THE JUVENILE JUSTICE SYSTEM IN SPAIN

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Key words:

1. Relevant legal framework regulating criminal proceedings against juvenile offenders

Very important transformations in the treatment of juvenile offenders have intervened during the last decade of XXth century and the beginning of XXIst century in Spain[1].

1.1. Due to the absence of guarantees and procedures, twelve years after the approval of the new Constitution of 1978, the old welfare-model (the „tutelary model") - regulated by an Act of 1948 and devoted to minors up to 16 - was declared unconstitutional by the Constitutional Court. This decision opened a process of deep transformation in the system of treatment of offenders under 16. Following the traditional positivist-correctional approach, the old „tutelary model" considered that delinquency among minors was a symptom of the need of public intervention to reform the individual quest for their social rehabilitation. Sanctions (measures) had to be not particularly punitive, but corrective and re-educative and they had to be inserted in the broader frame of protective interventions towards minors neglected or in danger. Theoretically, this system was only intended to protect, to improve and to give help: so, although deprivation of liberty was frequently imposed, tribunals did not need to be integrated by professional judges and no special guarantees had to be fulfilled. Indeed, the 1948 Act dearly stated that no ordinary or special procedure should be observed by the "tutelary tribunals": they intervened without separation between investigation and adjudication with a full „freedom of criterion", independent from all

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[1] José Luis de la Cuesta, 1999, 101 ff.

kind of juridical concept and consequence, and taking into account only the nature of the facts and the minor's conditions. The hearings were not public and intervention of a lawyer was not allowed.

Spanish literature had since long criticized this model and demanded its substitution by a different system. Separation between the protective and the correctional intervention was achieved in 1996. According to the 1996 Minors' Legal Protection Act, the protection of minors was put under the responsibility of the social services (in particular, those of the Autonomous Communities)[2] and the civil Judges. But, although in 1985 the new Judges for Minors were established by the new Act on Judicial Power and although it required the government to present to the Parliament a new Bill on Minors, the reform of the system of intervention related to juvenile offenders bad to wait until 1992. Indeed, only after the decision of the Constitutional Court (STC 14 February 1991) declaring unconstitutional the former regime, an „urgent" reform was approved. The Organic Act 4/1992 established a minimum age (12 years old) for the judicial intervention towards teenager delinquents (under 16) and „provisionally" introduced a hybrid system of reaction (tutelary/penal/social) based on the principle of the „best interest of the minor"[3], considering that criterion governing intervention had to be the minor's education and social reintegration needs and not punishment or repression. The new proceedings, fully complying with the constitutional guarantees for minors, were inspired by the principle of flexibility and opened the way to the implementation of different means of diversion. It was also envisaged to refer minors who had committed non-serious offences (without violence or intimidation) to the social services, either directly or with a warning. The Organic Act 4/1992 equally gave an answer to an insistent request: the establishment of the technical team[4]. Integrated by a psychologist, a social assistant and an educator, its a „overriding role"[5] was to facilitate the Public Prosecutor's and Judge's decisions concerning the minor's education and social reintegration, by issuing of a report on the minor's psychological, pedagogical situation and family background. New measures having a maximum span of two years were introduced. But the system was full of ideological contradictions[6] and was not really helpful to make the concerned minor to assume responsibility[7].

1.2. In 1995 a new Penal Code was approved in Spain. This Code raised from 16 to 18 the age limit for the Code's application, but the price[8] was the admission of the penal responsibility of minors (Art. 19). The system introduced in 1992 was provisionally maintained in force until the approval of the new Act regulating the penal responsibility of minors.

1.3. Following the provision of Art. 19 of the new Penal Code, the Organic Act 5/2000[9] introduced the new Spanish system of penal responsibility, giving a dear priority to educative and re-socialization criteria over those of the social defense[10].

The Act came into force only one year later (January 2001), after several reforms; one in particular, related to the treatment of minors committing very serious crimes and, in particular, terrorism[11], was very criticized (Organic Act 7/2000).

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[2] Spain is integrated by 17 regions, which benefit of a political autonomy, called „Autonomous Communities" (Comunidades Autonomas).
[3] Altava Lavall, 2002, 247; Higuera Guimera, 2003, 253; Palacio Sanchez Izquierdo, 2000.
[4] Beristain, 1995, XIV.
[5] Urra Portillo, 1995, 8.
[6] Rios Martin, 1993, 234.
[7] Funes, 1998.
[8] Cuello Contreras, 2001, 205.
[9] Boletín Oficial del Estado, 13 January, 2000.
[10] Cantarero Bandrés, 2002, 29; however, Cuello Contreras, 2001, 205.
[11] Etxebarria Zarrabeitia, 2001a.

In December 2006 a new reform has been introduced by the Organic Act 8/2006[12] in order to:

- Assure a higher proportionality between sanctions and the seriousness of the offence, opening new possibilities to the imposition of internment in closed regime, extending the limits of internment (not only if imposed as a sanction, but also as a preventive measure) in the most serious cases and allowing the execution of internment measures in penitentiaries as soon as the juvenile turns 18;

- introduce new measures, such as the prohibition to enter in contact or in communication with the victim, the victim's relatives or other persons; and

- strengthen and recognize the victim's rights.

This reform will come into force in February 2007.

Most of the changes introduced in 1992 were adopted by the Organic Act 5/2000, a comprehensive Act regulating both the penal and procedural aspects of the penal responsibility (and the civil liability) of minors having committed any of the criminal offences regulated by the Adults' Penal Legislation[13]. Nevertheless, the Organic Act 5/2000 has mainly a procedural content - only some of the provisions are-strictly of a penal nature[14]. It is thus a specialized Act, not embodied either in the Penal Code, or in the Criminal Procedure Code, even if the subsidiary application of both texts is envisaged to complement its provisions or to fill eventual gaps.

1.3.1. The Organic Act 5/2000 regulates, therefore, all of the material, procedural and executive aspects of the intervention against juvenile delinquents, establishing a system integrated within the criminal justice system. The main axes of the new system are the following[15]:

a) minor's penal responsibility: coherently with Art.19 of the penal code, the new model is aimed at reducing the importance of the ideas of protection and paternalism and dearly admits the „penal responsibility„ (or criminal responsibility) of minors. Thus, the Organic Act 5/2000 regulates this eventual penal responsibility as a *sui generis* one[16], distinguishing between its ascertainment and the related consequences. The ascertainment of the penal responsibility, in a formal sense, is governed by parameters similar to those for adult criminal responsibility; in fact, the grounds of the minor's penal responsibility are not different from the adult's one: committing a penal offence and no concurrence of any of the possible causes of exemption generally set out by the Penal Code (Art. 5.1);

b) a mixed model: penal responsibility and re-education: in the trend opened in 1992, the new model is not a punitive, but a mixed one, fully complying with the Convention on Children Rights. The declaration of penal responsibility constitutes only a first step in an intervention that must be devoted to the re-education and re-socialization of minors. The main differences with the adults' system relate the consequences: the formally established penal responsibility is not followed by a punitive intervention, but by a pragmatic[17] and, at least, predominantly non-punitive, strictly educative one. And by this way important differences to key principles of the adult penal and procedural law are allowed. Crimes and offences are not followed by punishments, but by measures submitted (in principle) to other imposition criteria. The special educative nature of the intervention determines procedural differences and the intervention of the technical team, as well

[12] Boletín Oficial del Estado, nº 290, 5 December 2006.

[13] A treatment intervention is also envisaged for those minors who are deemed to be absent of capacity for forming criminal intent (Art.5.2). But although Organic Act 5/2000 forgets to say it in an explicit way, in these cases the imposition of therapeutic measures should always require a proved criminal dangerousness (Gonzales Cussac – Cuerda Arnau, 2002, 84-85).

[14] Boldova Pasamar, 2002, 1553; Gonzales Cussac-Cuerda Arnau, 2002, 79.

[15] de la Cuesta, 2004; see also Giménez-Sallinas i Colomer, 2000.

[16] Bueno Arus, 2001, 72.

[17] Cuello Contreras, 2001, 207.

as the need for the specialization of all the professionals who take part in the penal process (4th Final Disposition);

c) the best interest of the child. Following the wording of the Child Convention, the Organic Act 5/2000 frequently refers to the „minor's superior interest" or to the „best interest of the child" as cardinal principles[18] of any intervention towards a minor: in fact, every participant in the process must respect this principle, further considered as the main criterion to be followed in the adoption of any decision and, particularly, in order to choose and determine the measure to be applied to the case (Art. 7.3). According to this „best interest", the Organic Act 5/2000 leaves interesting possibilities open for exercising the „regulated" opportunity[19] and the Prosecutor is therefore allowed, in certain cases, to decide not to prosecute (Articles 18 and 19), while in the adult penal law the Prosecutor is obliged to do so whenever a penal offence has been committed.

Definition of the best interest of the concerned child is the Judge's task, assisted by the technical team and in close coordination with the Prosecutor[20]. Due to the little help to be found in the Organic Act 5/2000, non-legal criteria are available in order to give a content to the „minor's best interest", a concept that should necessarily be connected to the minor's personal development, educational needs[21], to the minor's re-education and re-socialization[22].

1.3.2. Specifically, relating to the criminal proceedings provided by the Organic Act 5/2000, they are also in line with the 1992 trend, but include a much more developed regulation (Articles 16-42) to be completed by the general provisions on the abbreviated process (T.III, B.IV of the Criminal Procedure Code).

The trial is conducted by a specialized magistrate, the judge for Minors of the place where the facts were committed (Art. 2.3); if the facts were committed in various places, the decision on the competent Judge must also consider the place of residence of the minor concerned (Art. 20.3). In principle, the new procedure fully guarantees the presumption of innocence, the right for defense[23], the right to make an appeal and (not without distinctions) all the other fundamental procedural safeguards provided for the adults.

Other relevant features of this penal process are:

a) specialization of all the different intervening agencies (Judge, Prosecutor, Lawyer and the technical team);

b) pre-eminence and complexity of the Prosecutor's role (see below);

c) flexibility in decisions (they can always be revised, suspended, etc at any stage and options to diversion;

d) compliance with the accusatory principle[24] inside a procedure that is more accusatorial than the adults' one[25]: according to Art. 8, the judge cannot impose a measure more restrictive of the minor's rights or for a longer time than the one demanded either by the Prosecutor or by the accuser; if the judge considers that the-demanded measure is not sufficient, he/she must proceed according to Art. 37.1[26];

[18] Juan-López Martin, 2001, 107.
[19] Alastuey Dobón, 2002b, 202; Bueno Arus, 1997, 164.
[20] Funes Artiaga, 1997, 65.
[21] Higuera Guimera, 2003, 253.
[22] Palacio Sanchez Izquierdo, 2000.
[23] Gómez Colomer, 2002, 185.
[24] Arrom Loscos, 2002, 87; Gómez Colomer, 2002, 184.
[25] Abel Souto, 2004, 13.
[26] Abel Souto, 2004, 27.

e) victims' participation. The regime of the victims' participation in criminal proceedings concerning juvenile offenders has been recently reformed in order to broaden the previous restrictive regulation. According to the former Art. 25 of the Organic Act 5/2000, victims were not allowed to intervene as actors in the process. Of course they could denounce, but accusation was the Prosecutor's task. During the process only in certain circumstances the intervention of the victims was possible, and in a limited way[27]; they could also intervene in the separate judgement initiated to establish the civil liability, presenting their civil claim before the judge, under Articles 61-64[28]. Art. 25 has been reformed by the Organic Act 15/2003. This one, paying attention to the criticism raised in certain sectors by the initial decision of excluding the victim from the criminal proceedings against minors[29] -even qualified as unconstitutional[30] - allows for the intervention of the victim as an actor in this context. On the other hand, Art. 3, as reformed by the Organic Act 8/2006, is devoted to the recognition of the most important victims' rights: assistance, right to claim the civil liability, participation in the file and information on the evolution of the proceedings and over the main decisions adopted, even if they are not taking part in the proceedings.

The process is also characterized by celerity and by division between the procedure devoted to the imposition of a measure and the establishment of the civil liability[31].

The Organic Act 7/2000, adopted before the Organic Act 5/2000's coming into force, introduced, however, several restrictions to the general principles of the natural judge in relation to terrorist crimes[32], that have been confirmed by the Organic Act 8/2006. Leaving aside the relevant increase produced in the deprivation of liberty measures' length according to the new Article 10, prosecutions related to terrorism fall into the competence of the Central Judge for Minors, in the National Audience, Madrid (Art. 2.4). The joinder of proceedings is not allowed and the measures imposed have to be executed with preference to any other measures.

1.3.3. There are two proceedings regulated by the Organic Act 5/2000: the declarative and the executive proceedings.

The former is divided in two stages: investigation (instrucción) and trial (audiencia). Investigation and adjudication are, thus, separated and both of them have an intermediary phase: the presentation before the Judge.

In order to guarantee the principle of the judicial independence, investigation is dealt with the Prosecutor[33]. This subject - and not the Judge[34] - is the competent instance to start the case (Art. 16) and to close it after having carried out the investigation (Art. 30.1). Furthermore, the Prosecutor conducts the investigation, leads the action of the judicial police and decides on the practice of any search activities demanded by the minor's counsel or by the victims taking part in the process. The Prosecutor must give the minor's counsel (and those participant in the process) free access to the file to whenever required (Art. 23.2), except if the secret of the investigation has been declared by the Judge; in this case the minors' counsel will receive the file at the end in order to prepare the defense. Victims taking part in the proceedings have also the right of access to the file (Art. 25). However, in this stage, like in any other, only the judge, resolving in a motivated

[27] Planchadell Gargallo, 2002, 195.
[28] José Louis de la Cuesta, 2001b, 175; Navarro Mendizabal, 2001, 121.
[29] Abel Souto, 2003, 1077; Landrove Diaz, 1998, 293; Ventura Faci - Peláez Pérez, 2000, 124.
[30] Sáez Gonzáles, 2001, 77.
[31] Cuello Contreras, 2000, 88.
[32] Rios Martin, 2001.
[33] Diaz Martinez, 2003; López López, 2002.
[34] Critically, Gómez Colomer, 2002, 177, 184.

way (Articles 23.3 and 26.3), is entitled to adopt all kinds of decisions restricting the minor's fundamental rights.

As soon as the investigation phase is over, the file is sent to the Judge for Minors. After hearing the minor's counsel (and the civil liable persons), and if there is no conformity among the different parties (Art. 32), the Judge decides whether opening the hearing or not (Art. 33).

The hearings are conducted by the judge with broader discretion than in the adult criminal process. Other differences are: no robes and stage, restrictions in the publicity... The hearings take place in the presence of the Prosecutor (and those other persons taking part in the proceedings), the minor's counsel, a representative of the technical team and the minor, who can be accompanied by his/her legal representatives, except if barred by a judicial decision. The public agency responsible for the protection or reform of minors (and those persons or entities potentially civil liable) can also take part in the hearings (Art. 35).

The main contents of the hearing concern the evidence, the presentation of proposals by the parties and by the technical team and the interview of the minor.

After the hearing, the judge has five days to pass the sentence (Art. 38), imposing the measures, specifying their content, duration and objectives, in a clear manner and with explanations that are appropriate to the minor's age (Art. 39.2). Sentences can be appealed before the Provincial Audience (before the National Audience in case of terrorism) within five days (Art. 41): An appeal to the Supreme Court in order to unify the judicial doctrine is also provided for by Art. 42 of the Organic Act 5/2000.

The execution process is regulated by Articles 43-60[35]. The new system is coordinated with the social services working to protect minors as established in the Autonomous Communities; these are allowed to give their support to the judicial system and to the application of judicially adopted measures. The Organic Act 5/2000 entrusts the Autonomous Community of the place of the sentencing judge for Minors with the competence on execution (Art.45.1); conventions or agreements with public or private (non-profit)agencies in order to execute the measures can be drawn up (Art. 45.3). This does not mean in any case a referral of responsibility. Execution must be conducted under the control of the judge for Minors (Art. 44) and in full compliance with the legality principle. Special provisions for the execution of measures consisting in a deprivation of liberty are set out (Articles 54-60). By the Royal Decree 1774/2004 a general regulation of the execution of measures has been approved, developing the general provisions of the Organic Act 5/2000.

2. Age thresholds of criminal responsibility and liability to prosecution

2.1. Art. 19 of the new 1995 Penal Code established an age threshold for the full application of the Penal Code's provisions: 18 years old. Simultaneously, it ordered the drafting of a new Law on the penal responsibility of minors in Spain, suspending the application of the new age threshold until the effective coming into force of this new system.

According to the old penal Code, 16 years was the absolute age threshold of penal responsibility. Persons under 16 who had committed a criminal offence were not held responsible; in fact they benefited of an exemption of penal responsibility (Art. 8.2 old Penal Code). They were, nevertheless, sent to juvenile courts (to the „Tutelary Tribunals", until 1991) who were qualified to non-penal measures. Nevertheless, after Act 4/1992, children under 12 were not sent to Juvenile courts; they were directly put under the supervision of social services.

[35] José Louis de la Cuesta, 2001c.

Nowadays, the situation has changed. First of all, age threshold have been raised and, after the last reform, the Minors' Jurisdiction only examines acts committed by persons between 14 and 18. Furthermore, 18 cannot be considered anymore as the absolute age threshold for criminal responsibility; while the new system is a system of „penal responsibility", thus people under 18 can also be held responsible if they commit a penal offence as defined by the Penal Legislation. According to the new model, minors under 14 are the only ones who cannot be penal responsible (Art. 4); the minority of age (18) only prevents from applying the adults' Penal Code. Minors under 18 (but already 14) can be imputable, i.e. capable of culpability[36]; indeed, in order to be declared responsible, the minor must be culpable[37] and no circumstance of non-imputation, justification or excuse must intervene. Therefore, the Organic Act 5/2000 reduces to 14 the age limit for the criminal imputation[38], although between 14 and 18 the penal, procedural and execution system provide for this age range special regulations for responsibility.

Minors' jurisdiction extends its competence to minors between 14 and 18, but an important distinction is legally made: minors aged 16-18 can be submitted to a more severe penal intervention than those aged 14-16, especially in serious cases (Art. 10). Sometimes determining the age of a person can be difficult. Therefore, if doubts on the age arise and the police have no elements to determine it, the decision on this issue will be adopted by the ordinary. Judge according to the general rules set out by the Criminal Procedural Code (Art. 2.9 of the Royal Decree 1774/2004).

The attainment of the age of majority does not put an end to the execution of the measure imposed. The execution of the measure goes on until the goals are achieved; but internment in closed regime imposed to (or still in execution by) 21 years old persons will be executed in a prison, in principle; the same rule will be applied if the young person becomes 18 years old in dosed regime and his/her behavior is not in accordance of the objectives proposed by the sentence or if, before initiating the execution, he/she has already executed totally or in part an imprisonment sentence or an internment measure in a penitentiary establishment (Art. 14). On the other hand, if, during the measure's execution, a 18 year old person is punished under the Penal Code and the simultaneous execution of this punishment and the measure is not possible, priority is given to the punishment; the execution of the punishment will extinguish the measures imposed, except if it is an internment measure and punishment is imprisonment: in this case, if the Judge for Minors does not leave without effect the execution of the measure, this one will take place in a penitentiary and will be followed by the execution of the prison sentence (Art. 47.7).

Art. 69 of the new Penal Code paved the way to the application of the new system for certain minors aged up to 21 (but older than 18) who committed a penal offence. Art. 4 of the Organic Act 5/2000 regulated this possibility, excluding very serious crimes (when punished with a 15 year penalty of deprivation of liberty or more) and crimes related with terrorism.

The application of Art. 4 remained however suspended until 2007 (Organic Act 9/2002) and the last reform (Organic Act 8/2006), after having considered the exclusion from this possibility only of those acts punishable by internment in closed regime, has finally decided to limit the field of application of the jurisdiction for minors to persons aged between 14 and 18.

2.2. Minors under 14 committing penal offences cannot be held responsible and they are to be dealt with according to the provisions and procedures on protection of minors contained in the Civil Code and the Organic Act 1/1996 on Minor's Protection. Consequently Art. 3 of the Organic Act 5/2000 orders the Prosecutor (as soon after verifying this point) to send all the relevant information to the competent authority in the field of protection of minors, so that this one can

[36] Alastuey Dobón, 2002a, 1545.
[37] Cuello Contreras, 2000, 49; Gonzáles Cussac - Cuerda Arnau, 2002, 82; however, Feijóo Sanchez, 2001, 24.
[38] Gonzáles Cussac - Cuerda Arnau, 2002, 88; Higuera Guimerá, 2002, 71.

promote the adoption of those measures of protection that are adequate to the minor[39]. Every public authority qualified in the field of children's protection is legally obliged to intervene directly, immediately and with effectiveness in any situation of risk or danger to the children welfare, adopting all the necessary and suitable measures with an educative and interdisciplinary approach (Art. 14 Organic Act 1/1996). In cases of serious risk to the personal or social development of the minor, separation from the family can be ordered as to eliminate risk factors coming from the family environment. If parents fail to fulfil their protection duties depriving the minor of the necessary material and moral assistance, the qualified authority must assume directly and automatically the tutorship of the minor, and adopt all the necessary measures to guarantee protection (Art. 172.1 Civil Code).

In any case, the intervention must always be communicated to the minor's legal representatives, and carried out in coordination with all the competent authorities and under the control of the Prosecutor and the Civil Judge. The Prosecutor must be kept informed on every administrative decision and has to verify every six months the situation of the concerned minor and promote the adoption of the necessary protective measures by the Judge. Civil and Family judges are the entitled authorities to adopt any kinds of preventive measures (Art. 158 Civil Code) and to deal with appeals against any administrative decision.

3. Specialized agencies

As already explained, criminal proceedings against juvenile offenders constitute a judicial process - possibly too similar to the one for adults - conducted by a specialized magistrate, the judge for Minors. Indeed, specialization of the different intervening agencies is one of the main features of the new system established after the abolition of the tutelary system in Spain, and particularly by the Organic Act 5/2000. In this way, Final Disposition No. 4 requires the specialization of judges, Prosecutors and Lawyers, attributing to their respective governing boards the competence to organize training programs. Specialization courses are organized as one of the best ways to guarantee the specialized required training; but it could also be proofed by other objective criteria, such as the professional experience in working with minors and scientific studies or papers presented or published on this matter.

3.1. Judge's specialization

The specialization of the judges for Minors was already required in 1995 by the Organic Act of the Judicial Power; in this text the Judicial School was entrusted with training courses in order to assure it. A reform introduced by the Organic Act 9/2000 in Art. 329.3 reinforced this requirement, clearly establishing a hierarchy in the provision of these posts: firstly, those Magistrates having taken the specialization training organized by the judicial School; secondly, those Magistrates having served at least three years during the previous five years in the jurisdiction of minors; finally, in absence of the above mentioned requirements, the seniority rule. In any case, those who obtain a post by this way, before taking up office, have to participate in the activities of specialization determined by the General Council of the Judicial Power.

3.2. Prosecutor's specialization

Specialization of Prosecutors is also a legal requirement and, according to Final Disposition 4 of the Organic Act 5/2000, the Ministry of justice must not only assure it, but also create, in all the Prosecutor's Offices, a specialized Section for Minors.

[39] Lorca Martinez, 2001.

The Prosecutor's specialization is particularly crucial, due to the important role of Prosecutor in criminal proceedings concerning juvenile offenders[40]. The Prosecutor not only conducts the investigation, leads the action of the judicial police and instructs the case (Articles 16.1 and 23); the Prosecutor also has to guarantee the minors' rights and protect their interests (Art. 6 of the Organic Act 5/2000 and Art. 3.13 of the Prosecutor's Organic Statute) as well as to assure the victims' defense and the social interest. These functions deserve a different logic[41] and are not easily compatible[42], particularly if they concentrate on the same person. However, the proposal to have two different members of the Prosecutor office (one to prosecute, the other one to watch over the minor's interest) participating in the process was not followed by the Organic Act 5/2000. Nevertheless, concerning the statements of the minor detained conducted in the absence of the minor's parents, tutors or guardians, Art. 17.2 clearly orders the participation of a member of the Prosecutor's office, but different from the Prosecutor who is instructing the case[43].

A specialized Minors' Prosecutor has been appointed inside the Supreme Court's Prosecutor Office in January 2005, in order to assure coordination and unity of guidelines in the activity of the different Minors' Specialized Prosecutors in Spain.

3.3. Specialization required for any other figure acting in the proceedings

The Organic Act 5/2000 (Final disposition No. 4) also requires the specialization of the legal counsels. The General Council of Bar Associations must adopt any necessary provision aimed at guaranteeing an adequate offer of specialized training in all the territory for those lawyers who desire to intervene before the judges for Minors[44]. A specialized training, approved by the General Council, is necessary to be included in the list of lawyers authorized to intervene as official defending counsels before the Jurisdiction of Minors[45].

As far as the police forces are concerned[46], Final Disposition 3 required to the Government and the Autonomous Communities to strengthen the Specialized Groups for Minors of the Judicial Police, in order to give to the Prosecutors all the necessary support. Most of police forces (at least the most important ones) have organized specialized units to grant an adequate intervention in this field[47].

Furthermore, Royal Decree 1774/2004 has regulated the most important aspects of the judicial police's intervention related to minors under the Prosecutor's direction (Articles 2 and 3).

3.4. Social services (or similar agencies) involved in the proceedings

Several Articles of the Organic Act 5/2000 dearly envisage the participation of social services involved in the protection and reform of minors. This happens in the execution of measures (Articles 43-60), but also in other fields: adoption of provisional measures (Art. 28.1 and 28.2), participation in the hearings (Articles 35, 41 and 42.7), the choice (Articles 7.3 and 10.4) and modification of the measure (Art. 13) or the decision of suspending the sentence execution (Art. 40). Despite the importance of the adequate training of this non-jurisdictional personnel[48], the initial content of Final Disposition Nos. 3 and 4, setting out a new category of forensic

[40] Cavero Forradelas, 1997, 73; Sancho Casajus, 2002, 137.
[41] Tamarit Sumalla, 2001, 87.
[42] Gómez Colomer, 2002, 167.
[43] Critically, Salom Escrivá, 2002, 225.
[44] Ponz Nomdedéu, 2002, 382.
[45] Higuera Guimerá, 2003, 428.
[46] Antón Barberá, Cólas Turégano, 2002, 413.
[47] Bueno Arus, 1998; Clemente, 1997; Dominguez Figueirido, Balsebre Jiménez, 1998.
[48] Cuello Contreras, 2000, 146.

psychologists and educators and social Workers, was abolished by the Organic Act 9/2000 before the effective enforcement of the Organic Act 5/2000[49].

Furthermore, the Prosecutor can always propose the participation in the trial of persons or representatives of public and private institutions that can bring to the valuable elements in order to determine the best interest of the minor and on the suitability of the proposed measures (Art. 30.3). On the other hand, social services or similar agencies have to get involved if the socio-educative intervention over the minor proposed by the technical team is allowed for. Indeed, it is always up to the technical team's hands, to propose a socio-educative intervention over the minor, indicating the noteworthy aspects for this intervention (Art. 27.2).

4. Early definition of the proceedings

Coherently to the pursuance of the minor's best interest (and not punishment or repression) as the fundamental principle of the intervention towards minors, Spanish law allows an early definition of the proceedings avoiding new prosecutions against minors (14-18 years old).

So, by means of the principle of „regulated opportunity"[50], even before opening the case itself, Art. 18 allows the Prosecutor to decide not to start the investigation if the violations committed represent a less serious offence (without personal violence or threat) or misdemeanours, and there is no evidence of the previous commitment, by the minor, of similar acts[51]. In this case, if the Prosecutor decides not to open the file, he will transmit all kinds of information to the authority for the protection of minors. Although Art. 18's wording apparently obliges the authority to the adoption of protection measures provided for by the Organic Act 1/1996[52], the decision to promote them is only to be found according to the minor's situation[53]; discretion is, however, at this level, really broad and not sufficiently controlled[54].

Under Art. 19, conciliation or reparation can also determine a closure by the Prosecutor of an already opened investigation or file[55]. In any case, the seriousness of the offence and other circumstances of the facts especially the absence of serious violence or threat - are very important elements for the adoption of this decision; furthermore serious offences cannot be dealt with by this procedure[56]. On the other hand, although the victim's participation in this procedure is important, conciliation or reparation are not regarded as a manifestation of the privatization of the conflict's resolution[57] and can involve certain dangers to individual safeguards[58], so the controversial regulation introduced by Art. 19 of the Organic Act 5/2000[59] requires the intervention of different instances and defines what elements must be controlled in order to consider that conciliation or reparation have been achieved, and the procedure to be followed with this aim.

According to Art.19.2, conciliation occurs if the minor acknowledges the harm and apologizes to the victim and the latter -or the legal representative, with the approval of the Judge

[49] Higuera Guimerá, 2003, 429.
[50] Bueno Arus, 1997.
[51] Dolz Lago, 2002, 281.
[52] Higuera Guimerá, 2003, 434.
[53] Alastuey Dobón, 2002b, 203.
[54] Landrove Diaz, 2001, 287.
[55] Bernuz Beneitez, 2001, 263; Peris Riera, 2001.
[56] Critically, Tamarit Sumalla, 2002, 62.
[57] Torres Ferdández, 2003, 89.
[58] Carmona Salgado, 2001, 121.
[59] Herrera Moreno, 2001, 425.

for Minors - accepts[60] or at least does not reject it[61]. On the other hand, in order to accept reparation - as a way of diversion, and independently from the civil liability issues[62] - , an agreement of the minor to do something in favor of the victim or of the community is required; and this agreement must be followed by its effective execution. Reparation can also, in certain cases, be verified through the successful implementation of the educative activity proposed by the technical team[63].

In order to obtain conciliation or reparation, Art. 19.3 entrusts the technical team with the functions of mediation between the minor and the victim. It is also the technical team's task to inform the Prosecutor on the agreement that has been reached and on the obligations to be fulfilled. Nevertheless, the closure of the investigation is only possible if conciliation and reparation are effective (also if reparation was not possible in despite of the minor's will). Only then the Prosecutor will close the investigation and propose the Judge to dismiss the case.

Dismissal of the case by the way of Art. 19.1 can also be the consequence of a proposal coming from the technical team if it is regarded to be convenient in the minor's best interest due to the time elapsed since the commitment of the acts or because the blame that the facts deserve has already been sufficiently expressed by different interventions (Art.27.4). If the Judge dismisses the case, the Prosecutor is to send complete information to the competent public agency to facilitate possible necessary interventions to protect the minor.

An early definition of the proceedings can again derive from the fulfillment of the Prosecutor's request by the minors and their counsel, that - if the measures proposed do not consist in internment or absolute disqualification - give way, without any other intervention, to a sentence of conformity (Articles 32 and 36).

The principle of flexibility. also allows, once the sentence has been passed, to suspend its execution during two years and with the possibility of imposing certain conditions (Art. 40) or to suspend, modify or substitute the imposed measures (Articles 13 and 51), even putting an end to the penal intervention[64].

5. Personality assessment procedures

One of most important novelties of the new system introduced by the Organic Act 4/1992 was the establishment of a technical team, integrated by a psychologist, a pedagogue and a social worker, and with a fundamental task: to inform the Prosecutor and the judge on the psychological, pedagogic and familiar situation of the minor and his/her environment, assessing decisive elements in order to define the minor's best interest and to adopt any decision on the minor's rehabilitation and re-socialization.

In the Organic Act 5/2000 the position of the technical team remains an essential one[65]: not only it investigates and reports on the minor's situation, but it also explores the possibilities of conciliation or reparation (eventually mediating between minor and victim) and proposes the non-prosecution of the case, in the minor's best interest, if the „social concern" has already been sufficiently considered or prosecution is deemed inadequate due to the time elapsed since the commitment of the offence (Art.27). The technical team's report is needed in order to adopt many

[60] Critically, Gomez Rivero, 2002, 9.
[61] Marti Sanchez, 2001, 77.
[62] Richard Gonzáles, 2000, 4.
[63] In a critical sense, due to the possible confusion between reparation and measures consisting in community service or socio-educative tasks, see Alastuey Dobón, 2002b, 207.
[64] Mena Álvarez, 2001, 221.
[65] Dolz Lago, 2001.

fundamental decisions, particularly those related to the provisional and the final measures, their order of application, modification, substitution or suspension.

The Royal Decree 1774/2004 develops the regulation of the technical team's intervention. Art. 4.1 establishes that the technical teams will be integrated by psychologists, educators and social workers (eventually other professionals can join the technical team in a temporal or permanent way) recruited to assist the Prosecutor and the Judge for Minors, according to their specialization. They are qualified to give a professional assistance to the minor detained, and to mediate between minor and victim.

The technical independence of the team is guaranteed (Art. 42). It's organically dependent from the competent Administration and intervenes under the supervision of the Prosecutor and the Judge for Minors. But the reports are drawn up applying strict professional criteria, and have to be signed by the team members. They can also be drawn up or complemented by those public or private entities that, being active in the field of minors' education, have a first hand knowledge of the situation of the alleged offender (Art. 27.6 Organic Act 5/2000).

The composition of the technical team is defined by the competent administration, according to the real needs. Either the Ministry of justice or each competent Autonomous Community have to guarantee that each Prosecutor will have enough and adequate staff to draw up the legally required reports in time (Art. 4.4 Royal Decree 1774/2004).

6. Mediation

One of the functions entrusted to the technical team is to mediate between minor and' victim (Art. 19.3 of the Organic Act 5/2000; Art. 4.1 II of the Royal Decree 1774/2004).

Mediation can play an important role. at different stages of the proceedings (where several ways of diversion are envisaged, especially in case of conformity of the minor with the Prosecutor's demand or conciliation with the victim), but it is regulated by the Organic Act 5/2000 only in relation with the dismissal of the case due to the conciliation or reparation between minor and victim[66]. Art. 27.3 of the Organic Act 5/2000 establishes therefore that the technical team, as far as it considers it to be convenient and in the minor's best interest, has to explore the possibilities of conciliation or reparation and must inform the Prosecutor on the content and on the aim of the possible restorative or conciliation activity[67].

The mediation procedure has been further developed by Art. 5 of the Royal Decree 1774/2004. According to this new regulation, the procedure begins either by the initiative of the technical team (as regulated by Art. 27.3 and already explained) or by a Prosecutor's petition: this one - taking into account the concurrent circumstances, the minor's counsel's request or the technical team's initiative - may regard a discontinuance of the proceedings more convenient; in this case the Prosecutor will ask the technical team on the suitability of an extrajudicial solution adequate to the minor's and victim's interest.

After receiving the Prosecutor's petition, the technical team must get in touch with the minor, his/her legal representatives and counsel, in order to explain the possibility of an extrajudicial solution, and to discuss the matter. If the minor, in his/her counsel's presence, accepts one of the proposed solutions, the conformity of the legal representatives is demanded.

If the minor agrees, the technical team contacts the victims in order to explore their willingness (if the victim is a minor or is incapable, the legal representatives must confirm it and the competent Judge for Minors must be informed) to take part in a mediation procedure. If the victim agrees, the technical team meets both the minor and the victim in order to consider the

[66] Peris Riera, 2001.
[67] Elicegui Gonzales, Santibánez Gruber, 2002, 189.

particular aspects of the conciliation or reparation agreement; if the victim refuses, the agreement can be reached by any other way.

Finally, the technical team has to keep the Prosecutor informed about the result of the mediation procedure, on the agreements reached and on their degree of fulfillment or the reasons for a possible failure.

If the conciliation or the direct or social reparation is not possible (or if it is considered more suitable to the minor's best interest) the technical team can propose to the minor either a socio-educative task or a community service; in this event the minor's compromise and fulfillment of the service or task has the same value as conciliation or reparation in order to the adoption of the Prosecutor's decision to close the file and demand to the judge the dismissal of the case.

The mediation procedure regulated by Art. 5 of the Royal Decree 1774/2004 also applies to the sometimes „problematic"[68] cases of conciliation that can intervene after the application of the measure (provided by Art. 51.4 of the Organic Act 5/2000, without exclusion of serious offences). Here again conciliation or reparation can lead to the extinction of the measure, if the Judge - taking into account the Prosecutor's or the minor's counsel's proposal, and after having heard the technical team and the representative of the public body competent in protection and reform of minors - considers that conciliation expresses sufficiently the reject that the minor's offences deserve. However, in this case the mediation functions of the technical team already explained are usually developed by the public agency. The latter, as soon as the minor manifests his/her will of conciliation of reparation, has to inform the Judge for Minors and the Prosecutor, and then proceed in the way provided for the technical team under Art. 5 of the Royal Decree, without introducing any change in the execution of the measure imposed. If the victim is a minor the judge of Minor's authorization is required (Art. 15.1 of the Royal Decree 1774/2004 and Art.19.6 of the Organic Act 5/2000).

7. Personal liberty

In proceedings against juvenile offenders restriction or deprivation of liberty can occur since detention can be adopted either at the pre-trial stage or as final options.

7.1. Detention by the police[69] is regulated by Art. 17 of the Organic Act 5/2000 and Art. 3 of The Royal Decree 1774/2004. According to these provisions detention must be imposed in the less prejudicial form, in adequate facilities, different from the ones used for people over 18 (Art. 172); detained minors have to receive the protection and social, psychological, medical and physical assistance required according to their age, sex and individual characteristics.

The police must also immediately inform the Prosecutor and the minor's legal representatives, indicating the place where the minor is kept under custody; if the minor is a foreigner with legal residence outside Spain, consular authorities have to be equally informed.

The length of such detention should be restricted to the necessary time in order to clarify the facts. At least within 24 hours the Police must release or put the offender at the Prosecutor's disposal. This one within 48 hours since the detention has to decide either to release the minor or to open the case and send him/her to the competent Judge for Minors, eventually demanding the adoption of the necessary provisional measures.

Detained minors have the right to be informed immediately and in a clear and comprehensible way on the charges and their procedural rights. A detained minor has all the rights

[68] Alastuey Dobón, 2002b, 217; however, Tamarit Sumalla, 2002, 74.
[69] Antón Barberá, Colás Turégano, 2002, 429.

of a detained adult and, in particular, the right to maintain a private interview with his/her counsel before and after the practice of the declaration (Art. 17.2 II) and *habeas corpus* (Art. 17.6).

Any statement of the detained minor has to be made in his/her counsel's presence and also in the presence of the parents, tutor or guardian; if these ones are not present, a representative of the Prosecutor's office, different from the one investigating in the case, must participate (Art. 17.2)[70].

7.2. At the pre-trial stage, the Judge for Minors can adopt several provisional measures[71]: internment, controlled freedom, prohibition to enter in contact or in communication with the victim, the victim's relatives or other persons; the custody by a person, a family or an educational group. The decision must be founded on the risk that the minor may either elude justice or aggress the victim (Art. 28.1 of the Organic Act 5/2000), and requires a Prosecutor's request (or, eventually, the request of the private party taking part in the proceedings); the minor's defense counsel and the technical team must be heard. Aim of the provisional measures - that can last until the hearing or during the appeal - is to grant minor's custody and with defense. Obviously, the time of the provisional measure is counted as time served as part of a sanction, if a measure is finally imposed.

Provisional internment can be adopted taking into account the seriousness and repercussion of the offences and the social alarm caused by them. The minor's social background and personal characteristics, as well as the risk of evasion and the previous serious crimes committed by the minor must also be considered. The Judge decides on the proposal in a short hearing; the technical team and the public agency competent in the protection and reform of minors; these ones must inform the judge on the convenience of the adoption of the demanded measure, attending to the minor's best interest and situation. Evidence can be also proposed in this hearing.

Ordinarily, provisional internment's maximum time was three months, but the last reform (Organic Act 8/2006) has raised this limit to six months; an additional three months can be decided by the Judge in a motivated way and following a Prosecutor's request (Art. 28.3). The internment is applied in the centre designed by the competent public agency, and under the internment regime ordered by the Judge. Art. 29 of the Royal Decree 1774/2004 establishes that, in order to safeguard and respect the principle of presumption of innocence, the individualized program of execution will be replaced by an individualized intervention model, containing the plan of activities adequate to the minor's personal characteristics which must be compatible with the interment regime and the process situation.

In case of non-imputation due to mental impairment or any of the circumstances defined by Articles 20.1-2 and 3 of the Penal Code, the provisional measures foreseen by the Civil Code can be applied to the minor. However the investigation goes on and the application of a therapeutic measure adequate to the minor's best interest remains open by way of the sentence (Art. 29).

7.3. Restriction and deprivation of liberty play an important role in the system of measures, considered by academic literature as „punitive sanctions”[72] or „juvenile punishments”[73]. However, as Landrove Diaz[74] states, being formally penal sanctions, these measures have materially a sanctioning-educational nature[75].

[70] See, in a critical sense, Salom Escrivá, 2002, 225.
[71] Aparicio Blanco, 2000, 169; Gisbert Jordá, 2001, 103.
[72] Sánchez Garcia de Paz, 2000.
[73] Cerezo Mir, 2001,1094; Garcia Pérez, 2000, 686; Extebarria Zarrabeitta, 2001b, 32.
[74] 2001, 160.
[75] See also Gonzáles Cusac, Cuerda Arnau, 2002, 103-105.

The list of measures is broad and includes the following[76]: different kinds of ordinary (and therapeutic) internment (in close regime, half-open regime and open regime); ambulatory treatment; visiting a day-centre; week-end arrest; supervised freedom (eventually with intensive supervision); prohibition to enter in contact or in communication with the victim, the victim's relatives or other persons; custody by a family or educative group; community service; warning; socio-educative tasks; deprivation of the driving license for motorcycles; revocation of other administrative licenses (to hunt, to fish, or allowing the use of arms); absolute disqualification in relation to taking part in political elections or to become a public servant (Art. 7.1).

Measures, in general, may not exceed (Art. 9.3) two years (community service: 100 hours; week-end arrest: 8 week-ends). Internment measures are divided in two. periods: internment and supervised freedom. The technical team advises on the content of each period and the judge decides each period's length.

However, there are special cases (Art. 10):

a) those aged more than 16 who have committed either a serious offence ora less serious offence with violence or coercion or endangering other peoples life or well-being and the commission of any offence by a minor in a group, or belonging to a criminal organization or association, can deserve (after the last reform) measures up to six years (200 hours in case of community service, and up to 16 week-end arrest); if aged 14 or 15 the measure will be limited to three maximum; 150 hours in case of community service, and up to 12 week-end arrest. In extremely serious cases (and recidivism is always considered so) internement will be in a closed regime for 1-6 years (excluding all substitution before one year of effective execution) and supervised freedom with educative assistance up to 5 additional years will follow;

b) the Organic Act 7/2000 introduced a particular system for very serious offences and terrorism; this system has been reformed again in 2006:

- very serious offences (murder, homicide, rape, violent sexual aggression, terrorism and, in general, those punished by the Penal Code with 15 years imprisonment or more)
- if committed by minors of 16 years, deserve a measure of internment in a closed regime (1-5 years) followed by supervised freedom (up to three years more)
- if committed by those aged more than 16, internment in closed regime (from 1 to 8 years) will be followed by supervised freedom (up to five years more) and the measure will not be modified, suspended or substituted until a half of the internment period has been spent;
- in cases of terrorism, according to the seriousness of the offence, the number of acts committed and the circumstances related to the offender, the judge can also impose an absolute disqualification for taking part in political elections or to become a public servant (4 to 15 years); such a measure has to be executed after internment.

All these criteria have to be applied even if the minor is held responsible of more than one infraction and the measures will be executed according to the order established by Art. 47[77]; but if the offences are connected or continuous infractions, the judge will take as a reference the most serious offence committed. In case of a plurality of infractions, if one (or more) constitute a very serious crime or a crime of terrorism the internment in dosed regime can be raised up to 10 years for those aged 16 or 17 and up to six years for those under 16 (Art. 11).

[76] Abel Souto, 2002, 105; Carmona Salgado, 2002, 917; Muñoz Oya, 2001, 185.

[77] If the measures come from different resolution, the Judge in charge of the execution will have to apply the provisions of Art.47 (Art.12).

In any case, general limits in imposition of sanctions are the following:

- the accusatory principle (Art. 8) impedes the Judge for Minors to impose a more severe measure than the one demanded either by the Prosecutor or by the accuser a comparison that can be difficult in case of non-homogeneous sanctions[78];

- for misdemeanours only supervised freedom (up to six months), warning, week-end arrest (up to 4 week-ends), community service (up to 50 hours), deprivation of licenses (up to one year) and prohibition to enter in contact or in communication with the victim, the victim's relatives or other persons or socio-educative tasks (up to six months) can be applied (Art. 9.1).

On the other hand, internment measures - as an absolute temporal limit[79] - cannot exceed the prison's length established by the Penal Code for the commitment of the same offence by an adult (Art. 8). Only minors responsible of:

- either serious offences,

- or less serious offences committed with violence or coercion or posing a great risk to the life or personal integrity of others,

- or offences committed in group or if the minor belongs to a gang, organization or association devoted (even transitorily) to the commission of such activities, can undergo in a closed regime (Art. 9.2). Regulation of the internment in a closed regime is, in any case, mainly oriented in a punitive way[80].

In cases of mental disease or other circumstances that provoke the minor's non-imputability, therapeutic internment or ambulatory treatment are the only admissible measures, and they should be imposed taking into account risk or dangerousness posed by the minor (Art. 9.5).

In order to choose the appropriate measure (Art. 7.3) the model followed by the Organic Act 5/2000 opens a broad field to judicial discretion[81]: flexibility is much more acknowledged than in adults' proceedings[82] and the Judge for Minors must take into account not only the evidence and the legal scope of the conduct, but, in particular, the information provided by the technical team on the minor's age, social and family conditions and personality. The public institutions competent for the protection and reform of minors can also advise the judge on these issues. Although general prevention and retribution are present in a certain sense, special prevention criteria prevail[83].

The imposition of more than one measure of different nature in the same resolution is possible, if it appears to be the most suitable decision for the best interest of the minor. If two or more measures of the same nature imposed in different resolutions have to be simultaneously executed, the Judge will accumulate them, but the total time of execution will not exceed twice the length of the most serious one. Furthermore, if the different measures pronounced can not be simultaneously applied, the judge can substitute all (or some) of them or indicate the order of application beginning with the internment measures. Inside this category, the execution of a therapeutic internment will have the preference over all the internment in closed system, and the latter over any other internment measure (Art. 47). Judges are, however, allowed to establish a different order if they consider it more suitable to the minor's best interest (Art. 47.5 e); the Judge can also during the execution modify, suspend, reduce, substitute or put an end to the measure „at any moment", in accordance with the minor's best interests and if the social concern for the minor's behavior has been sufficiently expressed (Art. 13).

[78] Cervelló Donderis, Colás Toregano, 2002, 130.
[79] Arrom Loscos, 2002, 87.
[80] Cuello Contreras, 2000, 45.
[81] Gonzáles Cussac, Cuerda Arnau, 2002, 105.
[82] Tamarit Sumalla, 2001, 77.
[83] Cadena Serrano, 2002, 93.

Measures (under two years) can benefit from the conditional suspension of the execution (Art. 40)[84]. During the conditional suspension the minor can be put under supervised freedom or else the judge can require the development of a socio-therapeutic activity (if it is the case with the participation of parents or tutors), if proposed by the technical team or the public agency competent to protect or to reform minors. A successful conditional suspension requires not only the fulfillment of the conditions judicially established, but also the absence of new convictions during the probation period, and the minor's commitment not to reoffend.

Measures' execution[85] is under the responsibility of the respective Autonomous Community (Art. 45); this one must intervene under the control of the judge for Minors (Art. 44) and fully complying with the principle of legality (Art. 43). Autonomous Communities execute the measures directly or by means of contracts with other public or private (non-profit) agencies (Art.45); a professional is appointed (Art. 46.3) to assume the responsibility for overseeing the youth's sentence and for reporting periodically to the judge, to the Prosecutor and to the minor's counsel on the execution of the measure and the minor's progress (Art. 49).

Special provisions are set out for the treatment of minors who escape during the execution of the measure (Art. 50).

Concerning the execution of the measure of internment[86], 2001, 155), the special provisions included in Articles 54-60 of the Organic Act 5/2000 are developed by Art. 23 to Art. 85 of the Royal Decree 1774/2004.

Vicinity receives, as a principle, a stronger acknowledgement[87] than in the penitentiary legislation (for adults): minors must be kept in institutions close to their residence, although the judge can decide otherwise if it is required by the best interest of the minor; minors belonging to gangs, organizations or associations cannot execute the measure in the same centre (Art. 46.3).

The execution of internment consists of two periods: effective internment and supervised freedom (Art. 7.2). The effective internment must be spent in specific center, organized by the competent Autonomous Community, directly or by agreements with other public or private (non-profit) bodies. These center are different from those provided for by the penitentiary legislation to execute punishments and provisional measures of deprivation of liberty imposed to persons who have already attained the age of 18. Measures imposed when a terrorist crime has been committed have, however, to be executed under the control of specialized staff and in the center of the National Audience (Audiencia National), established by the Government, directly or by contracts with the Autonomous Communities (Art. 54.1).

According to An. 55, re-socialization is a fundamental principle. Therefore, Art. 56 grants all those inmates' rights not affected by the conviction (the duties are defined by Art. 57) and Art. 55.2 requires that the life inside the centre must be organized in a similar manner to the one in the outside world, trying to reduce the negative effects that internment can produce on the minor or his/her family, by promoting the social links and family contacts, collaboration and participation of the public and private agencies (particularly those geographically or culturally dose) in the process of social integration of the minor. Minors have always the right to be informed in writing and in a comprehensible language on their rights and duties and on every aspect of the centre's rules; they also have the right to file petitions and claims and to appeal (Art. 58).

Articles 45-52 of the Royal Decree 1774/2004 establish a complete regulation of ordinary and extraordinary leaves and releases. Minors in open or half-open regime can ordinarily benefit from permissions up to 30 days (open regime) or 20 days (half-open regime) every semester (each permission will not exceed 15 days). Even minors in closed regime will be able to benefit from

[84] Alastuey Dobón, 2002b, 210.
[85] Guinarte Cabada, 2004, 405; López Martin Dólerro Carillo, 2001, 141; San Martin Larrinoa, 2001, 141.
[86] López Caballo.
[87] Ortiz Gonzáles, 2001, 191.

these leaves after having served a third part of the internment period, according to their personal evolution and the process of social reinsertion; in this case each permission will not exceed 4 days, the maximum amount per year is fixed in 12 days and the competent judge for Minors has to authorize it (Art. 25 of the Royal Decree 1774/2004). On the other hand, minors in open regime can ordinarily leave the establishment every week-end from Friday 4 p.m. to Sunday 8 p.m. (with the addition of 24 h, if Friday or Monday are holidays). Minors in half-open regime deserve one week-end leave every month, and after having served one third of the internment period, two leaves per month; in the same circumstances minors in dosed regime can be authorized to a week-end leave per month (Art. 46). Extraordinary (until 4 days) and planned leaves (48 h) are also possible (Art. 47 and Art. 48), as well as all the different varieties of oral (two per week, 40 minutes per visit), phone and written communications; concerning the conjugal visits, (at least one per month, minimum one hour is reserved for those who cannot benefit from leaves during period longer than one month; and the reception of parcels is equally allowed (Articles 40-44).

Each centre must have an internal regulation, as provided by Art. 30 of the Royal Decree 1774/2004, and has to be organized in sections, adequate to the age, maturity, needs and social capacities of the minors interned. Minors have the right to education, training, health and religious assistance (Articles 37-39); as far as they have attained the minimum age to work, their right to carry out a remunerated activity (with the legally inherent social protection and in the limits of the public entity's possibilities) will be recognized; special rules are set out in relation to the nature of the working activity and to the conditions to be fulfilled in the case of workers aged under 18 (Art. 53). Those minors needing special protection will be separated from those who may represent a danger or a risk. Mothers will be authorized by the judge for Minors to keep their children (under 3 years) with them if, according to the criteria of the public authority, this situation represents no risk for the children.

Disciplinary rules and rules related to surveillance and security measures are particularly important in the centre's life. Thus, the provisions of the Organic Act 5/2000 (Art. 59) on security are developed by Art. 54 and Art. 55 of the Royal Decree 1774/2004, where surveillance, security and the application of the defined contention methods are specially regulated. Provisions on discipline (Art. 60) find also a detailed regulation in Articles 59-85 of the Royal Decree.

After having pointed out the compliance with constitutional principles and rules in their content, form and procedure, the regulation:

- defines the disciplinary infractions, classified according to three levels: very serious, serious and light (Art. 61-64);
- reproduces the disciplinary sanctions already listed by the Organic Act 5/2000 (Art. 60.3): separation from the group (in cases of aggression, violence or serious breach of the rules of communal life), separation during the week-end, deprivation of week-end leaves; deprivation of other leaves; deprivation of participation in leisure activities and warning; and
- sets out the imposition and execution guidelines, and the disciplinary procedure.

Personal dignity, the right to nourishment, the right to mandatory education, the right to be visited, and the right to communicate are always granted to the sanctioned minors (Art. 60.1 of the Organic Act 5/2000). The separation between investigation and sanctioning (Art. 60.2 of the Royal Decree 1774/2004) and the right to appeal any disciplinary decision - either in writing or orally - before the Judge for Minors (Art. 60.7) are granted too.

Disciplinary sanctions can always be reduced or suspended and conciliation with the offended, restitution, reparation and the development of activities for the benefit of the centre's collectivity, when voluntarily assumed, will be specially considered in order to close the disciplinary procedure or to leave without effect the imposed sanctions (Art. 60.5 of the Royal Decree 1774/2004).

8. Safeguards for the protection of minors

8.1. Affective and/or psychological assistance.

The minor's right to psychological and affective assistance during the provisional detention and the investigation is dearly envisaged by the Organic Act 5/2000; but no special provision relates to the limits and rights under which the supporting figures can intervene. Only Art. 22.1.e of the Organic Act 5/2000 acknowledges this right in the course of penal proceedings by a reference to the presence of parents or other person mentioned by the minor, that is submitted to the Judge's authorization. On the other hand, Art. 4.1 II of Royal Decree 1774/2004 provides for a duty of the technical team to give its professional assistance to the minor.

Where psychological treatment is appropriate, due to the minors' personal characteristics that affect their penal imputation, it is possible to impose those provisional measures envisaged by the Civil Code (Art. 29). This will be normally followed by the imposition of a therapeutic measure - therapeutic internment or ambulatory treatment – in the sentence (Art. 29); the ambulatory treatment is specially intended for those minors who suffer from psychological disturbances but do not need internment.

8.2. Preventing the disclosure of the juvenile offender's identity

Art. 35.2 of the Act explicitly establishes that the mass media cannot obtain or release the minor's photo or any data that allow identification. The Judge and the Prosecutor are legally obliged to strictly enforce this mandatory rule; every participant in the proceeding is also obliged to respect the minor's right to confidentiality and cannot diffuse his personal data and other relevant information included in the file (Art. 35.3).

8.3.Other measures

On the other hand, hearings are public, as a general rule[88], but, if it is in the interest of the minor or of the victim, Art. 35.2 authorizes the Judge to sit in chamber. Furthermore, Art. 37.3 of the Act has provided the enforcement of the criminal procedure code's provisions set out for the protection of witnesses and experts (Act19/1994), and according to the Art. 37.4 the Judge is entitled to order the minor to leave the hearing temporarily if, *ex officio* or upon parties' application, he considers that it is in the minor's best interest.

Conclusions

The new Organic Act 5/2000 introduced in Spain a new system of intervention towards juvenile offenders, regulating all the relevant aspects, including the criminal proceedings. These were shaped on the model of the abridged penal process for adults, but with remarkable differences. For instance, in this field possibilities for diversion are much broader than those to be found in the adults' proceedings, strictly submitted to the principle of legality in prosecution. The strengthening of the technical team is to be applauded, although greater emphasis should have been placed on improving the communication between the technical team and the Judge.

Regarding the critics on the penal procedure, the stress has been put on several points:

- too wide and complex functions entrusted to the Public Prosecutor;
- the important limits to the participation of the victims;
- too restrictive preventive measures: in particular, the period of precautionary internment can be, in practice, too long;

[88] Tomé Garcia, 2001, 176.

- the absence of an administrative regulation of the execution stage;
- the lack of sufficient investment in structures and facilities, a responsibility both of the Government and the Autonomous Communities.

Some of theses critics have progressively received an answer: the Act 15/2003, reforming the Art. 25, allowed for intervention of the victim as a full actor in the penal process for minors; by the Royal Decree 1774/2004 a general regulation developing the Organic Act 5/2000 was finally approved; and the new reform intervened in 2006 has introduced a specific Additional Disposition in order to assure the evaluation (after 5 years!) of the costs of the duties imposed to the Autonomous Communities by the Organic Act 5/2000.

Nevertheless, the most criticized aspects of the new regulation were the suspension of the possibility of applying it to young people between 18-21 and the reforms introduced by the Organic Act 7/2000 concerning very serious offences and terrorism. In particular, the prosecution of minors under 18 accused of terrorist crimes before the National Audience (Audiencia National) (brought in by the Organic Act 7/2000) is deemed to break the fundamental principle of vicinity and to reproduce merely the system applied to adults.

Successive reforms intervened since the entrance in force of the Organic Act 5/2000 have accentuated the repressive aspects of the new system. By the Organic Act 15/2003 a new Additional Disposition (the 6h) was included, promoting the application of measures oriented to a harsher and more efficient sanctioning of most serious crimes and authorizing to extend the time of internment, strengthening the system of security measures of the execution center and providing for the transfer of convicted persons to penitentiaries as soon as they reach the age of 18.

In the same trend, the last reform approved by the Parliament (Organic Act 8/2006) proceeds to a significant revision of important aspects of the legal regulation in order to:

- introduce new measures, such as the prohibition to enter in contact or in communication with the victim, the victim's relatives or other persons;
- strengthen and recognize the victim's rights;
- exclude the application of the justice system for minors over people aged more than 18 and mainly;
- assure a higher proportionality between sanctions and the offence's seriousness,
- opening new possibilities to the imposition of internment in dosed educational center,
- extending the limits of internment (not only if imposed as a sanction but also as a preventive measure) in the most serious cases, and
- allowing the execution of internment measures in penitentiaries as soon as the juvenile turns 18. Increase of the offences committed by minors is alleged as the main justification for a regrettable evolution that has transformed the original purposes of the system approved in January 2000.

Furthermore, perspectives cannot be optimistic in this field: in fact, instead of putting the accent in the minor's interest (i.e. his/her education and re-socialization) the last reforms dearly prefer to follow the increasing trend of a criminal policy based mainly on a myopic view of social defense.

Law sources.

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Organic Act 5/2000
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