015 reform also eliminate the requirement of consent, replacing it with a simple notification of the agreed protection measure (art. 126 Valencia, LA10, arts. 144 and 155 Balearic Islands, LA13). Andalusia (art. 99.3, LA1), for its part, refers the regulation of the procedure of constitution of foster care to a subsequent regulatory development that has not yet occurred.

## 5 | DISCUSSION

This study has shown the incipient legislative development of the participatory approach in the child and adolescent protection system in Spain. The participatory approach supposes a paradigm shift that has to be reflected in the different dimensions of work with the family of origin, and the legislative changes have to echo them.

A first contribution of this study is that Spanish legislation does not contain an express recognition of the participation of parents and lacks a general legal framework that supports and guarantees the necessary participation of the family in the protection system. The content analysis has shown how information is not considered a step prior to listening and its influence but as a purely communicative, formal and punctual action, leaving aside participatory action. In all these cases, the information is not included in a participatory process since it does not involve a step prior to listening but only the fulfilment of a legal procedural guarantee. The participation of families is limited to the specific recognition of the right to information and hearing of parents and to the opposition to certain resolutions—and for a limited time—but not to full participation. In this sense, the use of terms such as ‘notification’, ‘communication’ and ‘hearing’ reduces participation in simple administrative or procedural proceedings without any binding consequence on the decision taken. According to the interpretations of Lacharité (2015), the Spanish legislative framework continues to respond to a paradigm based on the protection of children against their parents and their behaviours judged individually.

In fact, the scarce recognition of parent's participation in the protection system legislation clashes with the procedural rights that are generally granted to any interested party in both the administrative and judicial filed. Thus, *Law 1/2000, of 7 January, on Civil Procedure (LE3)* and *Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations*, generally recognize the right to request and receive at all times clear and continuous information of the process, to resolve doubts, to legal assistance, to provide evidence, to make allegations, ... rights that disappear in the protection system, forgetting that parents are an interested party in the process.

A second contribution, and according to O'Mahony et al. (2017), is that also in Spain, the focus on the recognition of the rights of CA

(in particular the right to participate) in the laws as a result of international pressure has relegated the legal protection of the rights of parents, mainly in their right to be heard. While the participation of CA is already, at least formally, a principle widely accepted in Spanish legislation (Massons-Ribas et al., 2021), the same does not happen with the participation of parents. Faced with this scenario, the truth is that if there is participation of the parents in practice, it is not due to the existence of a general and express legal recognition that imposes it but to the particular regulatory development, more or less extensive, that each Autonomous Community has carried out its plans, programs and manuals and instruments of action and, in any case, to the sensitivity of the professionals responsible for the process. The Committee on the Rights of the Child in recommendations 5 and 6 of the Concluding Observations on the combined fifth and sixth periodic reports of Spain (Committee on the Rights of the Child, 2018) shows its special concern for this lack of harmonization and coordination of state and regional legislation.

For this reason, the absence of a general framework that establishes the principle of parent participation causes a lack of a participatory approach.

Third, although the participation of parents is a decisive element in the foster care and reunification processes, it is not included in the general legislation along with that of CA. Research indicates that the benefits of incorporating the voice of families in their process are directly linked to the probability of reunification (Lee et al., 2012; Schofield et al., 2011) and that listening to the voices of families in the decisions that affect them increases the probability of returning home, since their direct participation makes them more likely to collaborate (Burford & Hudson, 2002).

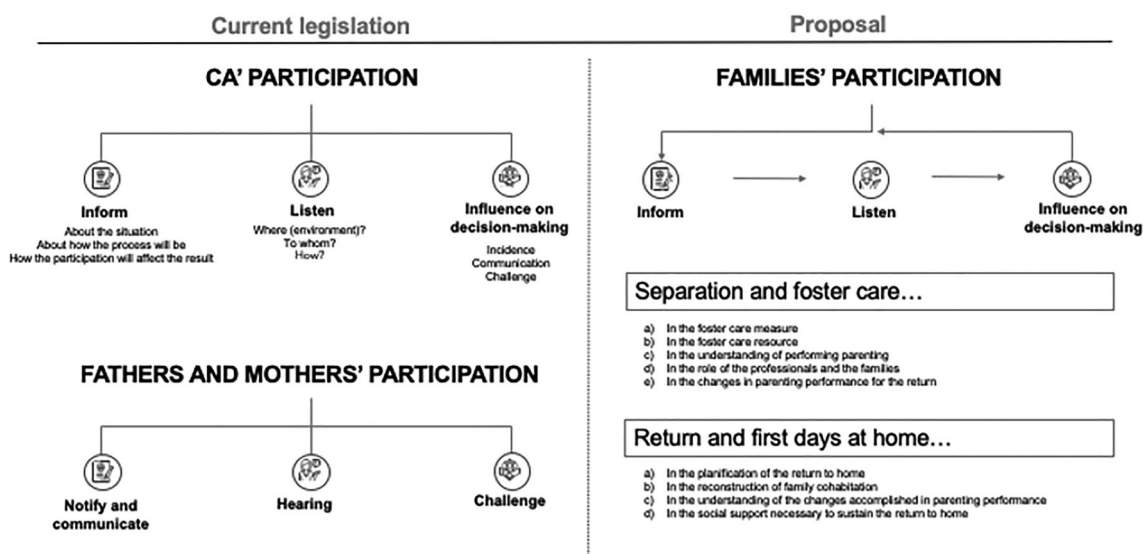
The participation of parents is such a decisive element in reunification processes that it should be considered in general legislation along with that of CA.

## 6 | CONCLUSIONS AND IMPLICATIONS FOR POLICY

The absence of a general framework that establishes the principle of participation of parents in abandonment and the reunification process causes a lack in the participatory approach that should be resolved. Legislation taking into account this evidence would mean adopting a whole process of foster care and reunification combining the practice of intervention and the practice of evaluation (Milani et al., 2011). Those involved become protagonists in the process of evaluating their actions; they learn to evaluate their own effectiveness, and the probability of achieving the objectives that art. 19 LOPJM (LE1) requires for reunification is increased: a positive evolution of the family, the maintenance of bonds, the purpose of performing parental responsibilities adequately and the verification of the absence of risks in the return of the child.

However, and against this, it should be noted that Spanish laws do recognize the participation of parents in cases of preservation, that is, in those cases in which, once the risk for CA is detected, work is initiated with the family to contain it or eliminate it, thus avoiding separation. Thus, in cases of preservation, Spanish laws recognize the participation of parents in the development and execution of a family social and educational intervention project, which should include the objectives, actions, resources and forecasting deadlines. For its elaboration, which will be sought by consensus, the parents' 'opinion will be heard and taken into account', and for its application, 'they will actively collaborate, according to their ability, in the execution of the measures indicated in the aforementioned project' (art. 17.4 and 17.5 LOPJM, LE1).

This, precisely, should be the participatory approach to be adopted in the process of reunification once separation has occurred. The priority of reunification imposed by the law requires the same or



**FIGURE 1** Participation of children and adolescents (CA) and parents in current Spanish legislation versus legislative proposal for the participation of families (children and parents).

even greater involvement of parents than in preservation. With its absence, it seems that once the child has been declared in abandonment and the child is separated from his or her family of origin, and despite the primary goal of reunification, the law abandons this objective, completely forgetting the participation of the biological parents.

Our opinion is that the concept of participation cannot have different contents before and after abandonment: The right to participate is unique and should be recognized even more when the objective is the reconstruction of a family environment.

We understand, in this way, that the content and form of the Individualized Protection Plan and the Family Reintegration Program (art. 19 bis LOPJM, LE1) should be an agreement developed with the participation of parents on the objectives to be achieved and on the concrete and detailed work to be done.

The initial formalization of a joint document that contains the objectives to be achieved and the work to be carried out will clarify the situation and facilitate understanding. It should be taken into account that a large part of the families that are in a situation of abandonment 'do not understand the actions they have to carry out to ensure that their child or children are reunified into their own family, and even more so considering (...) the absence of specific precepts that contemplate (...) the concrete steps to be observed by the parents who intend to recover the custody of their minor children' (Zamora Segovia, 2011).

From the initial development of the Individualized Protection Plan and the Family Reintegration Program, the work aimed at reunification should be, in the same way, a joint task, where the involvement of parents and CA is fundamental for achieving the objectives pursued. The three dimensions of participation—the right to be informed, heard and that their decisions are taken into account—are equally relevant.

In this way, the participation of parents and children would be effective throughout the intervention process—assessment, decision-making and change process—occurring cyclically at each moment and for each of the contents, the triad of information/listening/influencing.

Our proposal is to introduce a general legal framework for participation that implies unanimous respect for it. The reunification process should be addressed indistinctly with parents and sons/daughters, attending, at a minimum, to the following contents (Figure 1):

- At the time of separation and foster care, the dimensions of participation should be addressed to (Balsells et al., 2019): (a) understand and internalize abandonment and, with it, separation, (b) know the foster care resource, (c) acquire a realistic view of the exercise of parenting during foster care, (d) identify the role of professionals and (e) identify the necessary improvements in the exercise of parenting to complete the return of the CA to the home.

In this sense, and without specifying the scope of the measure, the formulation of recent art. 69 of the law of Andalusia (LA1) is encouraging, which proposes incorporating 'positive parenting training courses, which should be especially present in family intervention projects and intervention plans of social services' in situations of abandonment.

- In the return and follow-up phase, the objectives of participation should be addressed to (Balsells et al., 2014): (a) plan the necessary adjustments for the reconstruction of the relationship in the return home, (b) be realistic with the changes achieved in the exercise of parenting, (c) know the characteristics of a process of returning home and (d) establish the social support necessary to sustain the return home (follow-up).

In this way, the graphic design of the figure of the participation of parents should overcome the current symbolic presence of the three dimensions to achieve full participation. The participation of parents in all its dimensions must be present from the moment of separation, both in the individualized protection plan and in the development and implementation of the family reunification program and its subsequent support monitoring (treatment plan in art. 97 of the law of Andalusia, LA1; extend the support provided or initiate new measures or concrete actions that facilitate or reinforce the process of integration of the minor as indicated in art. 60.5 Navarra, LA8.).

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## CONFLICT OF INTEREST STATEMENT

The author declared no potential conflict of interest with respect to the research, authorship and/or publication of the article.

## DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available in the supporting information of this article.

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## APPENDIX A

TABLE A1. Spanish legislation analysed.

Identification code	Scope	Autonomous community	Law
LE1	State	-	Organic Law 1/1996, of 15 January, on the Legal Protection of Minors, partially modifying the Civil Code and the Civil Procedure Act
LE2	State	-	Royal Decree of 24 July 1889, by which the Civil Code is published
LE3	State	-	Law 1/2000, of 7 January, on Civil Procedure
LE4	State	-	Organic Law 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence
LA1	Autonomous	Andalusia	Law 4/2021, of 27 July, on Children and Adolescents of Andalusia
LA2	Autonomous	Aragon	Law 12/2001, of 2 July, on Children and Adolescents in Aragon
LA3	Autonomous	Cantabria	Law 8/2010, of 23 December, on the guarantee of rights and care for children and adolescents
LA4	Autonomous	Castile-La Mancha	Law 5/2014, of 9 October, on Social and Legal Protection of Children and Adolescents of Castile-La Mancha
LA5	Autonomous	Castile and León	Law 14/2002, of 25 July, on the Promotion, Care and Protection of Children in Castile and León
LA6	Autonomous	Catalonia	Law 14/2010, of 27 May, on rights and opportunities in childhood and adolescence
LA7	Autonomous	Catalonia	Law 25/2010, of 29 July, on the second book of the Civil Code of Catalonia, relative to the person and the family
LA8	Autonomous	Foral community of Navarra	Foral Law 15/2005, of 5 December, on the promotion, care and protection of children and adolescents
LA9	Autonomous	Community of Madrid	Law 6/1995, of 28 March, on Guarantees of the Rights of Children and Adolescents in the Community of Madrid
LA10	Autonomous	Community of Valencia	Law 26/2018, of 21 December, on the rights and guarantees of children and adolescents
LA11	Autonomous	Extremadura	Law 4/1994, of 10 November, on the protection and care of minors
LA12	Autonomous	Galicia	Law 3/2011, of 30 June, of support to the family and the coexistence of Galicia
LA13	Autonomous	Balearic Islands	Law 9/2019, of 19 February, on the care and rights of children and adolescents in the Balearic Islands
LA14	Autonomous	Canary Islands	Law 1/1997, of 7 February, on Comprehensive Care for Minors
LA15	Autonomous	La Rioja	Law 1/2006, of 28 February, on the Protection of Minors of La Rioja
LA16	Autonomous	Basque Country	Law 3/2005, of 18 February, on Care and Protection of Children and Adolescents
LA17	Autonomous	Principality of Asturias	Law 1/1995, of 27 January, on the protection of minors
LA18	Autonomous	Region of Murcia	Law 3/1995, of 21 March, on children in the Region of Murcia