JUST CLOSER

National Report on the youth justice system

SPAIN

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Introduction

This report has been produced as part of the JUST CLOSER project, which aims to strengthen respect for the procedural rights of children and young people in contact with the justice system by valuing their voices and recommendations and promoting their active participation[1].

The project has identified a practical gap between children's rights, needs and views and the workings of the juvenile justice system, largely due to the inability of adults to inform, listen to and take full account of children's views. Therefore, its main objective is to identify the gaps and strengths of the existing legal framework at EU and national level, while contributing to the harmonisation of practices.

In order to achieve this general objective, the aim of this report is to analyse the juvenile justice system in Spainl from a child rights-based approach. To this end, the methodology of this report has been to review the effective implementation of Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for minors suspected or accused in criminal proceedings[2] (hereafter Directive (EU) 2016/800) in the light of the Child-friendly Justice Guidelines of the Committee of Ministers of the Council of Europe[3], adopted in 2011. This analysis will identify good practices and gaps, and will help to identify the main challenges faced by European countries in their juvenile justice systems.

Children are considered by the European Commission as vulnerable defendants and suspects[4].

Directive 2016/800 is a harmonisation standard that aims to unify criminal procedural law for minors in the Member States in order to establish minimum procedural safeguards for minors suspected or accused in criminal proceedings[5]. This will enhance mutual trust between Member States and the mutual recognition of judicial decisions in this area.

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[1] A special thank you should be given to the extremely helpful and kind comments of the following professionals: Ms. Gema García Hernández, Public Prosecutor of the Superior Public Prosecutor's Office of Madrid (on secondment to the Minors' Section of the Provincial Public Prosecutor's Office of Madrid); Dra. Vicenta Cervelló Donderis; Dra. Asunción Colás Turégano; Prof. Dr. F. Javier Jiménez Fortea; Mr. Juan Molpeceres Pastor, Lawyer; and Mr. Juan José Periago Morant, Lawyer.

[2] Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, in OJ L 132, 21.5.2016.

[3] COUNCIL OF EUROPE, "Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice", *Council of Europe Publishing*, Strasburg, 2011. Available at: https://rm.coe.int/16804b2cf3, last access 21.01.2024.

[4] EUROPEAN COMMISSION: "Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings", 2013/C 378/02. Recital 1: *"...all suspects or accused persons who are not able to understand and to effectively participate in criminal proceedings due to age, their mental or physical condition or disabilities ('vulnerable persons')*".

[5] PILLADO GONZÁLEZ, E., "Implicaciones de la Directiva (UE) 2016/800, relativa a las garantías procesales de los menores sospechosos o acusados en los procesos penales, en la Ley de responsabilidad penal del menor", *Revista General de Derecho Europeo*, n. 48, 2019, pp. 58-97.

An overview of the Spanish criminal justice system

In Spain, juvenile justice is regulated by Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minors[6] (hereafter Organic Law 5/2000); as well as by Royal Decree 1774/2004, of 30 July, approving the Regulation of Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minors[7] (Organic Law 5/2000 Regulation)[8] .

This legal framework, with now more than twenty years, it has suffered various modification of different aspects and importance[9] . In fact, nowadays it is questioned whether the different reforms conducted may blur the initial finality of Organic Law 5/2000[10].

Therefore, a first point that stands out is that the Spanish legal framework is previous to Directive 2016/800, and there not been a specific transposition of this Directive. However, as we will develop in this report, in general, the system is compliance with Directive 2016/800.

The Spanish juvenile justice system is therefore a completely different jurisdiction from adult criminal justice, with specific and specialised courts.

The doctrine agrees that the basic principles established in the Organic Law 5/2000 are perfectly in line with the standards of the United Nations Convention on the Rights of the Child of 20 November 1989, also known as the New York Convention (hereinafter, CRC)[11] . As the law itself makes explicit: "*The persons to whom this Law applies shall enjoy all the rights recognised in the Constitution and in the legal system, particularly in Organic Law 1/1996, of 15 January, on the Legal Protection of Minors, as well as in the Convention on the Rights of the Child of 20 November 1989 and in all those rules on the protection of minors contained in the Treaties validly concluded by Spain*"[12].

[6] BOE n. 11, 13.1.2000. On its origins, see, LADROVE DÍAZ, G., *Derecho Penal de menores*, Tirant Lo Blanch, Valencia, 2001.

[7] BOE n. 209, 30.8.2004.

[8] On the evolution of the Spanish juvenile system see, for example, JIMÉNEZ FORTEA, F. J., "La evolución histórica del enjuiciamiento de los menores de edad en España", *Revista boliviana de Derecho*, nº 18, 2014, pp. 160-181.

[9] The most relevant are: Organic Law 7/2000, of 22 December, amending Organic Law 10/1995, of 23 November, of the Criminal Code, and Organic Law 5/2000, of 12 January, regulating the Criminal Responsibility of Minors, in relation to terrorist offences (BOE n. 307, 23.12.2000); and Organic Law 8/2006, of 4 December, amending Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minors (BOE n. 290, 5.12.2006). More recent reforms include Organic Law 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence (BOE n. 134, of 5.6.2021); or Organic Law 4/2023, of 27 April, for the modification of Organic Law 10/1995, of 23 November, of the Criminal Code, in crimes against sexual freedom, the Criminal Procedure Law and Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minors (BOE n. 101, of 28.4.2023).

[10] For a study of the application of the Organlic Lw 5/2000 in numbers see GUARDIOLA GARCÍA, J., "Desarrollo e implantación del Derecho penal de menores en España", *InDret*, n. 4., 2022, pp. 112-149; GUARDIOLA GARCÍA, J., "Introducción" and "Veinte años de responsabilidad del menor en el sistema penal español: un análisis desde las cifras oficiales", en Guardiola García, J. (coord.), *Peligrosidad, sanción y educación: veinte años de Ley Orgánica de Responsabilidad Penal de los Menores*, Tirant lo Blanch, 2023, pp. 11-60 and 201-246.

11 BOE of 31.12.1990.

[12] Free translation. Art. 1.2 Organic Law 5/2000.

Furthermore, the Organic Law 5/2000 and the Spanish juvenile justice model are based on the evidence that children should enjoy the recognition of the same rights as adults[13], as the Spanish Constitutional Court[14] has already stated.

A further peculiarity of the Spanish system should also be highlighted. The Autonomous Communities have also competences in matters of enforcement of the measures of the juvenile justice system (art. 45 Organic Law 5/2000). Therefore, each Autonomous Community has its own legislative development regarding the enforcement of measures[15] .

Some of the main characteristics of the Spanish juvenile justice system are the following:

1) The Organic Law 5/2000 is essentially a procedural law, as it contains few substantive provisions. The aim was certainly not to draft a Criminal Code for minors, with an autonomous catalogue of offences. But perhaps the opposite extreme has been chosen, with a text that contains few substantive criminal provisions. Because with this minimum model, what is actually being constructed is a system not very different from the Criminal Law of adults, when the real purpose was to draw up a specific regime adapted to the special characteristics of personality and degree of maturity present in minors[16].

The truth is that the differences between adult criminal law and juvenile criminal law are only to be found in the system of legal consequences, and little else, without containing specific rules on authorship and participation, attempt, desistance, preparatory acts, error (especially error about unlawfulness), imprudence, commission by omission, exonerating circumstances and modifying circumstances, to cite only the most serious and conspicuous absences[17] .

2) Moreover, the presuppositions for the application of the measures are the following[18]:

A) First of all, we can speak of a presupposition that establishes the objective scope of application; in such a way that the measures can only be applied to a minor for the commission of acts classified as a crime; that is, for typical, unlawful, guilty and punishable conduct, which is so classified in the Criminal Code or in the special criminal laws[19] .

B) Secondly, reference should be made to the subjective scope of application. Organic Law 5/2000 will apply to persons over 14 years of age and under 18 years of age who have committed crimes[20].

3) The basic principles of the juvenile justice system are:

a. The most significant substantive principles is the best interests of the child.

b. As for the procedural principles, we can mention: legality, opportunity, necessity, accusatory, free assessment of evidence, flexibility.

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[13] In this sense, PILLADO GONZÁLEZ, E., "Implicaciones de la Directiva...", cit., p. 69.

[14] STC 36/1991, 14.2, "BOE" n. 66, 18.3.1991.

[15] Thus, for example, in the Valencian Community we find Law 26/2018, of 21 December, on the rights and guarantees of children and adolescents (Title IV) (BOE n. 39, 14.2.2019). As well as various Circulars/Instructions of the Second Vice-presidency and Regional Ministry of Social Services, Equality and Housing.

[16] GONZÁLEZ CUSSAC, J. L. ORTS BERENGUER, E., *Compendio de Derecho Penal. Parte General*, Tirant Lo Blanch, Valencia, 10 ed., 2023, p. 613.

[17] ÍDEM, p. 613.

[18] See, in this regard, art. 1.1. and 5 Organic Law 5/2000.

[19] Vid. Art. 1.1 of Organic Law 5/2000.

[20] See section 3.2.2. on age liability.

c. Moreover, the Principles of procedure are also applied, mainly, orality, publicity, concentration, immediacy and celerity.

4) The nature of this Law is both educational and sanctioning.

THE IMPLEMENTATION OF DIRECTIVE (EU) 2016/800 AND THE APPLICATION OF THE PRINCIPLES OF CHILD-FRIENDLY JUSTICE IN THE SPANISH JUVENILE JUSTICE SYSTEM

Accessible justice: the right to information

Justice must be accessible to all children. All barriers to access to justice must be removed and children must be provided with adequate information about their rights. Justice must be free of charge and legal aid must be guaranteed, as well as access to support services and resources.

The related articles of Directive (EU) 2016/800 are basically Article 4 on the right to information and Article 18 on the right to legal aid[21] .

In the words of Pillado González, "the purpose of the right to information for minors is for them to know and understand the reasons that have led them to be subjected to criminal proceedings, what the different phases of the proceedings are and what rights they have throughout the process"[22] .

As noted above, this right is provided for in Article 4 of Directive 2016/800, which sets out the obligation of Member States to ensure that children suspected or accused in criminal proceedings are informed promptly, in simple and accessible language[23] .

In Organic Law 5/2000 we find various articles that refer to the right of children to be informed at different stages of the procedure[24] .

A) Specifically, Article 22.1 of the Organic Law 5/2000 expressly establishes that the child must be informed, from the moment the proceedings are initiated, either by the juvenile judge, the Public Prosecutor's Office or the police officer. However, it is not further detailed which rights and in what form they should be informed.

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[21] Other related EU Directives: Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings (Art. 2 and 3); Directive 2012/13/EU on the right to information in criminal proceedings; Directive 2013/48/EU on the right to legal counsel in criminal proceedings (Art. 3).

[22] PILLADO GONZÁLEZ, E.: "Implicaciones de la Directiva...", cit., p. 71.

[23] See also Recital 19: "*Children should receive information about general aspects of the conduct of the proceedings. To that end, they should, in particular, be given a brief explanation about the next procedural steps in the proceedings in so far as this is possible in the light of the interest of the criminal proceedings, and about the role of the authorities involved. The information to be given should depend on the circumstances of the case*".

[24] Arts. 22.1 a), 17.1, 36, 56 and 58 Organic Law 5/2000.

This article then lists the rights of children involved in these situations: "*b) To appoint a lawyer to defend him or her, or to have one appointed ex officio and to have a confidential interview with him or her, even before making a statement. c) To intervene in the proceedings carried out during the preliminary investigation and in the judicial process, and to propose and request, respectively, the carrying out of proceedings. d) To be heard by the Judge or Court before adopting any decision that concerns him/her personally. e) Affective and psychological assistance at any stage and level of the proceedings, with the presence of the parents or another person indicated by the minor, if the Judge for Minors authorises their presence. f) The assistance of the services of the technical team assigned to the Minors' Court*"[25].

B) Equally relevant is Article 17.1 of the law under study, which establishes that: "*The authorities and officials involved in the arrest of a minor shall carry out the arrest in the manner least prejudicial to the minor and shall be obliged to inform him/her, in clear and understandable language and immediately, of the facts with which he/she is charged, of the reasons for his/her arrest and of the rights to which he/she is entitled...*"[26]. It has been noted that for the proper transposition of Article 4(1) of Directive 2016/800 it is necessary to complete the above-mentioned list and add the following rights: the right to have the holder of parental authority informed; the right to protection of privacy; the right to free legal assistance; the right to a medical examination; the right to be accompanied by the holder of parental authority during hearings; and the right to be present at the trial[27] .

In relation to the information provided to children at the time of arrest, Instruction 1/2017 of the Secretary of State for Security will update Instruction no. 11/2007, of 12 September, of the Secretary of State for Security, which approves the "Protocol for police action with minors", and expand the content of article 4.4.2 in line with legislative reforms and international commitments. The current regulation is as follows:

"*a. The right to remain silent by not testifying if he/she does not wish to, to not answer any or some of the questions put to him/her, or to state that he/she will only testify before the Public Prosecutor's Office or the Judge.*

b. The right not to testify against oneself and not to confess guilt.

c. The right to appoint a lawyer, without prejudice to the provisions of section 1.a) of article 527 of the Criminal Procedure Act, in relation to the incommunicado detention of detainees over the age of sixteen, and to be assisted by him or her without undue delay.

If, due to geographical remoteness, the immediate assistance of a lawyer is not possible, the detainee shall be provided with telephone or video-conference communication with the lawyer, unless such communication is impossible.

d. The right of access to those elements of the proceedings that are essential to challenge the lawfulness of the detention or deprivation of liberty.

e. The right to be informed, without undue delay, of his or her deprivation of liberty and the place where he or she is being held without undue delay. Foreigners shall have the right to have the above circumstances communicated to the consular office of their country.

f. The right to communicate by telephone, without undue delay, with a third party of their choice. This communication shall take place in the presence of a police officer or, where appropriate, the official designated by the judge or prosecutor, without prejudice to the provisions of Article 527 of the Criminal Procedure Act, in relation to the incommunicado detention of detainees over the age of sixteen.

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[25] Free translation.

[26] Free translation.

[27] In this sense, PILLADO GONZÁLEZ, E., "Implicaciones de la Directiva...", cit., p. 73.

g. The right to be visited by, communicate and correspond with the consular authorities of his or her country.
h. The right to be assisted free of charge by an interpreter, in the case of foreigners who do not understand or do not speak Spanish or the official language of the action in question, or deaf or hearing impaired persons, as well as other persons with language difficulties.
i. The right to be examined by the forensic doctor or his or her legal substitute and, failing this, by the doctor of the institution in which he or she is being held, or by any other doctor dependent on the State or other Public Administrations.
j. The right to apply for free legal aid, the procedure for doing so and the conditions for obtaining it.
4.3.4. Where a statement of rights is not available in a language which the detained juvenile understands, he or she shall be informed of his or her rights through an interpreter as soon as possible. In this case, the written statement of rights in a language he or she understands shall be given to him or her without undue delay thereafter.
4.3.5. The detained juvenile shall be allowed to keep the written statement of rights in his or her possession throughout the period of detention, in a manner that is compatible with the physical security of his or her person while in police custody. Where such compatibility does not allow him/her to keep the written statement of rights in his/her possession, it shall remain at his/her disposal, for the duration of the precautionary measure, together with his/her personal effects.
4.3.6. The above information shall be provided in language that is understandable and accessible to the addressee. To this end, the information shall be adapted to the age, degree of maturity, disability and any other personal circumstance that may result in a limitation of the capacity to understand the scope of the information provided"[28].

This forms part of the police report, which is the document (attestation) that is sent to the Juvenile Section of the Provincial Public Prosecutor's Office, and its effective compliance can be verified.

C) Moreover, only Article 58 of the aforementioned law, regarding the information that must be provided to the child when he/she is admitted to a detention centre, specifies that such information must be provided in writing. Therefore, a sector of the doctrine recommends the express introduction in Article 22.1 a) of the Organic Law 5/2000 of the right of the child to be informed orally in clear and understandable language in accordance with his or her age and maturity, together with written information that he or she may consult at any time[29] .

D) On the question of whether language is used that is understandable and appropriate to the age and maturity of the children, the response is not uniform. What is certain is that the professionals interviewed agree in affirming that the professionals involved are very familiar with dealing with children and receive specific training for this purpose. Therefore, when interacting directly with them, they adapt their language. On the contrary, the same conclusion is not reached in a study carried out specifically on the group of foreign children in conflict with the law, which concludes that children do not correctly understand the information provided to them orally during detention, therefore, it is recommended to establish a protocol clearly defining the criteria for assessing the language skills of detained or accused children[30] .

[28] Free translation.
[29] PILLADO GONZÁLEZ, E.: "Implicaciones de la Directiva...", cit., p. 70.
[30] FERNÁNDEZ MOLINA, E., "Derechos procesales de los menores sospechosos o acusados en la Unión Europea. Informe Nacional España", PRO JUS Project, 2016. Available at: https://blogextranjeriaprogestion.org/wp-content/uploads/2016/12/derechos-procesales-de-los-menores-sospechosos.pdf, last access 20.1.2024, p. 48.

However, the problem lies in the written language, especially in procedural documents, in which complex legal language is used and is not adopted in such a way that the child concerned can understand it properly[31] . Indeed, there is no specific material available to the child[32] .

E) Equally essential for the exercise of the right to information is adequate translation for children who do not speak Spanish adequately. The translation of all acts is carried out orally through official translators. The file, with the exceptions of the co-official languages, is entirely in Spanish.

In this area, the reform introduced by Organic Law 5/2015, of 27 April, amending the Criminal Procedure Act and Organic Law 6/1985, of 1 July, on the Judiciary, to transpose Directive 2010/64/EU, of 20 October 2010, on the right to interpretation and translation in criminal proceedings and Directive 2012/13/EU, of 22 May 2012, on the right to information in criminal proceedings, is highly significant[33] . This reform resulted in Circular 3/2018 of 1 June on the right to information of persons under investigation in criminal proceedings[34] .

In the Spanish system there is always an interpreter present during court hearings. This interpreter will be present whether the child does not speak, or does not speak correctly, the language because he/she speaks a foreign language, or if he/she uses sign language or has some kind of permanent or temporary disability that makes it difficult for him/her to understand.

Despite these responses, it is also worth mentioning a research carried out in 2016 on non-foreign minors in Spanish juvenile justice, which concludes that there are significant shortcomings in the right to interpretation and translation. Such as, for example, the lack of assistance not only to children but also to their families, or the non-existence of a rule regulating a register of translators and interpreters and their requirements to ensure the quality of the service[35] .

F) An additional issue for the realisation of children's right to information concerns the existence of reference persons provided by the national system to whom children can ask questions.

In the Spanish system, technical advice is given through the child's lawyer. In this sense, art. 17.2 Organic Law 5/2000 establishes that "*the detained minor shall have the right to a confidential interview with his/her lawyer prior to and at the end of the statement-taking procedure*"[36].

Each child is assigned a lawyer (duty solicitor), unless he/she appoints one privately. The lawyer will assist him/her from the moment he/she is arrested at the police station and later in his/her examination before the public prosecutor's office for minors. It should be noted that it will not be the same lawyer on duty, but the one who assists him/her in the examination will remain for the

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[31] In this sense, FERNÁNDEZ MOLINA, E. AND BLANCO MARTOS, B., "Avanzando hacia una 'child-friendly justice'. Un estudio sobre la accesibilidad de la justicia juvenil española", *Boletín Criminológico. Instituto andaluz interuniversitario de Criminología*, n. 157, v. 4, 2015, p. 1.

[32] JIMENEZ MARTIN, J., "Child participation in juvenile justice in Spain: National report for AIMJF's comparative and collaborative research", *The Chronicle -AIMJF´s Journal on Justice and Children´s Rights*, v. 1, N. II, 2023, pp. 1-15. Available at: https://chronicle.aimjf.info/index.php/files/issue/current, last access 20.12.2023, p. 9.

[33] BOE n. 101, 28.4.2015.

[34] FIS-C-2018-00003, BOE

[35] FERNÁNDEZ MOLINA, E., "Derechos procesales de los menores sospechosos o acusados en la Unión Europea. Informe Nacional España", cit., p. 48.

[36] Free translation.

rest of the procedure. The adolescent may consult with the lawyer on any issue that may affect him/her. The adolescent will also be able to ask the prosecutor for clarification, but will not have excessive access to the prosecutor unless the minor goes to the Juvenile Prosecutor's Office.

The law, on the other hand, foresees that at the moment of detention, the child will have the social and psychological support he or she requires, although this is usually never requested.

The Pubic Prosecutor Office Consultation 2/2005, of 12 July, on the disputed right of the detained minor to have a confidential interview with his/her lawyer before making a statement in phases prior to the opening of the case opened the way for this right of the child to be enshrined in the reform carried out by Organic Law 8/2006, of 4 December, which modifies Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minors[37] , whose Article 13 introduces the second paragraph of the aforementioned Article 17.

It also constitutes an obligation of the Public Prosecutor's Office, as recalled in the aforementioned Circular 3/2018, of 1 June, on the right to information of those investigated in criminal proceedings, which contains in paragraph 12 a special mention to the right to information in criminal proceedings of minors with reference to paragraph 26 of Directive 2012/13/EU and points out in its conclusions that:

> "*9. Prosecutors shall promote and ensure compliance with the obligation to instruct the person under investigation of their rights, in the terms established in article 118 of the Criminal Procedure Act, from the first moment of the criminal charge and always prior to the making of any statement. Prosecutors will try to avoid hasty accusations being made, taking into account as criteria for determining the moment at which to do so, the degree of certainty as to the commission and authorship of the punishable act and the content of the right of defence in the specific case, given the existence of acts of investigation that could require defensive actions*"[38].

In relation to this point, it has been highlighted in one of the interviews that there has been a great deal of institutional collaboration to carry out improvements in this aspect. The Commission for the clarity and modernisation of legal language has recently been set up with the participation of the Ministry of Justice, the Supreme Court and the General Council of the Judiciary; the State Attorney General's Office; the Spanish Royal Academy; the Spanish Royal Academy of Jurisprudence and Legislation; the General Council of Spanish Lawyers; the General Council of Spanish Solicitors; the General Council of the Official Associations of Social Graduates of Spain and the Conference of Law Deans of Spain, which establishes the general objective of ensuring the proper use of legal language and promoting its modernisation, making it comprehensible to citizens, on the understanding that improving the clarity of legal language and guaranteeing the right to understand, in the sphere of the Administration of Justice, is also modernising Justice. This will result, or at least it is hoped, in the improvement of public service also in the juvenile jurisdiction.

Age-appropriate justice

[37] BOE n. 290, 5.12.2006.

[38] Free translation.

At all stages of the process, children should be dealt with according to their age, their specific needs, their level of maturity and their level of understanding. Everything should be explained in a language they can understand.

The main related articles of Directive (EU) 2016/800: Article 7, which sets out the right to individual assessment; and Article 2 on age liability[39] .

First of all, it is necessary to relate this principle of Child-friendly Justice to one of the fundamental principles of the Spanish juvenile system. In fact, this principle was highlighted by all the professionals interviewed. We are referring to the principle of flexibility.

A clear manifestation of the scope of the aforementioned principle is the fact that the judge has the freedom or discretion to choose the measure or measures to be imposed, always in accordance with the guiding principle set out in the Law. This system favours the individualisation of the measure according to the needs of the child. This system of free choice, i.e. of judicial discretion, is a notable departure from our traditional model of sentencing, which is closely tied to and subject to the parameters of strict legality. The criterion or guiding principle is always "the interests of the child" (established by the specialists on the technical team), according to age and circumstances. Hence, the file can even be closed[40].

The individual assessment of the child

The Organic Law 5/2000 on the Criminal Responsibility of Children establishes the compulsory intervention of the Technical Team in article 27.1:

> "*1. During the investigation of the case, the Public Prosecutor's Office shall require the technical team, which for these purposes shall functionally depend on the former regardless of its organisational dependence, to draw up a report or update those previously issued, which must be delivered within a maximum period of ten days, extendable for a period not exceeding one month in cases of great complexity, on the psychological, educational and family situation of the minor, as well as on his social environment, and in general on any other relevant circumstance for the purposes of the adoption of any of the measures provided for in this Law*"[41].

The absence of a report, being an inexcusable requirement of the procedure, would lead to the nullity of the proceedings[42] .

The scope of this intervention has been the subject of nuances, both in terms of the nature of the facts (in the former misdemeanours) and the composition of the Technical Team in terms of the number and profession of those carrying out the assessment.

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[39] Another European Directive related to this principle is Directive 2012/13/EU on the right to information in criminal proceedings.

[40] GONZÁLEZ CUSSAC, J. L. ORTS BERENGUER, E., *Compendio de Derecho Penal. Parte General*, cit., p. 625.

[41] Free translation.

[42] In this respect, Judgment of the Provincial Court of Seville, 3rd section, no. 115/2002, 26.2.2002).

But it has to be borne in mind that the juvenile justice system is based, among others, on the principle of opportunity. In this context, many proceedings end at the stage of preliminary proceedings. In 2022, a total of 7,500 preliminary proceedings were dropped, which represents 10.85% of the overall number of proceedings initiated in the whole of Spain. The intervention of the Technical Team is carried out when the Preliminary Proceedings are transformed into a File. Thus, the evaluation is carried out in 90% of the juvenile files, but not in all the proceedings[43] .

The interviewed professionals agree on the fact that the procedures for individual assessment are effective. They provide invaluable information for determining the most appropriate measure. However, the efficiency of these procedures is sometimes questioned, as there is an excessive investment of time and resources in procedures that are unnecessary due to their content or importance.

Given the duration of the procedures, especially in those in which measures are imposed, whether in an open or closed environment, for a long period of time, it is important to talk about the permanent individual assessment. The first is not a single assessment, but rather the professionals monitoring the measure will be sending reports updating this initial assessment, which allows them to have knowledge of the situation of the child and the effectiveness, or not, of the measure. This system allows to modify the measure, either to shorten it, replace it, to make it more severe, or to cancel it due to the fulfilment of the purposes for which it was imposed (Article 51 Organic Law 5/2000). It should be remembered that the Organic Law 5/2000 even allows for mediation during the enforcement of the measure (article 51.3 Organic Law 5/2000). All this possibilities are the clear manifestation of one of the main principles of the Spanish juvenile justice system, the flexibility.

The Organic Law 5/2000 Regulation regulates these reports in article 13[44] .

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[43] FISCALÍA GENERAL DEL ESTADO, "Memoria de la Fiscalía General del Estado. Ejercicio de 2022", 2023. Available at: https://www.fiscal.es/memorias/memoria2023/FISCALIA_SITE/index.html, last access 1.12.2023, p. 786.

[44] Free translation: "*Article 13. Reports during implementation.*

1. During the execution of the measure, the public entity shall send monitoring reports to the juvenile judge and to the Public Prosecutor's Office. Their content shall be sufficient, in accordance with the nature and purpose of each measure, to ascertain the degree of compliance with the measure, the incidents that occur and the personal evolution of the minor.

2. The minimum frequency with which monitoring reports shall be drawn up and processed shall be as follows:

a) For the weekend stay measure, one report every four completed weekends.

b) In the case of community service, one report every 25 hours served if the measure imposed is equal to or less than 50 hours, and one report every 50 hours served if the duration is longer.

c) For all other measures, a quarterly report.

3. Notwithstanding the provisions of the previous section, the public body shall send monitoring reports to the juvenile judge and to the Public Prosecutor's Office, whenever requested by them or when the body itself deems it necessary.

4. When the follow-up report contains a proposal to review the measure in any of the ways provided for in Articles 14.1 or 51 of Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minors, this shall be expressly stated.

5. Once the measure has been complied with, the public entity shall draw up a final report addressed to the juvenile judge and the Public Prosecutor's Office, in which, in addition to indicating this circumstance, an assessment shall be made of the situation in which the minor is left.

6. A copy of the follow-up and final reports referred to in the previous paragraphs shall also be sent to the lawyer who proves to be the defender of the minor and expressly requests it from the public body".

Finally, it is very interesting to note the contribution of one of the professionals interviewed, who believes it is worth highlighting that these reports aim to carry out an assessment of the child's circumstances and omit, due to the lack of preparation of those who carry them out, an aspect that would be very convenient in today's youth, regarding the state of participation in new technologies. Without this, it will be increasingly difficult to assess the child's needs. It is true that throughout the reports we see references, but it would be necessary for people with knowledge of technology and social media to be integrated into the technical teams in order to have an assessment of the child in the virtual world, as this can give us different profiles of children.

Age Responsibility

A) In relation to age responsibility, first of all, the age ranges provided for in the Spanish juvenile justice model should be presented. The Spanish system follows a biological criterion. That is to say, the criterion for distinguishing between groups is based not on biological age, nor on evidence of maturity or personality, but exclusively on chronological age. That is, both the Criminal Code and the Organic Law 5/2000 attribute a differentiated legal regime to minors, in consideration of their date of birth. In fact, the purely chronological criterion is taken to the last extreme in case law: time of birth[45] .

Thus, even within the framework of the 14 to 18 years of age, the Organic Law 5/2000 distinguishes between two stages: between 14 and 16 years of age; and between 16 and 18 years of age. This is a less clear-cut distinction. And indeed, the differences between the two periods exist, but they are only applied to set the maximum limits for the duration of the measures, which are more tenuous in the first group than in the second[46].

For their part, minors under 14 years of age are absolutely unimpeachable for the purposes of criminal law, according to both the Criminal Code and art. 3 Organic Law 5/2000. Therefore, the rules of protection will be applied to this age group[47].

In this section, it is interesting to note that the Spanish system initially provided for special treatment for the 18-21 age group, who were classified as "young people"[48] . However, this framework was totally supressed. Perhaps this special treatment for young adults should be rethought in our system.

Moreover, Article 14 of Organic Law 5/2000 should also be mentioned, which refers to the age of majority of the convicted person. By virtue of this precept, once the convicted person reaches the age of 18, he or she must continue to serve the measure. If the measure consists of closed detention, the judge has the power to send the convicted person to a penitentiary centre for adults[49].

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[45] GONZÁLEZ CUSSAC, J. L. ORTS BERENGUER, E., *Compendio de Derecho Penal. Parte General*, cit., p. 614.
[46] Art. 10.1 a) Organic Law 5/2000.
[47] Vid. art. 3 Organic Law 5/2000.
[48] Indeed, following the reform introduced by LO 8/2006, the possibility of extending the application of this law to the 18-21 age group has been eliminated.
[49] Art. 14.2 Organic Law 5/2000.

Once he or she reaches the age of 21, the judge must send him to a penitentiary centre unless there are exceptional circumstances[50] . It is worth noting that in one of the interviews it was pointed out that it is usual for convicted persons to remain in juvenile detention centres even when they reach the age of majority, and that they are obviously separated from the rest of the juveniles who are underage.

B) The second point to address is whether the behaviour of police officers and other professionals is appropriate to the age of the child. And, also, whether the procedures take into account the age and maturity of the child (e.g. in terms of the language used, the environment in which interviews are conducted, hearings, meetings with different actors, etc.).

The answer must be affirmative, but with some further clarification. It must be considered that, for practical reasons, the juvenile units are located inside the judicial buildings, which means a first encounter with "adult justice". In localities such as Madrid, the juvenile jurisdiction, together with the GRUME – which is the National Police Unit specialised in children-, has an autonomous building, which means that they do not meet with adults except for those who work there or appear as witnesses or experts in juvenile cases.

Likewise, the mandate contained in art. 187.1 Organic Law of the Judicial Power[51] is maintained:

> "*At public hearings, court sessions and solemn judicial acts, judges, magistrates, public prosecutors, registrars, advocates and procurators shall wear a robe and, where appropriate, a badge and medal appropriate to their rank.*
> *2. They shall also all sit on the bench at the same height*".

Instruction 1/1993, of 16 March 1993, on the general lines of action of the Public Prosecutor's Office in proceedings under Organic Law 4/1992, of 5 June 1992, states that "*with regard to the material aspect of holding hearings, it should be pointed out that the formalities typical of criminal trials, with robes and platforms, should be avoided. It would be better to use ordinary clothes and a round table where each participant is seated, with the minor also seated and informed of who the others are*"[52].

Unfortunately, this timely approach of the Public Prosecutor's Office has not been followed and the use of robes at the hearings has become the norm.

The chambers of the judges and prosecutors are usually decorated with portraits of the King in robes and the flags of Spain and the Autonomous Community. It would be desirable for these rooms to be free of institutional references.

C) A final aspect to be considered in relation to the age responsibility is whether the procedures are appropriate in relation to study or work activities. These are factors that are taken into account when assessing the child's personal situation, both to ensure that they do not interfere with the child's proper development and to assess the child's circumstances in the case of truancy or unemployment and inactivity in the case of children over 16 years of age. In these

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[50] Art. 14.3 Organic Law 5/2000.

[51] Organic Law 6/1985, of f1st of July, of the Judicial Power, BOE n. 157, 2.7.1985. https://www.boe.es/buscar/act.php?id=BOE-A-1985-12666

[52] Instruction 1/1993, of 16 March 1993, on the general lines of action of the Public Prosecutor's Office in the procedure of Organic Law 4/1992, of 5 June 1992.

cases, measures are taken to ensure proper school attendance or integration into work training processes.

Speedy justice

The principle of urgency should be applied to provide a rapid response, in light of the best interests of the child. Preliminary decisions should be reviewed.

The main article of Directive (EU) 2016/800 that reflects this principle is Article 13 on expeditious handling of cases.

The Public Prosecutor's Office does not have statistical data on the average time taken to prosecute minors. In the annual reports, specific assessments are made on the basis of the data provided by each of the Deputy Public Prosecutors for Minors. The latest report indicates that the speed ratio is "*quite satisfactory in general with acceptable processing times*"[53].

The General Council of the Judiciary publishes annual statistics according to which last year the duration of proceedings in the juvenile jurisdiction was 6.8 months. It should be remembered that the intervention of the courts (the basis of these statistics) does not cover all proceedings. As we indicated above, it is approximately 90%[54] .

Therefore, the professionals interviewed consider that the length of the proceedings is not at all adequate in the light of the principle of the best interests of the child.

On this issue, it has been suggested that a fast-track procedure should be incorporated into the juvenile justice system, as it is already established for the Spanish system for adults. Indeed, the idea would be to take as a reference Title III of Book IV of the Spanish Criminal Code of Procedure, the so-called "*procedure for the speedy trial of certain offences*", which usually concludes with the appearance in custody or the summons to trial occurs within fifteen days of the appearance of the accused before the duty court, and the time limit for sentencing is three days from the end of the hearing. Transferring this procedure to the juvenile jurisdiction would only encounter the problem of individual assessment, but the lightness of the facts should make us reconsider the advisability of finding formulas for an assessment centred on the suitability of a light measure.

Diligent justice: the training of professionals

Diligence is the quality in which commitment, care, thoroughness and zeal converge. Child-friendly justice must encompass all of these qualities, respecting the rights of children and always acting in their best interests.

[53] FISCALÍA GENERAL DEL ESTADO, "Memoria de la Fiscalía General del Estado. Ejercicio de 2022", cit., p. 790.

[54]https://www.poderjudicial.es/cgpj/es/Temas/Transparencia/Estimacion-de-los-tiempos-medios-de-duracion-de-los-procedimientos-judiciales/, last accessed 20.1.2024.

In relation to this principle, the main provisions of Directive (EU) 2016/800 to be highlighted are, once again, Article 13, on the prompt and expeditious handling of cases, already addressed in the previous section[55] ; and Article 20, dedicated to training, which we will focus on in this section.

The main professionals involved in juvenile justice in the Spanish system are the following:

- The Juvenile Judge: he/she is in charge of prosecuting, determining whether a juvenile is responsible and controlling the legality of the execution of the measure.
- The Public Prosecutor for Minors: the public prosecutor is responsible for the pre-trial phase of the proceedings in accordance with the principle of opportunity. Authorisation to resort to out-of-court proceedings, conciliation.
- The child's legal representatives.
- The technical team: psychologist, social worker, educator.
- The public entity: each Autonomous Community has its own system. In the Valencian Community, Conselleria de Servicios Sociales, Igualdad y Vivienda.
- The technicians in charge of the execution of the measure. They operate through Agreements of the Autonomous Administration for the management of the socio-educational centres, the entities must be NGOs. Regarding these entities, it has been borne to attention by some of the professionals the fact that the execution of the measures is conducted mostly by private entities. And it has been stated that perhaps this system should be rethought, towards a more public system, like the adults system. In this centers they may have even private security staff.
- State security forces and bodies: specialised minors' unit (GRUME).

A) In the Spanish system, we must distinguish different official training programmes for legal professionals in contact with children.

All the professionals involved are specialised in the Juvenile Justice system. In particular, the Judge, the Public Prosecutor and the Lawyer need to have a specialisation.

By way of example, and due to the central position of these professionals in the Spanish system, the training programmes of the Juvenile Public Prosecutor's Office are detailed. In terms of training, a distinction should be made:

- Initial training: This is the training received by those candidates who have passed the competition at the centre for legal studies. It consists of two fundamental phases:

Theoretical-practical classroom-based phase with master classes and subjects including the subject of minors (in the last Training Plan, Module 5: The Public Prosecutor's Office in the jurisdiction of minors).

A supervised work experience phase during which they join the Provincial and Area Prosecutor's Offices under the guidance of a supervisory team. During this period they usually spend between one and two weeks in the Juvenile Section of the Prosecutor's Office they have joined.

This training is compulsory.

- Continuous training: the Continuous Training Plan for the Prosecutor's Career is published annually, drawn up by the Centre for Legal Studies at the proposal of the Technical Secretariat

[55] Vid. previous section, 3.3., on speedy justice.

of the Attorney General's Office. This plan is aimed at prosecutors and practising prosecutors. The plan for 2023 includes 58 training activities (a total of 2,930 places)[56] .

In addition to these courses, the Public Prosecutor's Office also offers training through agreements with the Autonomous Communities, places on courses run by the General Council of the Judiciary, and national and international organisations and institutions. In these cases, these places are offered on an individual basis and applications are sent through the virtual headquarters of the Centre for Legal Studies website.

Continuous training is a training offer for prosecutors which is accessed on a voluntary basis.

B) A second essential point for the realisation of diligent justice in practice is the coordination between the different professionals involved (judges, prosecutors, lawyers, technical staff, etc.).

In the Spanish system, this coordination is carried out through computer resources that are usually linked through specific applications. In addition, in most cities, all the members of the jurisdiction are located in the same building, including the GRUME (National Police Minors Group) units. This allows everyone to deal with each other on a daily basis and in a very cordial manner.

In order to unify criteria among the juvenile prosecutors, there is a Delegate Prosecutor in each Provincial Prosecutor's Office. There is also a coordinator in the Technical Teams, who is in contact with the Delegate Prosecutor for Minors and the "dean" Judge for Minors.

In relation to the functioning of the Spanish system, a significant lack of coordination between the Autonomous Communities and, in turn, between them and the central State has been identified. Thus, for example, the Organic Law 5/2000 was approved without an economic report, and therefore there are problems in the management of resources, for example, technical teams. In addition, there are many differences in the application of the Juvenile Justice system between the Autonomous Communities[57].

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[56] In the following, the training offer is set out, highlighting those courses that are specific to the criminal responsibility of children and then those in which it will be dealt with in other material:

- Online course on criminal responsibility of minors and protection.
- Practical criminal law issues for prosecutors on duty.
- Practical and gender-sensitive approach. Good and bad practices.
- Crimes against children and adolescents online. The right to a safe digital environment within the framework of Organic Law 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence and the preservation of their rights as victims in the process.
- New challenges in the expert response in cases of violence against women, children and adolescents. Towards an expert environment based on effectiveness, innovation and non-victimisation.
- Hate crimes, their scenario after the pandemic and the reform of Organic Law 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence.
- Critical analysis of LO 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence.

Information available at: https://www.cej-mjusticia.es/es/formacion-continua/carrera-fiscal, last access 1.11.2023.

[57] In this sense, GUARDIOLA GARCÍA, J., "La responsabilidad penal del menor en España: mapa de una realidad geográficamente diversa a partir de la estadística oficial", *ReCrim*, 2022, pp. 1-312.

Adapted and focused on the rights of the child

The entire procedure should be carried out with the child's needs and rights in mind. Any form of deprivation of a child's liberty should be a last resort and of the shortest possible duration. Alternative means should be encouraged if they are in the best interests of the child.

Several provisions of Directive (EU) 2016/800 refer to this principle: Right to a medical examination (Article 8); Limitation of deprivation of liberty (Article 10); Alternative measures (Article 11); and Specific treatment in case of deprivation of liberty (Article 12).

The different types of measures are established in article 7 of the Organic Law 5/2000, and in general terms they can be classified by their nature into custodial measures and non-custodial measures or measures restricting rights.

Article 6 of the Organic Law 5/2000 Regulation sets out the principles underlying these measures:

"*Professionals, agencies and institutions involved in the implementation of measures shall act in accordance with the following principles when dealing with minors:*

a) The best interests of the minor over and above any other competing interests.

(b) Respect for the free development of the minor's personality.

(c) Information on their rights at all times and the necessary assistance to enable them to exercise these rights.

(d) The implementation of primarily educational programmes that foster a sense of responsibility and respect for the rights and freedoms of others.

e) The appropriateness of procedures to the age, personality and personal and social circumstances of children.

f) The priority of action in the child's own family and social environment, provided that this is not detrimental to the interests of the child. Likewise, the normalised resources of the community environment shall be used preferably in the implementation of measures.

g) Encouraging the cooperation of parents, guardians or legal representatives in the implementation of measures.

h) As far as possible, multidisciplinary decision-making that affects or may affect the person.

i) Confidentiality, appropriate secrecy and the absence of unnecessary interference in the private life of minors or their families in the procedures carried out.

j) Coordination of actions and cooperation with other bodies of the same or different administrations that intervene with minors and young people, especially with those with responsibilities in the fields of education and health"[58].

[58] Free translation.

As indicated in the introduction, in Spain, the Autonomous Communities are competent for the enforcement of the measures adopted by the juvenile judges[59]. The juvenile judge has the power to control the enforcement of the measures and will therefore ensure that the entities and professionals act in accordance with the aforementioned principles[60].

Deprivation of liberty: limits and specific treatment

In the Spanish juvenile system, the measure consisting of the deprivation or limitation of freedom of movement or ambulatory freedom is called "internment"[61]. Four types of internment can be distinguished: closed regime; semi-open regime; open regime; and therapeutic internment (requiring the child's consent in the case of treatment for addiction)[62] . Within the modality of deprivation of liberty, it is also worth mentioning the measure of "weekend stay"[63].

Likewise, it is worth mentioning the precautionary measure of internment provided for in article 28 of the Organic Law 5/2000, which is adopted for the custody and defence of the juvenile offender or for the protection of the victim, depending on the seriousness of the facts and the personal and social circumstances of the child[64].

The duration of detention is fixed as follows: the maximum limit refers to the maximum limit of the penalty prescribed in the Criminal Code for the offence in question. Within this generic limit, the general rule is a maximum of two years. Exceptionally, up to six years may be imposed, which will normally be the case by application of Articles 10 and 15; the decision will then be taken by the juvenile judge[65].

In general, Spanish legislation is very flexible and allows these measures to be applied as a last resort. Only in relation to certain offences does it establish the mandatory measure of internment[66]. In addition, Article 8 of the Organic Law 5/2000 establishes, in general, the limit derived from the accusatory principle and the duration of the sentences established by the Criminal Code for adults, which may not be exceeded in the juvenile jurisdiction.

However, in some of the interviews, attention was drawn to the constant legislative reforms that are tightening up the system. Both with regard to the obligatory nature of detention measures for the most serious crimes, as well as with regard to the mandatory minimum duration of such measures. Therefore, the legislative reforms that have been undergone for the most serious crimes,

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[59] Art. 45 Organic Law 5/2000.

[60] PERIAGO MORANT, J. J., *La ejecución de la medida de internamiento de menores infractores*, Tirant Lo Blanch, Valencia, 2017, p. 38.

[61] For this issue see CERVELLÓ DONDERIS, V., *La medida de internamiento en el Derecho Penal del Menor*, Tirant Lo Blanch, Valencia, 2009.

[62] GONZÁLEZ CUSSAC, J. L. ORTS BERENGUER, E., *Compendio de Derecho Penal. Parte General*, cit., p. 625.

[63] Art. 7.1 g) Organic Law 5/2000.

[64] PERIAGO MORANT, J. J., *La ejecución de la medida de internamiento de menores infractores*, cit., p. 61.

[65] GONZÁLEZ CUSSAC, J. L. ORTS BERENGUER, E., *Compendio de Derecho Penal. Parte General*, cit., p. 626.

[66] Art. 10.2 Organic Law 5/2000.

for example, terrorism[67] or crimes against sexual freedom[68] , limit the principle of flexibility on which the system is built. This leads to conclude that there is a double speed in the Spanish system. And even some go further and conclude that the initial system of the Organic Act 5/2000 has been denaturalised.

In this regard, it is also very interesting to point out that one of the main reasons that the professionals have pointed out for this tendency is, precisely, the role of the media in showing a Juvenile Crime reality which is far from what is shown in official statistics, and therefore, creating a false sense of alarm in the society.

In relation to the existence of case law on custodial measures for children, in the interviews it was recalled that access to the Second Chamber of the Supreme Court is very limited as only the appeal for the unification of doctrine can be lodged[69] . The Supreme Court has ruled in relation to the content of the custodial measure contained in Article. 10.2 Organic Law 5/2000 in various rulings that determine the content of the detention measure.

The Provincial Courts do establish criteria in their decisions, but they do not have the value of jurisprudence, in accordance with article 1.6 of the Civil Code. Of this minor jurisprudence of the Provincial Courts, the Office of the Public Prosecutor for Minors makes a six-monthly dossier for the information of the Prosecutor's Office[70] .

The General Prosecutor's Office has provided prosecutors with guidelines for action through Instructions, Circulars and Consultations. Likewise, the Prosecutor for Minors' Chambers has issued the corresponding Opinions[71] .

Finally, there are doctrinal works that refer to the need for further research on the containment measures provided for in the context of juvenile detention[72] .

Alternative measures

A) The Spanish juvenile system offers a wide variety of alternatives to deprivation of liberty, designed to provide an adequate response to the situation of each child.

As anticipated, Article 9 of Organic Law 5/2000 provides for the following alternative measures to imprisonment: Outpatient treatment - attendance at a designated centre; attendance at a day centre; weekend stay; probation; prohibition to contact or communicate with the victim or his relatives or other persons determined by the judge; cohabitation with another person, family or educational group; community service; performance of socio-educational tasks; reprimand;

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[67] By way of example, the Fourth Additional Provision of LO 7/2000 of 22 December, which modified the CP and the present Organic Law 5/2000, fundamentally in the area of terrorist crimes.

[68] LO 8/2006 or LO 4/2023 for offences against sexual liberty.

[69] Art. 42 Organic Law 5/2000.

[70] Available on the web: https://www.fiscal.es, last access 1.12.2023.

[71] Available on the web: https://www.fiscal.es, last access 1.12.2023.

[72] Vid., in this sense, POZUELO PÉREZ L., "Uso (y posible abuso) de los medios de contención en los centros de internamiento de menores", *Revista Electrónica de Ciencia Penal y Criminología*, n. 24, 2022, pp. 1-35.

withdrawal of the licence to drive mopeds and motor vehicles or of the right to obtain it, or of the administrative licences for hunting or for the use of any type of weapon; and absolute disqualification.

The criteria for choosing the measure or measures, as well as for requesting their imposition, are binding on all those involved in the process[73]. The judge has the freedom or discretion to choose the measure or measures to be imposed, always in accordance with the guiding principle set out in the Law. This system favours the individualisation of the measure according to the needs of the child.

The criterion or guiding principle is always "the interests of the child" (established by the specialists on the Technical Team), according to age and circumstances. Hence, the file may even be closed. For this reason, the Organic Law 5/2000 tries to avoid any reference to the seriousness of the act and the culpability of the perpetrator as criteria for determining and choosing the measures. However, it has not managed to completely banish such criteria: for example, it does so in Art. 9.1 by referring to the limits established in the Criminal Code; and implicitly it continues to consider the greater or lesser culpability and the seriousness of the act in Art. 9.1 (for cases of misdemeanours); 9.2 (seriousness of the offence, the use of violence or intimidation, or the commission of the offence in a group, conditions the application of the measure of internment in a closed regime); 9.4 (limits to imprudence) and art. 10, (which combines different ages and offences of "*extreme seriousness*"). These exceptions to the general rule are not in line with the provisions of the CRC (detention as a measure of last resort), and in turn can lead to paradoxical situations[74].

The measures imposed are subject to modification at any time, including during the period of enforcement. The law understands modification to range from substitution to cancellation of any measure imposed. The general rule is flexibility, but this discretionary power is always limited by the central criterion: the interests of the child. The Organic Law 5/2000 contemplates two hypotheses, one in Art. 13, which it calls modification in the strict sense, and another in Art. 51, which it calls substitution[75].

In addition, it is also important to highlight, with regard to the execution of the measures, the principle of legality in the execution[76], the jurisdictional control by the juvenile court judge who ordered the measure. Indeed, this is the competent judge[77]. Moreover, as it has already been outlined, the administrative competence in enforcement is attributed to the Autonomous Communities. The entities dependent on them must open a personal file on each child subject to a measure[78], and issue reports on the enforcement to the Juvenile Judge and the Public Prosecutor's Office[79]. The commencement of enforcement is fixed at the moment of the finality of the sentence and the approval of the enforcement programme[80].

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[73] Art. 7.3 Organic Law 5/2000.

[74] GONZÁLEZ CUSSAC, J. L. ORTS BERENGUER, E., *Compendio de Derecho Penal. Parte General*, cit., p. 625.

[75] GONZÁLEZ CUSSAC, J. L. ORTS BERENGUER, E., *Compendio de Derecho Penal. Parte General*, cit., p. 627.

[76] Art. 43 Organic Law 5/2000.

[77] Art. 44 Organic Law 5/2000.

[78] Art. 48 Organic Law 5/2000.

[79] Art. 49 Organic Law 5/2000.

[80] Art. 46 Organic Law 5/2000.

B) Among the mentioned measures, probation is the most frequently imposed, as it was also stated by the professionals interviewed.

According to the 2023 Report of the Public Prosecutor's Office[81], out of a total of 23,175 judicial measures imposed in 2022, probation accounted for 46.18%, followed by semi-open detention, 10.43%, and community service, 9.63%. It is worth noting that the measure of internment in a closed regime reached the figure of 735, which represents a percentage of 18.74%[82].

In the probation measure, it must be monitored the activity of the person under probation, and his or her attendance at school, vocational training centre or workplace, trying to help him or her to overcome the factors that determined the offence committed. Likewise, this measure obliges, where appropriate, to follow the socio-educational guidelines indicated by the public entity or the professional in charge of monitoring, in accordance with the intervention programme drawn up for this purpose and approved by the Judge for Minors[83]. The person subject to the measure is also obliged to hold the interviews established in the programme with the appointed professional and to comply, where appropriate, with the rules of conduct imposed by the Judge[84].

At this point, it is worth sharing a very interesting reflection from one of the professionals, who highlights that perhaps it would be advisable to carry out a review of this list of measures in the light of the new times, contemplating others that have to do with the use of mobile devices and access to the Internet or to certain applications, content or time limits, as this would involve

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[81] FISCALÍA GENERAL DEL ESTADO, "Memoria de la Fiscalía General del Estado. Ejercicio de 2022", cit.

[82] For more statistical data see also MINISTERIO DE DERECHOS SOCIALES Y AGENDA 2030, "Boletín de datos estadísticos de medidas impuestas a personas menores de edad en conflicto con la Ley. Boletín número 21 Datos 2021", 2022. Available at: https://www.mdsocialesa2030.gob.es/derechos-sociales/infancia-y-adolescencia/PDF/Estadisticaboletineslegislacion/BOLETIN_MenoresEnConflictoConlaLey_PROVISIONAL_DATOS2021.pdf, last access 1.12.2023.

[83] As detailed in art. 7.1h Organic Law 5/2000.

[84] Which may be one or some of the following, as established in art. 7.1.h of the Organic Law 5/2000:
"*1. The obligation to attend the corresponding educational centre regularly, if the minor is of compulsory school age, and to provide the judge with proof of such regular attendance or to justify absences, if necessary, as many times as required to do so.*
2.ª Obligation to submit to training, cultural, educational, vocational, employment, sex education, road safety education or other similar programmes.
3.ª Prohibition to go to certain places, establishments or shows.
4.ª Prohibition to leave one's place of residence without prior judicial authorisation.
5th Obligation to reside in a specific place.
6.ª Obligation to appear in person before the Juvenile Court or a designated professional, to report on the activities carried out and to justify them.
Any other obligations that the judge, either ex officio or at the request of the Public Prosecutor's Office, deems appropriate for the social reintegration of the sentenced person, provided that they do not violate his or her dignity as a person. If any of these obligations imply the impossibility of the minor to continue living with his parents, tutors or guardians, the Public Prosecutor shall send testimony of the individuals to the public entity for the protection of the minor, and said entity shall promote the protection measures appropriate to the circumstances of the minor, in accordance with the provisions of Organic Law 1/1996".
Free translation.

intervening directly in the reality of the child with sanctions that could be implemented in an open environment and could have a greater punitive effect than other measures.

C) In addition, and as a formula directly related to the principle of justice adapted to and focused on children's rights, it is essential to refer to the criminal mediation available in the Spanish juvenile justice system. Indeed, Article 19 of the Organic Law 5/2000 provides for the possibility of agreeing the dismissal of the case in the event of conciliation between the juvenile offender and the victim or reparation.

Criminal mediation in the Spanish system was implemented for the first time precisely for juvenile criminal justice. The people interviewed agree that it is a model that works, and that in fact, it served as a pilot test, as a reference, to later implement criminal mediation in the adult system.

The system has the following essential features[85] : a) the existence of a criminal case file is required; b) the initiative corresponds to the Public Prosecutor's Office, who requests a report from the Technical Team on the most appropriate solution; c) the initiative is transferred to the child and his/her legal representatives, who must demonstrate their predisposition to dialogue; d) in this process the intervention of the Technical Team (psychologists, educators and social workers) is essential to reach an agreement; e) once the mediation is accepted, the victim is given the opportunity to express his or her agreement, always freely and informed; f) if the agreement is finally reached, it implies the dismissal of the proceedings, which can be reinitiated if the child fails to comply with it; g) the agreement reached replaces the agreed measures.

According to data from the 2022 Annual Report of the State Prosecutor's Office, the figures have been fluctuating over the last six years at around 4,400 cases of conciliation and victim reparation per year[86] .

Respecting the right to a due process: assistance by a lawyer and right to legal aid

Children, like adults, must be guaranteed all the principles of due process (principle of legality and proportionality, presumption of innocence, right to a fair trial, right to legal assistance, right of access to justice).

The main articles of Directive (EU) 2016/800 related to this principle are: legal aid (Article 6); the right to legal aid (Article 18); and remedies (Article 19)[87] .

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[85] Following ARMENTA DEU, T., "Justicia restaurativa, mediación penal y víctima: vinculación europea y análisis crítico", *Revista General de Derecho Europeo*, n. 44, 2018, p. 214.

[86] FISCALÍA GENERAL DEL ESTADO, "Memoria de la Fiscalía General del Estado. Fiscal year 2022", cit., p. 787.

[87] Similarly, the following Directives related to this principle can be cited: Directive 2013/48/EU on the right to legal counsel in criminal proceedings (Art. 3); Directive 2016/1919/EU on legal aid in criminal matters and

The professionals interviewed agree in confirming that the right to legal aid is effectively respected, either through an appointed lawyer or through the duty lawyer. In the latter case, it is worth mentioning the Fourth Final Provision of the Organic Law 5/2000 on the Specialisation of Judges, Prosecutors and lawyers, which establishes in paragraph 3 the obligation of specialisation by stating that "*The General Council of Lawyers shall adopt the appropriate provisions so that in the Bar Associations where it is necessary, approved courses are given for the training of those lawyers who wish to acquire specialisation in juvenile matters in order to intervene before the bodies of this Jurisdiction*"[88]. For this reason, the Bar Associations have a Section of lawyers specialising in minors, which is exclusively devoted to this jurisdiction.

In the Bar Associations there is a specific, highly specialised juvenile jurisdiction bench, as required by law. The requirements for access to this specialised shift are more demanding than in other specialised shifts, which means that the lawyers involved tend to have extensive knowledge of the subject matter. There are specialised training courses to gain access and refresher courses to remain, which are compulsory[89] .

Additionally, it is important to note that in Spain there are no preliminary or informal interrogations. Consequently, the presence of a lawyer is guaranteed during the first interrogation with the police. Thus, Article 22.1 b)of the Organic Law 5/2000 establishes that from the moment the case is opened, the minor will have the right to appoint a lawyer to defend him or her, or to have one appointed ex officio, and to have a confidential interview with him or her, even before making a statement.

In the same way, the presence of a lawyer is guaranteed at all other stages of the legal proceedings. The lawyer who assists the child at the time of the first statement to the police accompanies the child throughout the proceedings. Depending on the rules of each Bar Association, special circumstances may be established which allow a lawyer to take care of all matters concerning a child, even if he/she has not assisted him/her in a statement at the police station. This allows for better mutual knowledge and a better follow-up of the cases.

However, it has been pointed out by a Juvenile Judge that in practice it has been identified one issue regarding the right to legal aid when in the process there is an intervention of a particular accusation party ("acusación particular"). In these cases, when the process is concluded, they are applying the costs of the process and imposing it to the loosing part. And, for that, they are calculating the economic capacity of the child through the income of the parents. Therefore, there is a clear affectation of the right to free legal aid that should be resolved.

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persons wanted in connection with a European Arrest Warrant procedure; Directive 2016/343/EU on the presumption of innocence.

[88] Free translation.

[89] For example, see the ICAV Legal Aid Service: https://www.icav.es/ver/112/turno-de-oficio-y-asistencia-al-ciudadano.html, last consulted 1.12.2023.

Respecting the right to participate in and understanding the proceedings: the right of children to appear in person at, and participate in, their his or trial

Children should be informed in a language they can understand about their rights and about all judgements and decisions that affect them. They should understand how the situation can or will evolve, what options they have and what the consequences will be. They have the right to be heard and have a say in all matters that affect them.

Essentially, the rights in Directive (EU) 2016/800 related to the above principle would be: the Right to information (Article 4); the Right of the child to have the parental rights holder informed (Article 5); and the Right of the child to be present and participate in his or her own trial (Article 16)[90] .

Article 22.1 of the Organic Law 5/2000 establishes that from the moment the case is opened, the minor shall have the right to:

> "(*a) To be informed by the judge, the public prosecutor or a police officer of his rights.*
>
> *(c) To intervene in the proceedings during the preliminary investigation and the trial and to propose or request the taking of evidence.*
>
> *(d) To be heard by the judge or tribunal before any decision concerning him is taken* (...)"[91].

This means that there is a real "possibility" of the child's participation, at least from a formal point of view. However, in one of the interviews, it was noted that this participation is not so real in practice, as the child usually tends to remain silent, even in the first statement, either by his or her own decision or on the advice of his or her lawyer. This was an isolated practice in this jurisdiction, but it is becoming more widespread. There are several reasons for this: imitation of the adult judiciary, or the speed with which statements are made in a cell full of prisoners, among others. It should also be borne in mind that these silences represent a step backwards in a process that undoubtedly has an educational vocation, but what is clear is that the minor has the right to participate and it is up to him or her to decide what and how he or she participates.

As far as the impact of the child's opinion on the judge's final opinion is concerned, in our system it can have a different effect if the child acknowledges the authorship of certain facts, in which case it can lead to a sentence of conformity[92], or if he/she does not acknowledge them. In the latter case, the relevance of the child's statement is weighed against the value of the evidence provided by the prosecution.

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[90] Similarly, the following European Directives related to the participation of minors can be mentioned: Directive 2012/13/EU on the right to information in criminal proceedings; and Directive 2013/48/EU on the right to the assistance of a lawyer in criminal proceedings (Art. 5-6).

[91] Free translation.

[92] Arts. 32 and 36 Organic Law 5/2000.

In addition, the child can take the floor and carry out what is known as an act of self-defence, arguing what he or she considers relevant in relation to the evidence presented[93]. The Spanish Constitutional Court has ruled on the right of defence in relation to the procedural guarantee of the right to the last word[94]. The Court affirmed that this guarantee, which relates to criminal proceedings in which the accused are adults, must also apply to minors, given the need to apply to this type of offender all the guarantees deriving from respect for constitutional rights. Accordingly, the Court granted "*amparo*" against decisions convicting a minor of the offence of burglary in an inhabited dwelling, even though the appellant had not expressly requested it, since the defendant's voice is a highly personal and essential element of his defence at trial[95].

Failure to formalise the child's opinion in the proceedings may lead to nullity. In order for a decision to be declared null and void, it is required that there has been a material and effective defencelessness, which is also impossible to repair, and that in order to be assessed on the occasion of an appeal it must be requested[96].

Respecting the right to a private and family life: the right to protection of privacy

The privacy and personal data of children who are or have been involved in any proceedings must be protected. No information, images or data that could directly or indirectly enable the identification of the child may be disclosed. Authorities should provide limited access to records or documents, and all proceedings involving children should be held in camera.

This principle is embodied in Article 14 of Directive (EU) 2016/800 on the right to privacy[97] .

A) With regard to this principle, a first question to be answered is whether there are rules in the Spanish legal system on the protection of the privacy of children involved in criminal proceedings.

Specifically for children, this principle is articulated through the confidentiality of the reports of the Technical Team (Article 35.3 Organic Law 5/2000) and the personal execution file (Article 12 Organic Law 5/2000 Regulation). On the other hand, by the possibility of holding the hearing in camera (Article 35.2 Organic Law 5/2000).

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[93] As stated in art. 37.2 Organic Law 5/2000, "*Finally, the judge will hear the minor, leaving the case for judgement*".

[94] STC 13/2006, 16.1.2006. BOE" n. 39, 15.2.2006.

[95] GONZÁLEZ CUSSAC, J. L. ORTS BERENGUER, E., *Compendio de Derecho Penal. Parte General*, cit., p. 621.

[96] Art. 240.2 Organic Law of the Judicial Power.

[97] Also relevant to this principle is Directive 2013/48/EU on the right to legal counsel in criminal proceedings (Art. 4).

The Provincial Prosecutor's Offices, the headquarters of the Juvenile Sections, do not have press offices, but they do have Spokesperson Prosecutors, a function commonly assumed by the Delegated Prosecutors. This means that in cases of notoriety or media coverage, it is the Prosecutor's Office that can provide the information required by the media[98]. The assessment of this relationship and the work carried out in terms of disseminating information and containing journalistic yellow journalism is very positive.

B) A second relevant point would be the processing of data and the operation of registers, such as electronic data on a child's judicial history.

In relation to this issue, it should be noted that all the actions of the Public Prosecutor's Office are subject to data protection regulations, since the right to data protection binds the Public Prosecutor's Office as well as all public authorities (Art 53 of the Spanish Constitution), as indicated in Instruction 2/2019, of 20 December, of the State Attorney General's Office, on data protection in the sphere of the Public Prosecutor's Office: the Data Protection Officer and the Data Protection Delegate.

These data protection tasks are carried out through the General State Prosecutor's Office and/or the Data Protection Delegate appointed in the Provincial Prosecutor's Office.

Regarding this principle, there is a worrisome regulation of the antecedents in cases of sexual crimes, where the antecedents remain in the Central Registry of Sex Offenders for the period of 10 years since the person has reached the age of majority. This is a severe impediment in practice to work at several institutions where they ask a certificate of no sexual antecedents, which means that a child that has committed a sexual crime, irrespective of its gravity, will not be able to work until 28 years old in any place with contact with children.

C) Thirdly, in relation to respect for the right to private and family life, it should be verified whether children have the possibility to maintain regular contact with their parents and family members during detention.

Unless the family circumstances (death, absence, abandonment) or of the event (aggression within the family or crimes against the life, honour, privacy or freedom of the legal representatives...) make it impossible for them to attend the declaration of the minor, as they must be notified immediately of the fact of the arrest and the place of custody[99], they will accompany him/her in the statement before the police and before the Public Prosecutor's Office[100], before the judge in the possible appearance for the adoption of precautionary measures[101].

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[98] Art. 4.5 of the Statute of the Public Prosecutor's Office establishes that the Public Prosecutor's Office "*may inform the public of the events that take place, always within the scope of its competence and with respect for the secrecy of the investigation and, in general, for the duties of reserve and confidentiality inherent to the position and the rights of those affected*". Free translation.

[99] Art. 17.1 Organic Law 5/2000.

[100] Art. 17.2 Organic Law 5/2000.

[101] Art. 28 Organic Law 5/2000.

In the event that the legal representatives of the minor are unable to appear, the law establishes that "*in the absence of the latter, the statement shall be made in the presence of the Public Prosecutor's Office, represented by a person other than the investigator of the case*"[102].

Respecting the right to integrity and dignity

Children must be protected from harm, including bullying, reprisals and secondary victimisation. They should always be treated with care, sensitivity, fairness and respect, and with full respect for their physical and psychological integrity. Special care and protection should be provided to children in special conditions of vulnerability. If they are deprived of their liberty, they should be separated from adults. Children should not be subjected to torture or inhuman or degrading treatment or punishment.

In relation to this principle, the main provisions of Directive (EU) 2016/800 are: the right to a medical examination (Article 8); audiovisual recording of interrogations (Article 9); and specific treatment in case of deprivation of liberty (Article 12).

A) The first point to be addressed with regard to the right to integrity and dignity is the right to a medical examination.

In the Spanish system, Royal Decree 650/2023 of 18 July, approving the Protocol for the forensic medical examination of detainees[103] , fulfils this objective.

The protocol established in the annex to the draft Royal Decree consists of two parts: one dedicated to the collection of data and the other which specifies the forensic medical examination, which is structured in eleven sections including, for example, that the vulnerability factors that may affect the detainee due to: gender identity, sexual orientation, age, disability, illness or self-harm risk, foreigner, human trafficking and incommunicado detention should be analysed and recorded.

The forensic doctor is also obliged to collect information on the conditions of detention and more specifically on the place where the detainee has been held, the duration of detention, the conditions of food, hygiene, rest and health care provided.

Finally, if there is an allegation of torture or inhuman or degrading treatment, detailed clinical assessments in legal contexts should be recorded with an express reference to Annex IV of the Istanbul Protocol.

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[102] Free translation. Art. 17.2 Organic Law 5/2000.
[103] BOE n. 172, 20.7.2023.

In all the Juvenile Sections there is a guard service to which the detained child is presented. Among the staff on duty is the forensic doctor.

The child is informed of his or her right to be assessed by the forensic doctor and the public prosecutor may agree to this ex officio.

B) Secondly, it must be pointed out that the interrogations of children are not recorded. What is always done is to record in writing the information from the reading of rights and the statement to the Security Forces or the Public Prosecutor's Office. The signatures of the minor, legal representatives, lawyer and, if necessary, interpreter must be recorded.

C) Thirdly, some considerations should be made with regards to the special treatment of children after detention.

Firstly, with regard to the assessment of the behaviour of police officers and other professionals at the time of arrest, given the preparation of public defence lawyers and the lack of complaints for this reason, as well as the direct assessment that the Public Prosecutor's Office has of minors in detention, it is possible to conclude that the juvenile teams of the Security Forces and Corps do an excellent job.

Detention is carried out by the State Security Forces and Corps, which must take into account the fact that the person is a child, and the least burdensome measures possible shall be adopted. He or she may not be detained in police custody for more than 24 hours. He or she may be handcuffed if necessary. The usual practice, in contrast to adults, is that they will be released in the care of their legal representative once the necessary steps have been taken by the police, and only in the most serious cases will they be placed directly at the disposal of the public prosecutor. The lawyer and the legal representative will be present at any police procedure that is carried out, and they will be notified immediately as soon as the arrest is made.

In addition, the first interview with the lawyer is reserved at police headquarters.

Regarding the treatment by police officers, the treatment is usually appropriate and takes into account the age of the child, although it obviously depends on the individual. In general, the officers tend to be quite sensitive to the circumstances of the adolescents they deal with. With regard to prosecutors and judges, they are specialised in children, and in general their treatment is very correct and adapted. Likewise, the technical team, which is a specific resource of the juvenile jurisdiction, and which is made up of social workers, psychologists and educators who draw up a report on the circumstances of the minor. Also in the internment centres and the technicians who execute the open environment measures are specialised resources and know very well how to deal with adolescents.

The assessment of an excess in a police action can be carried out in the administrative or criminal sphere. Instruction 12/2007 of the Secretary of State for Security on the conduct required of

members of the State security forces and corps to guarantee the rights of persons detained or in police custody aims to contemplate the situations that must be avoided in order to prevent conduct that could result in the violation of rights and, therefore, administrative or criminal liability.

CONCLUSIONS

The Spanish Juvenile Justice system is previous to Directive 2016/800, and even previous to the adoption of the Child-friendly Principles of the Council of Europe. In general terms, it can be concluded that the system is in compliance with the Directive. However, it may also be logical to adopt a new legislation making sure that all the rights covered by the Directive are included in the Spanish system.

Organic Law 5/2000 was adopted as a far-reaching change in the Spanish juvenile system, based on the principles of education and sanction. This is essentially a procedural law, which establishes a completely different jurisdiction from adult criminal justice, with specific and specialised courts.

Through this report, some legal amendments that could be introduced towards a more child-cantered justice system have been identified:

- In general, it can be concluded that the constant legislative reforms conducted in the 25 years of application of Organic Law 5/2000 have denaturalised the initial system. Both with regard to the obligatory nature of detention measures for the most serious crimes, as well as with regard to the mandatory minimum duration of such measures. Therefore, the legislative reforms that have been undergone for the most serious crimes, for example, terrorism[104] or crimes against sexual freedom[105] , limit the principle of flexibility on which the system is built. This leads to conclude that there is a double speed in the Spanish system.
- In this regard, it is also very interesting to point out that one of the main reasons that the professionals have pointed out for this tendency is, precisely, the role of the media in showing a Juvenile Crime reality which is far from what is shown in official statistics, and therefore, creating a false sense of alarm in the society.
- Regarding the accessible justice principle, and, in particular, the right to information, it has been identified that for the proper transposition of Article 4(1) of Directive 2016/800 it is necessary to complete the list of rights contained in art. 17 and 22 of Organic Law 5/2000 and add the following rights: the right to have the holder of parental authority informed; the right to protection of privacy; the right to free legal assistance; the right to a medical examination; the right to be accompanied by the holder of parental authority during hearings; and the right to be present at the trial. It is suggested the express introduction in Article 22.1 a) of the Organic Law 5/2000 of the right of the child to be informed orally in clear and understandable language in accordance with his or her age and maturity, together with written information that he or she may consult at any time.
- Regarding age responsibility, it is interesting to note that the Spanish system initially provided for special treatment for the 18-21 age group, who were classified as "young people". However, this framework was totally suppressed. Perhaps this special treatment for young adults should be rethought in our system.

[104] By way of example, the Fourth Additional Provision of LO 7/2000 of 22 December, which modified the CP and the present Organic Law 5/2000, fundamentally in the area of terrorist crimes.
[105] LO 8/2006 or LO 4/2023 for offences against sexual liberty.

- As for the speedy justice principle, it has been suggested that a fast-track procedure should be incorporated into the juvenile justice system, as it is already established for the Spanish system for adults.

As far as the functioning of the system in practice, this are some of the main best practices and gaps that has been identified.

Best practices:

- The Spanish juvenile justice system is therefore a completely different jurisdiction from adult criminal justice, with specific and specialised courts.
- The specialization of all the professionals dealing with children, and, most importantly, the vocation of all this professionals to work and to help children involved in this situations. On the question of whether language is used that is understandable and appropriate to the age and maturity of the children, the response is not uniform. What is certain is that the professionals interviewed agree in affirming that the professionals involved are very familiar with dealing with children and receive specific training for this purpose. Therefore, when interacting directly with them, they adapt their language.
- As far as the principle of a justice adapted and focused on the rights of the child is concerned, the anchor of the Junenile Justice system is the principle of flexibility, together with the principle of opportunity (in Spanish “oporntunidad reglada”).
    - A manifestation of this flexibility principle could be the Individual assessment of the child conducted by the TechnicalTeam. The interviewed professionals agree on the fact that the procedures for individual assessment are effective. They provide invaluable information for determining the most appropriate measure.
    - Regarding this principle, it should also be outlined the permanent individual assessment. The first is not a single assessment, but rather the professionals monitoring the measure will be sending reports updating this initial assessment, which allows them to have knowledge of the situation of the child and the effectiveness, or not, of the measure.
    - Therefore, the system allows to modify the measure, either to shorten it, replace it, to make it more severe, or to cancel it due to the fulfilment of the purposes for which it was imposed (Article 51 Organic Law 5/2000). It should be remembered that the Organic Law 5/2000 even allows for mediation during the enforcement of the measure (article 51.3 Organic Law 5/2000).
    - In general, Spanish legislation is very flexible and allows these measures to be applied as a last resort. Only in relation to certain offences does it establish the mandatory measure of internment[106]. The Spanish juvenile system offers a wide variety of alternatives to deprivation of liberty, designed to provide an adequate response to the situation of each child. The criteria for choosing the measure or measures, as well as for requesting their imposition, are binding on all those involved in the process[107]. The judge has the freedom or discretion to choose the measure or measures to be imposed, always in accordance with the guiding principle set out in the Law. This system favours the individualisation of the measure according to the needs of the child.
    - The criterion or guiding principle is always "the interests of the child" (established by the specialists on the Technical Team), according to age and circumstances. Hence, the file may even be closed.

[106] Art. 10.2 Organic Law 5/2000.
[107] Art. 7.3 Organic Law 5/2000.

- Another of the main best practices that should be clearly mentioned is the criminal mediation available in the Spanish juvenile justice system. This is a formula directly related to the principle of justice adapted to and focused on children's rights.
- In the Spanish system there is a real "possibility" of the child's participation, at least from a formal point of view. In addition, the child can take the floor and carry out what is known as an act of self-defence, arguing what he or she considers relevant in relation to the evidence presented[108]. The Spanish Constitutional Court has ruled on the right of defence in relation to the procedural guarantee of the right to the last word[109].

Main gaps:

- On the question of whether language is used that is understandable and appropriate to the age and maturity of the children, the response is not uniform. Therefore, this point should be further studied. What is certain is that the professionals interviewed agree in affirming that the professionals involved are very familiar with dealing with children and receive specific training for this purpose. Therefore, when interacting directly with them, they adapt their language. However:
  - On the contrary, the same conclusion is not reached in a study carried out specifically on the group of foreign children in conflict with the law, which concludes that children do not correctly understand the information provided to them orally during detention, therefore, it is recommended to establish a protocol clearly defining the criteria for assessing the language skills of detained or accused children .
  - The main problem lies in the written language, especially in procedural documents, in which complex legal language is used and is not adopted in such a way that the child concerned can understand it properly . Indeed, there is no specific material available to the child.
- Moreover, the adequate translation for children who do not speak Spanish adequately is essential for the exercise of the right to information. In the Spanish system there is always an interpreter present during court hearings. Despite these responses, it is also worth mentioning research carried out in 2016 on non-foreign minors in Spanish juvenile justice, which concludes that there are significant shortcomings in the right to interpretation and translation. Such as, for example, the lack of assistance not only to children but also to their families, or the non-existence of a rule regulating a register of translators and interpreters and their requirements to ensure the quality of the service[110] .
- In the individual assessment of the child, it has been detected to necessity to include a more accurate analysis of the participation of the child in new technologies. Without this, it will be increasingly difficult to assess the child's needs. It is true that throughout the reports we see references, but it would be necessary for people with knowledge of technology and social media to be integrated into the technical teams in order to have an assessment of the child in the virtual world, as this can give us different profiles of children.
- As far as the age responsibility principle is concerned, and, in particular, the question of whether the behaviour of police officers and other professionals is appropriate to the age of the child it should be borne in mind that, although it is understood that, in general, the behaviour of professionals is adequate, there is a lot of room for improvement in terms of the physical environment in which the interviews, hearings and meetings are conducted.

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[108] As stated in art. 37.2 Organic Law 5/2000, "*Finally, the judge will hear the minor, leaving the case for judgement*".

[109] STC 13/2006, 16.1.2006. BOE" n. 39, 15.2.2006.

[110] FERNÁNDEZ MOLINA, E., "Derechos procesales de los menores sospechosos o acusados en la Unión Europea. Informe Nacional España", cit., p. 48.

- For instance, for practical reasons, the juvenile units are located inside the judicial buildings, which means a first encounter with "adult justice". In localities such as Madrid, the juvenile jurisdiction, together with the GRUME – which is the National Police Unit specialised in children-, has an autonomous building, which means that they do not meet with adults except for those who work there or appear as witnesses or experts in juvenile cases.
- In addition, the chambers of the judges and prosecutors are usually decorated with portraits of the King in robes and the flags of Spain and the Autonomous Community. It would be desirable for these rooms to be free of institutional references. Moreover, Judges and Public prosecutors wear the formal clothes typical for criminal trials – robes-. These practices should be improved.

- As for the speedy justice principle, the professionals interviewed consider that the length of the proceedings is not at all adequate in the light of the principle of the best interests of the child.
- When it come to the principle of diligent Justice, and in relation to the functioning of the Spanish system, a significant lack of coordination between the Autonomous Communities and, in turn, between them and the central State has been identified. Thus, for example, the Organic Law 5/2000 was approved without an economic report, and therefore there are problems in the management of resources, for example, technical teams. In addition, there are many differences in the application of the Juvenile Justice system between the Autonomous Communities
- As far as the principle of a justice adapted and focused on the rights of the child is concerned, the Spanish System is based on the principle of flexibility and opportunity. In general, Spanish legislation is very flexible and allows these measures to be applied as a last resort. However, as it has already been pointed out on several occasions, due to successive legal amendments, currently certain offences have the mandatory measure of internment[111].
- Regarding the principle of respecting the right to a private and family life, and in particular, the right to protection of privacy, there is a worrisome regulation of the antecedents in cases of sexual crimes, where the antecedents remain in the Central Registry of Sex Offenders for the period of 10 years since the person has reached the age of majority. This is a severe impediment in practice to work at several institutions where they ask a certificate of no sexual antecedents, which means that a child that has committed a sexual crime, irrespective of its gravity, and therefore not taking into account the principle of proportionality, will not be able to work until 28 years old in any place with contact with children.

[111] Art. 10.2 Organic Law 5/2000.

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