

# **CHILDREN'S RIGHTS BEHIND BARS**

## **Human rights of children deprived of liberty: improving monitoring mechanisms**

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**NATIONAL REPORT**

-

**SPAIN**

**Fundación PROYECTO SOLIDARIO por la Infancia**

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## **I. INTRODUCTION.**

### **Presentation of the organization and the researcher.**

The Foundation PROYECTO SOLIDARIO for Children is an international organization that works to promote, protect and defend the human rights of children and teenagers. It has as a frame of reference United Nations' Convention on Children Rights and its Optional Protocols. It is a member of numerous national, regional and international networks including Spain Children Platform of Organizations (current Vice Chair), Child Right Connect or Regional Platform Against Child Labour in Central America and the Caribbean.

The organization has focused its work primarily in the fight against child labour exploitation and the prevention and eradication of violence against children in different contexts and areas, working in direct intervention with children at risk and helpless situation. In the field of Juvenile Justice, we have gained valuable experience working with children, adolescents and mothers in prisons in Bolivia with Restorative Justice projects and socio-professional reintegration. In Spain, we intervene mainly working on projects of socio-educational intervention with children at risk or socially excluded. In 2010 we participated making the Supplementary Report to the Report of the Spanish State to the Committee of children rights.

Josué Díaz holds a degree in Law and has a Masters in Human Rights and International Cooperation by the Carlos III University of Madrid. He has worked in Peru, Haiti, Dominican Republic and Morocco in international cooperation projects and humanitarian action in childcare.

### **Methodology.**

The study aims to have an overview of the conditions and satisfaction of the rights of children in detention, with special reference to the mechanisms of monitoring and controlling and the already existing complaint and claim system. In order to deepen in the subject we narrowed the object to study to the category of juvenile offenders, this means, minors imposed on them a measure of deprivation of liberty by court order. This does not prevent for in the present study to analyze related situations and mention children in care under the regime of protection, unaccompanied children, asylum-seeking children or minors in police custody.

To develop the study, we combined documentary analysis with key informant interviews and reference in the field. For reasons of budget and time, and considering the competency in the field of Juvenile Justice is for the CCAA ( autonomous communities) and that there are 17 CCAA in Spain and 2 autonomous cities (Ceuta and Melilla), visits and interviews were geographically demarcated to the Autonomous Communities of Andalusia and Madrid, communities where PROYECTO SOLIDARIO has an office.

For the documentary analysis we have studied the regulations and the legal framework, the reports of the Ombudsman as a National Mechanism for the Prevention of Torture in Spain, alternative reports from civil society, the Memoirs of the prosecution and Circular reference in the field, as well as articles from criminology doctors as reference in the field.

Among these interviews , professionals has been interviewed from different fields of intervention and relevant actors in the field: NMP, Children's Ombudsman in Andalusia, Juvenile Attorney, Juvenile Judges, Lawyers for Children, Coordinator for the Prevention and Termination of torture, professional and managerial staff working in juvenile detention centres, adult persons who have been interned in Centre Closed.

Annex I contain the list of interviews and bibliography.

## Limitations.

In the development of the study we found several obstacles. Below are listed with the strategies followed to address or cushion their impact on the quality and depth of the study.

First, as might be expected and given the low level of transparency of the Spanish administration, we have not had access to closed centres to conduct interviews with children in detention. Likewise, it has not been possible to interview professionals and administration staff actively working in Closed centres.

In Spain competition in Juvenile Justice, in relation to the implementation of the measures imposed on juvenile offenders is the responsibility of the AC, so each Community should independently authorize visits to Closed centres which holds the authority title. This has meant that we have had to initiate and follow different procedures and bureaucratic processes for each region, complicating processes and increasing dedication. In some cases, we have tried to expedite the process by asking the participating institutions themselves that manage Closed centres in agreement with the community, but it also has proven effective. The response and attention to our request by the administration has been uneven. In some cases they have rejected directly; others, have asked for signing a Convention (which suppose the start of a new process dilated in time); and in other cases, we have not received an answer in any way.

We have to consider at this point that organizations with whom we have discussed in the framework of the study and who cherish more experience and institutional prestige in the field (APDHA AI) warned us that in the context of similar research carried on previously they have not obtained permissions to access the Closed centres. It shows once again the opacity of the Spanish Administration.

Given this impossibility, we have responded by contacting and interviewing a large number of adults who have been confined in Closed centres compliance with detention measures when they were children and professionals who have been actively working in centres of closed, semi open or open juvenile rehabilitation plan.

Secondly, we have been unable to update the data as of 2014, and the National Institute of Statistics presents data relating to Justice and Home Affairs in September of each year over the previous year. However, we have combined data from NIS, the NMP and the Prosecutor to provide the most complete, accurate and up to date image.

Third, with respect to the timing of the study, one must consider that in view of the unwillingness of the Administration and the lack of bureaucratic permitting process agility, and considering the study coincidence in dates with the European elections and the start of the holiday period (in July there is a significant reduced availability of lawyers, civil servants), the timeline for the study has not been the most appropriate.

In any case, it is necessary to warn that PROYECTO SOLIDARIO holds open requests for visits to closed centres in several autonomous regions and continues to monitor them. Therefore, we believe that this study is not closed permanently and may feedback if we get permission to access the closed centres.

## II. INTERNATIONAL FRAMEWORK.

The next table shows the body, conventions and international frameworks ratified by Spain in relationship with Human Rights, Torture and Child Rights. In the third section of this Study we will show the main Recommendations of international Committee and the state of applications by Spain.

Convention	Signature Date	Ratification Date	Reservation/Declaration
<b>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</b>	4/02/1985	21/10/1987	Spain declares that, pursuant to article 21, paragraph 1, of the Convention, it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that the Spanish State is not fulfilling its obligations under this Convention. It is Spain's understanding that, pursuant to the above-mentioned article, such communications shall be accepted and processed only if they come from a State Party which has made a similar declaration. Spain declares that, pursuant to article 22, paragraph I, of the Convention, it recognizes the competence of the Committee to receive and consider communications sent by, or on behalf of, persons subject to Spanish jurisdiction who claim to be victims of a violation by the Spanish State of the provisions of the Convention. Such communications must be consistent with the provisions of the above-mentioned article and, in particular, of its paragraph 5.
<b>Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)</b>	13/4/2005	4/04/2006	
<b>European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)</b>	26/10/1987	2/5/1989	
<b>Convention on the Rights of the Child (CRC)</b>	26/01/1990	6/12/1990	<p>1. Spain understands that article 21, paragraph (d), of the Convention may never be construed to permit financial benefits other than those needed to cover strictly necessary expenditure which may have arisen from the adoption of children residing in another country.</p> <p>2. Spain, wishing to make common cause with those States and humanitarian organizations which have manifested their disagreement with the contents of article 38, paragraphs 2 and 3, of the Convention, also wishes to express its disagreement with the age limit fixed therein and to declare that the said limit appears insufficient, by permitting the recruitment and participation in armed conflict of children having attained the age</p>

			of fifteen years.
<b>Optional Protocol to the Convention on the Rights of the Child on a communications procedure (CRC-P3)</b>	28/02/2012	3/06/2013	
<b>European Social Charter</b>	23/10/2000		

### III. NATIONAL FRAMEWORK.

#### 1. LEGAL REGULATORY FRAMEWORK.

In Spain the regulatory framework of Juvenile Justice is regulated by the Organic Law 5/2000, of January 12, governing the criminal liability of minors, as amended, and Royal Decree 1774/2004, of July 30 by which this regulation is approved.

#### Background

In Spain until the Sentence of the Constitutional Court 36/1991, of February 14, the regulatory policy framework of the criminal responsibility of juvenile offenders is contained in a law dating from 1948. Such Sentence declared unconstitutional article 15 of the Law of Juvenile courts, inspired by a paternalistic model and which considered the young offender as a sick person that needed to heal, for which the judge was attributed full powers, acting as an instructing, accusing, defending and judging party, thereby contravening any procedural guarantee. The assessment of the judge went beyond the legal field and penetrated moral and psychological aspects, acting in practice as a purifier of the dominant public moral, in which situations like vagrancy, roam, indiscipline, were liable to prosecution and implementation of corrective measures by the judge-doctor. In short, it was an inquisitorial, repressive and controlling system.

From that sentence, a new Organic Law was passed in 1992, which defined itself with the nature of urgent reform and announced the beginning of a process of law reform in the area of criminal responsibility. Two years later a motion was presented and unanimously adopted in the House of Representatives, which established for the first time in our legal system setting the age of criminal responsibility at 18 years and urged the adoption of a new child and youth criminal law based on the principles of rehabilitation and reintegration of young offenders, but wasn't completed until the approval of the 5/2000, governing the criminal liability of minors.

Article 25 of the Spanish Constitution of 1978 expresses the principles that will govern the criminal responsibility: criminal law, reintegration, rehabilitation, prohibition of forced labour and respect and guarantee the fundamental rights.

For its part, Article 15 of the C.E. establishes the right to life and to physical and moral integrity, prohibiting torture and inhuman or degrading treatment. Article 17 C.E. recognizes the right to personal freedom and regulates the principles and conditions on which shall arrest and deprivation of liberty situations develop, explicitly recognizing the right of habeas corpus.

The Penal Code definitely sets the age of criminal responsibility at 18 years. Our Penal Code contains a more extensive definition of torture concept that CAT. Article 174 PC distinguish between torture and degrading treatments in function of the view, intentionality and the main objective that guides the purpose of the assailant. In that sense, the CCT uses the gravity of the harm to establish the difference between tortures and degrading treatments.

## **The regulatory framework of Juvenile Justice: 5/2000 and Royal Decree 1774/2004.**

The Organic Law 5/2000, January 12, governing the criminal liability of minors, is inspired by the UN international standards in the administration of Juvenile Justice (Beijing Rules, 1985) and protection of juvenile offenders (Havana Rules, 1990). In this sense, it gathers the principle of subsidiarity and minimum intervention of criminal law, committed to promoting restorative justice measures supporting conciliation and judicial settlement based on reparation and restitution to the victim, and provides a catalogue of measures and alternative sanctions for juvenile offenders, modulating the imposition of custodial freedom depending on the seriousness of the offenses, the assessment of the elements of subjective criminality (intent or negligence) and the interests of the child. As for the regime of detention and imprisonment, the emphasis on celerity, is recognized, with some limitations that will be discussed below, the right to free legal advice, and the right to education, training or work, as well as play and leisure.

The spirit of the law is the rehabilitation of the child for a successful reintegration into society and family after completion of the measure. While in practice, as will be discussed, this principle has an uneven and questionable effectiveness.

Regarding the definition of the age of criminal responsibility in accordance with Article 19 of the Penal Code, the Law establishes different liability regimes gradually depending on the age group, always bearing in mind the age with respect to the date of commission of the offense and not to the time of trial:

- **Young offenders under 14 years old.** The legislature understands that they are not mature enough to know the severity or size of their criminal acts, which is why its responsibility is regulated under the Organic Law 1/1996 of January 15 on the Legal Protection of Children and the Civil Code. In this sense, it is possible that in the interest of the child, the guardianship of minors is removed from their parents or persons who hold parental authority.
- **Young offenders aged 14 to 18 years old:** in this case the Organic Law 5/2000 is fully applicable, by which the criminal responsibility of the minor shall be demarcated.
- **Young offenders between 18 and 21 years:** The Organic Law 5/2000, in accordance with Article 69 of the Penal Code, established an extensive framework for the application of the criminal responsibility of minors to young people between 18 and 21 years who met three requirements: - that they were responsible for the alleged commission of acts classified as an offence or misdemeanour where no violence, intimidation and serious danger to the life of the victims is involved; - They had no record of conviction by final judgment for acts committed after reaching legal age; - That the personal circumstances of the accused and their maturity so it advised him.

However, despite the fact that the inclusion of the category of young people within the legal framework of juvenile criminal law was a success of progressive nature in harmony with the principles of Restorative Juvenile Justice; but social and media pressure, end up promoting change more restrictive in the legislature, in such way that in practice the scheme barely got to enter into force, as the OL 9/2002 suspended the application of Article 4 of the 5/2000 until 2007, and finally the OL 8/2006, repealed before it came into force.

In relation to the definition of criminal responsibility and the type of measures, according to Law 5/2000, young offenders aged between 14 and 18 years will be held criminally responsible for the commission of acts classified as offenses and crimes under the Penal Code and Special Penal Laws. The social and media pressure above several cases of special violence causes that Legislator got to enter into force the regulatory framework. Actually, considering the seriousness of the facts, the following apply:



- For committing misdemeanours, only warning measures may be imposed, custodial measure guard for 6 months, stay over the weekend up to four weekends, benefits for the community to a maximum of 50 hours, deprivation of driving or other administrative licenses for 1 year, social educative works for 6 months and prohibition of communications with the victim and his family for 6 months.
- For committing crimes in case of reckless or imprudent acts or omissions: we will proceed to the application of measures of deprivation of liberty in detention centres open or semi-open, prohibiting the closed detention.  
In general, the length of custodial measures shall not exceed 2 years, 100 hours for community service or 8 weekends if weekends permanence.
- For committing serious crimes, or less serious crimes in which violence or intimidation toward people is involved, or acts that could present serious risk the life or physical integrity of others, wilful misconduct, or crimes acting in group by organized band or terrorism, the application of the measure of closed detention will proceed for 3 years, 150 hours of benefits for the community or 12 stay over the weekend up when the minors is 14-15 years old; and 6 years of closed detention, 200 hours of benefits for the community or 16 stay over the weekend up when the minors is 16-17 years old, in addition with a measure of parole freedom for 5 years in cases of extreme gravity.
- For committing crimes as murder, homicide, rape, terrorism or anyone crimes with more than 15 years prison detention for adults criminals, the measure will be to a maximum of 5 years in closed detention and 3 years of parole freedom in case of 14-15 years old minors, and 8 years closed detention and 5 years of parole freedom for 16-17 years old minors.
- When juvenile offenders criminally responsible for the commission of criminal types were suffering mental disorders or abnormalities or a state of alcohol dependency, toxic drugs or psychotropic substances or other alteration in the perception that determine severe alteration of consciousness and reality the detention shall propose therapeutic or outpatient treatment depending on the intensity of the factors mentioned.
- They may take protective measures for the cautioned minor's custody and advocacy when circumstances so advise, consisting in internment regime, probation or cohabitation with another person, family or educational group. As for the duration of the precautionary measures, the deprivation of liberty may not exceed 6 months extendable by maximum other 3, computing this time in compliance with the measures imposed in the judgment.

**Table Nº 2: Descriptive typology measures applicable to juvenile offenders**

**a) Custodial measures deprive of liberty:**

- Confinement in closed regime: Minors reside in the centre and perform within the same full training, education, work and leisure activities.
- Confinement in semi-open regime: Minors reside in the centre but carry out outside the centre their training, education, work and leisure activities.
- Confinement in open regime: Minors perform all activities of the educational project of reintegration into community resources in a standardized system, but reside in the detention centre as usual residence.
- Confinement in therapeutic regimen: an educational specialist care in detention for juvenile offenders suffering from mental disorders or abnormalities or addiction to alcohol, drugs or psychotropic substances or any other alteration of perception that generates a serious disorder in the perception of reality. This measure could be applied in isolation or complementary to other measures.
- Weekend stay: minors are required to remain at home or in a detention centre on weekends (36 hours computable from late Friday afternoon until late Sunday night).

**b) Non-custodial measures, not deprive of liberty:**

- Provision of services to benefit the community, the minor perform (or undergo) non remunerative activities of social interest or that benefit vulnerable individuals or in a precarious situation, relating the nature of the measure with the legal right infringed by the conduct of the child.
- Conduct socio-educational tasks: the minor performs educational activities to facilitate his development of positive social skills, without appealing to detention or to probation.
- Warning: the minor is reprimanded by the juvenile court judge, trying to make him understand the gravity of the facts and urging him not to commit such acts in the future.
- Deprivation of driving licence for mopeds or motor vehicles, or the right to obtain it, or for administrative licence for hunting or the use of any weapon, may also be imposed as an accessory to any of the above.
- Outpatient treatment: Minors are in a regime of freedom, but with restrictions, since they must attend



regularly the designated centre for the treatment of addiction, mental abnormalities or alteration of perception.

- Day centre attendance: Minors live in their usual residence, but they are required to attend a specified centre, integrated into the community, for training, education, work or leisure activities.
- Probation: the minor is required to follow the guidelines set by the judge in his sentence according to the following rules: - obligation to attend a school or education centre - Obligation to undergo either a training or a cultural, educational, professional, sexual education, or work program; Prohibited from leaving the home of habitual residence without prior judicial authorization; - Obligation to reside in a particular place; - Obligation to report personally and promptly to the Juvenile Court.
- Living with another person, family or educational group other than the one attended by the minor: for a period of time determined by the juvenile court judge in the sentence, in order to better guide the minor in developing a successful socialization process and more favourable the minor himself.

### Area of competence.

The Prosecutor is the institution responsible for the instruction of the procedure. In this regard, it should carry out prior proceedings to promote and materialize the fact-finding during which it should seek from the juvenile court judge his approval to those procedures involving the application of detention measures of the minor or any others involving the restriction of fundamental rights. Once the instruction is over it shall be sent (or referred) to the same juvenile court judge, describing the facts with their legal assessment, the degree of participation of the minor, the assessment of the personal and social circumstances of the minor and the proposed disciplinary and educational measures according to the circumstances of the facts, the author and the interests of the minor.

The juvenile court judge has the jurisdiction to try the facts and the issue of a sentence, which must be justified, taking into consideration the circumstances and seriousness of the facts, circumstances on personality, situation, needs, and family and social environment age of the child. The proposed measures should indicate the objectives to achieve in compliance with the highest interest of the child

Competence for the implementation of these measures is for the administration (Autonomous Communities, Ceuta and Melilla). The Juvenile Court will monitor the implementation thereof, the ACs being required to issue annual reports to the public prosecutor, the juvenile's attorney and the juvenile court judge, on the implementation of the measures, incidents in it accomplishment and evolution of the minor according to the individualized educational project. The competent authority may also request the prosecution judicial review and modification of the measure imposed on the minor motivating the reasons

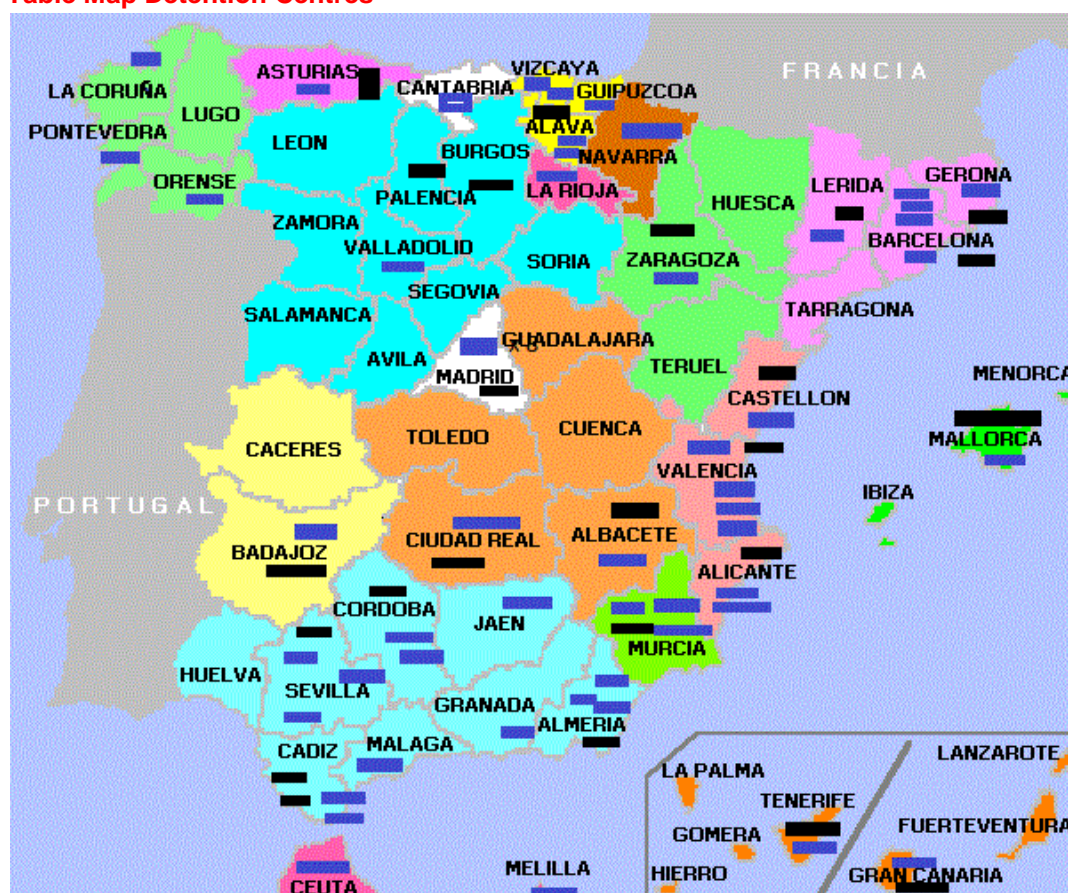
The Autonomous Communities, in turn, may establish agreements with private entities for the management of the centres where measures are undertaken, always under the supervision and control of the Administration under strict compliance with the regulatory regime established by Law 5/2000 Royal Decree 1774/2004 and other laws and regulations of the competent Autonomous Community.

## 2. MAP: DETENTION CENTRE'S FOR MINORS IN SPAIN.

In Spain, for the pursuant of measure of deprivation of liberty, in case of minors, there are the following spaces:

- Closed centres confinement in closed regimen, semi-open and open regimen.
- Centres for confinement in therapeutic regimen.  
In those two cases, the legal competence belongs to AC.
- Jail and other short-stay units of the Security Forces of the State, regional and local police.
- Detention stays where asylum seekers are.
- In those two cases the legal competence belongs to the Interior Ministry, with the special exception of Catalonia and Basque Country.
- Centres of Protection for unaccompanied minors, which are regulated by protection and civil regulatory.

**Table Map Detention Centres**



Closed Centre Institution	
Therapeutic	

Autonomous Community	Centre	Name	Rate	Occupancy
Galicia	Closed, open and semi-open regimen	Monteledo	37	12
	Therapeutic	Montefiz	23	6
	Closed, open and semi-open regimen	Avelino Montero	30	25
	Closed, open and semi-open regimen	Concepción Arenal	36	30
Asturies	Closed, open and semi-open regimen	Sograndio	60	29
	Therapeutic		8	5
Cantabria	Closed, open and semi-open regimen	Maliaño	25	14
Basque Country	Closed, open and semi-open regimen	Miguel Ángel Remirez	7	5
	Closed, open and semi-open regimen	Mendisola	14	7
	Closed, open and semi-open regimen	Uribarri	14	6
	Closed, open and semi-open regimen	Bilbao	6	4
	Closed, open and semi-open regimen	Donostia-San Sebastian	10	8
Navarre	Closed, open and semi-open regimen	Aranguren	20	15
Rioja	Closed, open and semi-open regimen	Virgen de Valvanera	21	19
Aragón	Closed, open and semi-open regimen	Juslibol	69	49
	Therapeutic		8	6
Catalonia	Therapeutic	Els Til-Lers	51	50
	Closed, open and semi-open regimen	L Alzina	60	60
	Closed, open and semi-open regimen	Montilivi	36	36
	Closed, open and semi-open regimen	Folch i Torres	59	59
	Closed, open and semi-open regimen	El Segre	58	50
	Closed, open and semi-open regimen	Oriol Badia	29	21
	Closed, open and semi-open regimen	Can Lluïa	52	52
	Therapeutic		15	15
Balearic Island	Closed, open and semi-open regimen	Es Pinaret	38	35
	Closed, open and semi-open regimen	Es Mussol	8	5
Castille Leon	Closed, open and semi-open regimen	Zambrana	30	25
	Therapeutic	San Juan de Dios	6	4
	Therapeutic	Candeal Burgos	12	9
Madrid	Closed, open and semi-open regimen	Altamira	20	19
	Closed, open and semi-open regimen	Renasco	24	21
	Closed, open and semi-open regimen	El Laurel	41	40
	Closed, open and semi-open regimen	El Pinar I	60	59
	Closed, open and semi-open regimen	El Madroño	15	15
	Closed, open and semi-open regimen	Las Palmeras	12	10
	Closed, open and semi-open regimen	Teresa de Calcuta	218	156
	Closed, open and semi-open regimen	Picón del Jarama	50	40
	Therapeutic	El Lavadero	70	60
Castille La Mancha	Closed, open and semi-open regimen	La Cañada	57	23
	Therapeutic		8	4

	Closed, open and semi-open regimen	Albaidel	31	21
	Therapeutic			
Valencia	Closed, open and semi-open regimen	CEIs Reiets	106	98
	Closed, open and semi-open regimen	La Villa	91	84
	Closed, open and semi-open regimen	Mariano Ribera	97	69
	Closed, open and semi-open regimen	Pi i Margall	28	20
	Closed, open and semi-open regimen	Pi Gross	47	35
	Closed, open and semi-open regimen	Rei Jaume I	73	62
	Closed, open and semi-open regimen	Colonia San Vicente Ferrer	117	100
Extremadure	Closed, open and semi-open regimen	Vicente Marcelo Nessi	38	25
	Therapeutic		9	3
Murcia	Closed, open and semi-open regimen	Las Moreras	46	31
	Closed, open and semi-open regimen	La Zarza	37	30
	Closed, open and semi-open regimen	Los Alcores	14	7
	Therapeutic	La Quintanilla	3	2
Andalusia	Closed, open and semi-open regimen	Lagunillas	48	40
	Closed, open and semi-open regimen	San Miguel	14	14
	Closed, open and semi-open regimen	San Francisco La Biznaga	15	15
	Closed, open and semi-open regimen	Tierras de Oria	92	71
	Terapéutico		38	31
	Closed, open and semi-open regimen	Purchena	36	29
	Closed, open and semi-open regimen	El Molino	70	51
	Therapeutic	Cantalgallo	18	17
	Closed, open and semi-open regimen	El Limonar	32	28
	Closed, open and semi-open regimen	Los Alcores	51	50
	Closed, open and semi-open regimen	La Jara	28	21
	Closed, open and semi-open regimen	La Marchenilla	84	70
	Therapeutic		28	28
	Closed, open and semi-open regimen	Bahía de Cádiz	84	80
	Therapeutic		8	8
	Closed, open and semi-open regimen	Medina Azahara	72	59
	Closed, open and semi-open regimen	Sierra Morena	42	36
	Therapeutic		6	6
Melilla	Closed, open and semi-open regimen	Baluarte	24	18
Ceuta	Closed, open and semi-open regimen	Punta Blanca	32	31
Canary Island	Closed, open and semi-open regimen	Valle Tabares	150	101
	Therapeutic		15	9
	Closed, open and semi-open regimen	La Montañeta	70	41
	Therapeutic		7	5

In general closed, open and semi-open centres are dispraised in AC in function of the population. In fact, each AC selected his own criteria about location. So, there are AC like Andalusia that has 15 centres and other like Murcia has 6 centres or Castille Leon which has 5 centres. Usually, centres are allocated in surrounds of capital cities or in towns. All of centres have unities of closed, semi-open and open regimen, stay weekend space and therapeutic regimen. In addition, the centres have educative and social labour integration programs.

In Spain, we detected a decrease of the rate for juvenile crime, even though the OL 5/2000 has make stricter the regulatory framework. According to the NIE and the Prosecutor dates, in 2012 there were 18.143 guilty judgment against minors, which is 5,15 less than 2011. There were 28.022 lawbreaking's (4.7% less than 2011), which of them 64,3% were crimes and 35,7% were offences. Crimes more often were robbery (41,3%), tort (31,45), tortures and aggression against personal integrity (8,1%). There were 1.797 guilty judgment of deprivation of liberty.

The 85% of minors with a guilty judgment were male and the 17,5% were female. In case of immigrants minors, there is more frequency of penal measures in closed confinement for these group than for national minors (5,2% for immigrants and 1,9% for nationals).

**Table Nº 3. Typology of preventive measures of liberty by nationality**

	OPEN CONFINEMENT	SEMI-OPEN CONFINEMENT	CLOSED CONFINEMENT	THERAPEUTIC CONFINEMENT
<b>Nationals</b>	145	2080	359	384
<b>Immigrants</b>	37	978	321	86
<b>Total</b>	182	3058	680	470

Source: Source: Graphic made from data of INE (2012).

**Table Nº 4. Final judgment measures by confinement regimen, sex and age.**

	14 years old		15 years old		16 years old		17 years old	
	Male	Female	Male	Female	Male	Female	Male	Female
<b>Minors under a open confinement measure</b>	8	3	8	1	4	0	23	3
<b>Minors under a closed confinement measure</b>	10	0	10	1	17	2	30	1
<b>Minors under a semi open confinement measure</b>	63	13	104	17	131	19	175	15
<b>Minors under a therapeutic</b>	10	2	17	4	30	2	48	5

COUNCIL OF EUROPE



confinement measure								
Minors under a weekend stay measure	37	15	83	20	129	25	195	43
<b>Total</b>	128	33	222	43	311	48	471	67

Source: Graphic made from data of INE (2012).

In the next two tables, according with report of Observatory of Infancy in 2012 (dates from 2011), shows the most actualized dates about rates and real occupancy per AC. Is important to notice that, the value of measures is not completely equivalent with the numbers of minors because, there are minors who are in compliment more than one measure by final judgment.

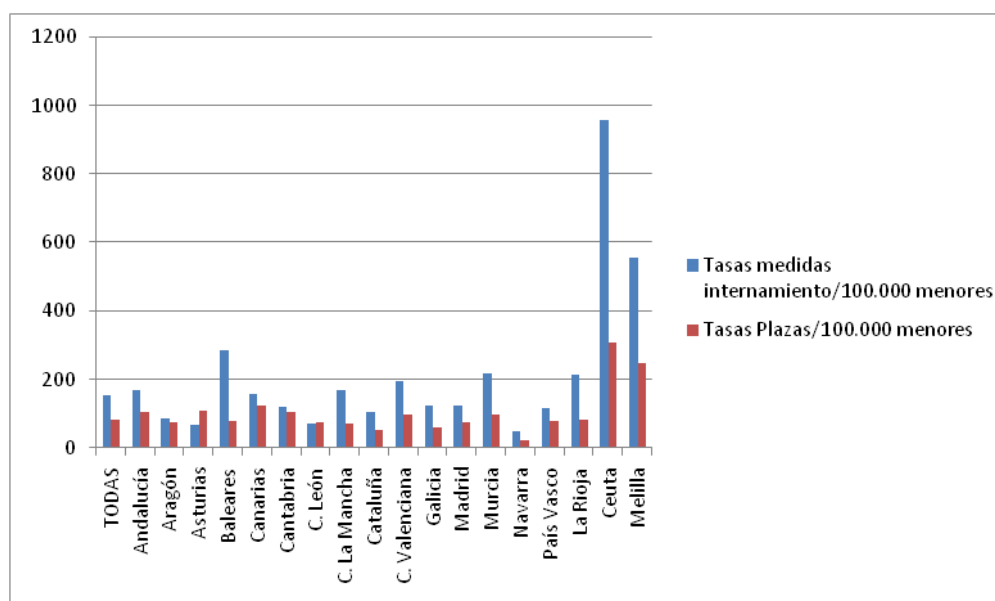
**Table Nº5. Distribution of Closed Centre/ number of vacancies by Autonomous Community.**

Nº of Centres						
	Total	By Administration	By Private Organization	Nº of vacancies places	Nº of total centres/100.000 minors	Nº of total rates/100.000 minors
<b>Total</b>	99	33	57	2.914	2,8	81,9
Andalusia	15	0	5	764	2,1	104,4
Aragon	1	1	0	69	1,1	73,5
Asturies	1	1	0	68	1,6	109,2
Balearic Island	4	4	0	70	4,6	80,0
Canary Island	11	2	9	216	6,3	122,8
Cantabria	4	0	4	40	10,4	103,8
Castille and León	8	2	6	129	4,7	76,1
Castille La Mancha	8	1	7	122	4,6	70,6
Catalonia	10	10	0	288	1,9	53,3
Valencia	8	5	3	379	2,1	98,3
Extremadure	no dates					
Galicia	4	1	3	110	2,2	60,4
Madrid	9	3	6	356	1,9	74,6
Murcia	4	0	4	123	3,2	96,9



Navarre	1	1	0	10	2,2	21,9
Basque Country	8	1	7	107	5,9	78,9
Rioja	1	0	1	19	4,4	83,6
Ceuta	1	1	0	24	12,8	306,6
Melilla	1	0	1	20	12,4	247,7

**Table N°6. Contrast occupancy rates/measure confinement executed or executing**



### 3. NATIONAL TORTURE PREVENTION MECHANISM.

#### Concept and delimitation.

The National Mechanism for the Prevention of Torture in development of the commitments made by Spain following the ratification of OPCAT is the Spanish **Ombudsman**. This is a pre-existing institution, established by the Organic Law 3/1981 of April 6, which has its legal basis in Article 54 of the EC which defines it as the high commissioner of Parliament whose mission is to ensure and defend the rights and freedoms of citizens enshrined in the Spanish Constitution.

The decision to appoint the Ombudsman as the NPM, not without controversy and doctrinal debate<sup>1</sup>, came into force on November 4, by the OL 1/2009, Article Three, which established the Ombudsman allocation of functions and powers corresponding National Mechanism for the Prevention of Torture.

<sup>1</sup> NGO's like International Amnesty or the Platform for the Prevention and Report the Torture, sent a communicate report for the SPT in 2009 in which advertise that the Spanish NPM doesn't respect the international framework.

The Ombudsman has a status of independence, which is favoured by the following notes:

- The procedure for appointment (favourable agreement of 3/5 of the parliamentarians) boasts a majority agreement by the various political groups.
- The establishment of a different specific mandate extending beyond the expected for the parliamentary term (5 years).
- The inviolability of persons in positions.
- The incompatibility regimen about political or trade union affiliation, prosecutor or judgment function, or anyone administrative, functional, public or private professional labour.

The Ombudsman as National Mechanism for the Prevention of Torture has authority within the limits of the law and its regulations, to establish working procedures it deems most appropriate in the discharge of its functions and development. There is full transparency, reporting the work done annually both to Parliament and to the public, through the publication of annual reports as well as punctual and specific reports on the subjects of study in the performance of its functions. Access to this information is free and public. In addition, the Ombudsman appears annually in ordinary session in Parliament for the reading of the annual report summary of their work.

Within the hierarchy of the Ombudsman, the National Mechanism for the Prevention of Torture is organically shaped by the figure of the Unit of the National Mechanism for the Prevention of Torture. The unit consists of a permanent technical team that acts as technical secretariat consisting of four technicians and two administrative. It also has the support of two coordinators who combine this job with other responsibilities within the institution. In carrying out the tasks entrusted as NPM and for reasons of expertise, we resort to hiring professional technicians of medical and health profile (psychologists, psychiatrists, forensic doctors) to put more value and strength to the visits to imprisonment centres and reporting. It also has an Advisory Council as a body of technical and legal cooperation, consisting of members and experts, representatives of civil society and sectors of reference in relation to the activity of the NPM (psychology, forensic medicine, law, NGOs). Its members accompany on visits to centres of deprivation of liberty.

### **Functions and economic regime.**

Ombudsman functions as MNP are eminently preventive, establishing for that purpose and in accordance with article 1 of the Optional Protocol. Should therefore distinguish between the system of complaints for violation of fundamental rights, among which would breach Article 15 and 17 EC and are processed by the relevant areas of the Ombudsman, and the prevention of torture, focused not so much on the response of particular situations, but the tracking and monitoring of the whole system, a task entrusted to the Unit of the National Mechanism for the Prevention of Torture.

In this context and as NPM should develop the following tasks:

- Conduct regular inspections and unannounced visits to detention centres.
- Prepare inspection reports and visit reports and the annual report and submit it to the Subcommittee of Prevention of Torture UN and spread among the citizenry.
- Make Recommendations to the responsible authorities, in order to improve the treatment and living conditions of persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading punishment.
- Make proposals and observations concerning existing legislation or draft legislation.
- Maintain contact with the SPT.
- Promote and conduct outreach and awareness on the subject.

The Ombudsman relies on established procedures for internal and external communication. On the website you can find the updated information and list of events and activities of the Ombudsman in

general and as NPM, updating the map of visits to centres of detention and imprisonment within the Spanish territory. Also issued press notes and a monthly e-magazine edition.

Internationally, the Ombudsman as NPM has a direct communication with the Subcommittee of Torture Prevention and other international organizations of similar nature. In this regard, it is noteworthy the learning exchange that the Ombudsman has with NPM from other countries. For example, in 2013 he has visited and shared working days with NPM Mauritania, Albania, Montenegro, Ukraine, Honduras, and Rio de Janeiro. Here, it is important to consider that the Ombudsman makes visits to Spanish prisoners who are serving sentences in foreign prisons.

In compliance with the outreach and dissemination the Ombudsman organizes seminars and conferences on subjects of interest in criminal justice. Thus, during 2013 we highlight holding a conference titled "*A Protocol for preparing reports of injury.*"

Finally, we note that the Ombudsman applies in his protocols of data management the policy of data protection in compliance with Law 15/1999 of protection of personal data.

In fiscal subject and economic regime of the Ombudsman is integrated as part of the budget of the Parliament. The Ombudsman is in charge of budget management and allocation of funds in accordance with the internal control body (corporate government). Its annual budget varies each year depending on the general Parliament budget. The Ombudsman should submit at the annual report, the amount expended as budgeted funds, broken down by chapters and headings. This information is available on the website of the institution with a great detail and transparency.

Since the creation of NMP in 2010 the Ombudsman shows a progressive reduction in the budgetary framework (13,2 point from 2010). The budget for 2014 is 13.951.700€.

### **Work methodology.**

The Ombudsman activity as NPM is conducted mainly through two activities: conducting visits and preparation of report.

#### **a) Visits:**

The visits made by the Ombudsman as NPM objective is, to analyze the conditions in which the persons deprived from their freedom are as well as the satisfaction and guarantee of their fundamental rights. For this purpose a preventive and constructive approach that seeks to build a positive dialogue with the authorities and competent administrations to generate positive changes that result in greater security and protection of the rights of persons deprived of freedom. In Spain, the Ombudsman visits are complemented by the actions and visits made by **the Ombudsmen of the AC** that have created similar institutions within their jurisdiction and geographical boundaries. This allows establishing a more active and deep vigilance despite the challenges of configuring a country of average size with a great variety of types and spaces for detention.

Places or areas of deprivation of freedom visit by the Ombudsman are:

- Jail and other short-stay units of the Security Forces of the State, regional and local police.
- Jails located in court buildings.
- Barracks, naval and air bases, military training centres.
- Disciplinary military establishments.
- Civil and Military Prisons.
- Centres for Foreigners.

- Detention stays where asylum seekers are.
- Centres for juvenile offenders among which are:
  - Detention centres for closed juvenile rehabilitation plan.
  - Detention centres for open juvenile rehabilitation plan.
- Hospitals and other places enabled to control or the involuntary confinement of persons for psychiatric health reasons:
  - Psychiatric Hospitals.
  - Old people's home.
  - Therapeutic centres for minors.
  - Outpatient treatment centres.
- Educational establishments or special training centres where minors are taken by their guardians with prior judicial authorization.
- Transportation of people in custody.
- Facilities designated for the permanence of stowaways.
- Aircraft and ships in which they have taken measures of restriction of freedom against some people.
- Border control centres with police facilities at airports, ports and land borders.

The Ombudsman may visit any facility or space of detention in Spain, without notice, strategy adopted in practice on a routine basis. This leads them also to visits on holidays and at night, for greater analytical breadth.

During the visits, the Ombudsman has the power to meet freely with detainees, security personnel, maintenance staff and managers, apply self-questionnaires, as well as checking records books, records of detainees and other documents of interest. All Public Administrators are required to cooperate and help with urgent and preferential basis to the Ombudsman in carrying out its mission in accordance with Article 19 Ombudsman OL. Failure to comply is considered a crime against state institutions (art.8 502.2 PC).

The criteria for selecting the sites to visit are based on the combination of general and specific approaches. For example, during the first year in office (2010), there was a need to visit as many centres in order to have a comprehensive picture (231 visits). During the period 2011 (77 visits) it was decided to reduce the number of visits to achieve greater depth and monitoring visits to places of deprivation of liberty previously visited. In any case, custodial spaces and centres must be visited annually (2012:52 visits; 2013: 60 visits; 2014: 20 visits until May). To do this, the importance is weighted in quantitative terms, time elapsed since the previous inspection, standards and relevant organizational changes follow up on previous visits, incidence, complaints of ill-treatment or disciplinary proceedings initiated against officials and security personnel in charge custody, complaints or open claims of special relevance.

Visits usually last two to four days. Initially, the team visits consisted exclusively of legal staff of the institution, but since 2011 expert technical staff is incorporated to visit hire on an ad hoc basis (coroners, psychologists and psychiatrists), thus forming multidisciplinary teams that allow further analysis and enrich the quality of the reports and since 2014 also incorporated the Advisory Board of experts of NPM. When selecting the staff that is performing visits, gender and intercultural criteria must be taken into account in order to encourage a climate of greater closeness and empathy with the recipients of care interviews themselves. This is an aspect to improve.

Prior to the visits, the multidisciplinary team contemplates specific objectives. The parameters taken into account to evaluate the visits are:

- a) Location of centre / place: location, environment, accessibility and transportation, parking.
- b) Conditions of habitability: overall infrastructure, detailed inspection of personal and common areas, capacity, qualified staff, quality and quantity of goods, equipment, supplies, food, communication with the outside, access to education and training, culture, religion.

- c) Safety conditions: indoor surveillance systems, protocols, data protection policy, handling and custody of records, fire protection, contingency planning, and communications with the custodial staff, infrastructure adequacy and safety equipment.
- d) Health and social conditions: health facilities and material and human resources, protocols, drug availability and drug policies, monitoring and management, health education and vaccination.
- e) Living conditions: programming activities, schedules, penalty regime, regime of rights and guarantees, personal communication protocols and electronic means.
- f) Compliance with law: review books records, operating system and respect law, domestic measures to prevent torture, registration protocols, procedures for complaints and claims.
- g) Other issues: violent incidents, verification visits of other authorities (Administration, Judge, Prosecutor, etc), interviews with detainees, the Centre management and staff.

Codes of conduct followed in conducting interviews and reporting guide / report abuse.

## b) Reports:

After the visit, the Ombudsman writes the minutes and delivers a copy to the centre or site visited. Later, after the phase of systematization and analysis of the information gathered during the visit conducted by the multidisciplinary team, report must be sent to the government and led authorities indicating any Advice, Suggestions or Reminders of Legal Duties.

As discussed above, the Ombudsman as NPM is required to issue an annual report that is sent to Spanish Parliament, the SPT and disseminated to the public. Visits to centres of deprivation of liberty are detailed in this report, analyzing the conditions in which the detainees are and the level of assurance and satisfaction of their rights under the above mentioned parameters establishing a connection Conclusions and Recommendations for the Administration, stating whether there has been response, accepted or rejected by the Administration.

The annual report has the following structure:

- Presentation.
- Mapping visits to detention centers: report of the results of the visits and the situation of the aforementioned centre.
- Description of institutional training and dissemination MNP.
- General Conclusions.
- Appendix complaints handled by the Ombudsman for ill-treatment or torture.
- Annex conclusions:  
In this point, the conclusions reached after visits to centres are classified with the issued recommendations, specifying the response given by the Administration, good practices identified.
- Indexes.

In addition, the Ombudsman conducts studies and thematic reports on special relevance and give it a large diffusion. Regarding NPM includes the following Studies: "*A Protocol for preparing reports of injury*" (2014) and "*Centres for minors with behavioural disorders and social difficulties*" (2009).

**Child friendly approach at national institutions in Juvenile Justice Ombudsman, Minor Defense Institution at the National and Autonomic level, Public Prosecutor of Minors, Lawyer, Court of Minors and Civil Administration.**

In general and in a force sense, we have not detected child friendly practices and internal protocols adapted at the national institutions responsible to manage control and complaints mechanism in Juvenile Justice.

First, web sites of these institutions have not a special style and contents with a child friendly approach. Regarding of Ombudsman institution the procedure for complaints is clear and easy to manage, but we think that will be necessary to introduce a child friendly style in the web site in order to guarantee that general information about mandate and functions of the institution are clear and accessible by a child.

Second, and in relation with the judgment procedure, according with international recommendations, it is necessary to adapt the penal procedures to children. For this purpose will be important to extend an easier terminology and less legal language. In this sense, we remark that the Justice and Procedural Legal were born with the purpose to guarantee the universal access to Justice. So we cannot keep these legal language and process formalism which excludes children and other persons of the Justice.

In the practice, and in relation with terms of the present study, it is necessary that juveniles offenders who are deprived of liberty receive a full manual in child friendly style with information about child rights, internal protocols of the closed centres and complaints mechanism. It must be expressed in an easy language, clear and well understanding, considering the special particularities of educative level, culture, age and sex.

Although Law 5/2000 and RD 1774/2004 recognize the right of minors deprived of liberty to complaints actions, in the practice there are some facts which causes some damage and restrict the exercise of this right. Most of these issues are the absence of celerity of some procedures and the absence of a special support provided by legal expert to argue the complaints.

Third, and in relation with expert and other actors with special relevance in the procedure, it is very appreciate that staff who carry out the visits of Ombudsman as NMP are psychologist and psychiatrist expert in child health care. In this line, lawyer and public prosecutor of minors are also expert in child rights, but, this general expertise is not enough. We consider that will be necessary that these experts get a special training and a complementary formation in others camps with the objective of provide a better capacity in communications and relationship with minors, which requires a global perspective above child by social and educative approach.

Finally and in relation with spaces and general atmosphere at the offices of Court Judgment and Public Prosecutor of Minors, it is so formalist, serious and restrictive, without a child friendly sensibility and a more comfortable atmosphere. In fact, this atmosphere could be intimidated for the child, and does not boost the complaints mechanism.

#### **4. CLAIMS AND COMPLAINTS SYSTEM:**

Law 5/2000, recognizes as a right of the child to be informed at the time of entry to a detention centre of the available complaints and claims system.

In Spain there are two types of systems for complaints and claims available to young offenders in detention situation, taking the bodies which handles the procedure we can distinguish between: a) system of judicial complaints processed by fiscal and juvenile judges; b) non-judicial complaints system, processed before the Ombudsman or before the competent public authority on Juvenile Justice and Justice or the direction of the Centre.



In any case, before any of the non-judicial proceedings, when the body handling the complaint or claim has knowledge of facts that may constitute criminal offenses committed against minors, as could be crimes of torture (art.174), inhuman treatment or degrading treatment (art. 173 and 175 PC), it shall inform the Public Prosecutor.

### **Claims and complaints system before the Ombudsman.**

Among the Ombudsman functions is to receive complaints from the public concerning alleged abuses and violations of fundamental rights by Public Administrations. In this sense, minors who are in a situation of deprivation of liberty and consider their fundamental rights violated by action or omission of the public administration may use this procedure.

As specified above, it is a function with a unique and common to the institution procedure, the practical processing is done by the corresponding area in response to the distribution of powers established. Therefore, this procedure must separate the actions performed by the Ombudsman as NPM.

Complaints can be presented by minors own accord *motu proprio* by direct referral to the Ombudsman, or through their lawyer or director of the Centre where the minor is serving his sentence, or even through an NGO. It can be done by email, regular mail, fax or online through the

website of the Ombudsman. In accordance with Article 16 of the Ombudsman Act, correspondence addressed to the Ombudsman shall not be subject to censorship of any kind, as communications established between members of the Ombudsman and the child may not be heard or interfered.

There is no specific format for the complaint, although a number of formal requirements must be met. For this purpose, it must be signed by the applicant indicating the name and address for notifications and be duly reasoned, accompanied if possible by supporting documentation on which the complaint is based. The process is free and the presence of a lawyer or attorney is not necessary. Keep in mind that the deadline period for the handling of complaints is one year since the events that cause it took place.

After receiving the complaint, the Ombudsman shall issue an acknowledgement of receipt, and granted admissible or denying it, in which case it will send to the person who made the complaint a written notice stating the reasons that lead to rejection, which in accordance with Article 17.3. of Ombudsman OL can be: - for anonymity; - bad faith, lack of foundation or lack of pretence; - the risk of causing harm to others; - be open to a court case.

Once accepted for filing the complaint, the Ombudsman starts an informal and summary investigation, to determine whether or not impairment of a right has been noticed, transferring substantial content of the same to the competent authority, in order to present a written report/reply within a maximum period of fifteen days, providing any documents deemed necessary to facilitate the clarification of the facts. If the complaint is assumed to be real and therefore there is a violation of a right, the Ombudsman will issue a report to the competent authority requesting the return of the right or safeguarding the right of the child, indicating Recommendations, Suggestions or Reminder of Legal Duties, being the competent authority forced to respond to the Ombudsman within a month.

The minor shall be informed of the outcome of the investigation and the steps taken indicating the response issued by the Administration or officer involved. The investigation progress and the Administration reply shall be made known to the minor throughout the procedure. The estimated time for the resolution of a complaint varies depending on the subject and the Administration to

which it is addressed. Once the Recommendations are made, and a reasonable time has elapsed, if the Administration hasn't taken appropriate measures, the Ombudsman may write to the relevant Department Minister to acknowledge them.

As part of the research conducted to clarify the facts, the Ombudsman has the power to visit juvenile detention centres, interviewing people involved, premises staff, access to records, medical reports, etc. The Administration and therefore officials are required to cooperate and provide assistance to the Ombudsman in the conduct of investigations. If they refuse, the Ombudsman may complain to superiors.

It is not possible to appeal against the Ombudsman decisions, so in this case, people who lead-complaints and did not feel satisfied with the resolution issued by the Ombudsman should exercise appropriate judicial action.

Ombudsman resolutions do not have the character of judgment and therefore have no value binding legal force. Its power lies in the media and political repression and moral disapproval toward Administrations. In this sense, even though it cannot change or override administrative acts, it can suggest changes to the criteria followed to the production of these acts, or modification of norms that constitute a violation of minors' rights or from their misapplication such violations are derived. In the case of violations committed by officers or employees in charge, it can urge the authorities to exercise their powers of inspection and punishment. In practice, these Administrations accept more than 75% of the decisions issued by the Ombudsman.

It is important to highlight that in the Autonomous Communities there are **Autonomous Ombudsmen and Commissioner for Children** against which it is possible to initiate procedures of complaints and claims, available to juvenile offenders in detention situation.

### **Commissioner for Children- Minor Defender Institution in Autonomous Communities**

Commissioner for Children exists in several Autonomous Communities. In general, it takes part as a specific area with own rules and procedures inside of the Ombudsman Autonomous Communities. The mission is defense child right in the geographical area of the Autonomous Communities. It has similar functions and status than Ombudsman. So, it is a non-judge institution, which has been founder in order to defense child rights from the Civil Administration. For these purposes, Commissioner for Children has a specific procedure to receive complaints from citizens respect child rights.

Currently, in Spain there are the following Commissioner for Children in Autonomous Communities:

- *Arateka*, Minor Defender in Basque Country.
- Minor Defender in Autonomous Community of Navarre.
- Minor Defender in Andalusia.
- Minor Defender in Catalonia.
- Common Prosecutor in Castille and Leon, *Valedor do Pobo* in Galicia, Justice of Aragon have not the status of the other institutions, but have a mandate to defense child rights.
- Common Deputy in Canary Island has a special section in Canary Island.
- Ombudsman in Galicia, Valencia and Murcia have special mandate in child rights.

The rest of Autonomous Community have not any Minor Defender Institution, Ombudsman or similar institutions, because with economic crisis the Autonomous Communities have suppressed it.

All of these institutions count with the faculty to visit closed centre and other institutions where children are deprived of liberty. Also, these institutions can submit Recommendations and Suggestions in child right issues addressed to the competent Administration.

In the same line that National Ombudsman as NMP, these institutions have the obligation to submit an annual report which is showed in the Autonomic Parliament. The most relevance special report submitt about Juvenile Justice are developed by Basque Country Arateka (1998, 2001), *Valedor do Pobo* in Galicia (2007), Commissioner for Children in Catalonia, Andalusia, Justice of Aragon and Common Prosecutor in Castille and Leon (each year).

In this point it is important to remark the "minor's phone" mechanism. This is a special procedure that exists in some Autonomous Communities as Andalusia and Basque Country, which offers free access service to everyone child or adult persons interested in resolve some doubt about child right situation or even interested in request or initiate a complaint procedure in defense of children rights.

Finally, we can advertise that webs sites of Commissioner for Children in the Autonomous Communities have not a friendly approach.

### **Claims and complaints system to the Civil Services Administration.**

Article 58.2 of the Law 5/2000 establishes the right of young offenders to voice complaints or requests concerning their situation and conditions of detention before the competent authority against the management of the centre where they are serving their sentence.

The complaints will be passed on verbally or in writing, in open or sealed envelope directly to the Administration or through the Centre's management. The Administration will address the complaint if it is within its jurisdiction or refer it to the appropriate authority, reporting to the Prosecutor and the Juvenile Court. Once the complaint is received, the director of the Centre or Administration, as appropriate, records the complaint and proceeds to its study, after which, once analyzed, communication to the child or his legal representative shall be sent informing the resolution adopted and the appeal process.

In practice, this distinction is based on the subject and officer or employee against whom the complaint is directed. So, if the complaint is directed against acts or omissions made by an employee of the Centre, the complaint is reviewed by the Director; in the case that the complaint is against the management of the Centre or the management and administration of its services, the complaint is handled by the Provincial Delegate of the General Delegation on Juvenile Justice.

The competent authority in the field of Juvenile Justice makes regular visits to monitor and control compliance with regulations in juvenile detention centres with special emphasis regarding the facilities, organization, operation and educational intervention. During these visits, the Administration can meet with minors to attend requests and complaints.

### **Legal claims and complaints system: Prosecutor and Juvenile Judge.**

**The Child Public Prosecutor**, the institution responsible for ensuring the interests of the child, is required to visit the detention centres where minors serve custodial measures. In these visits they should meet with minors who wish to receive information about respect, protection and guarantee their rights in detention centres. In addition, beyond these visits, youngsters can apply either through the director of the centre, either through the relevant public authority's requesting an interview with the Prosecutor or even directly sending a written statement. In the event that the request is initiated by the director of the centre, he is obliged to communicate it within 24 hours since being made aware.

In accordance with Article 56.2. of Law 5/2000 RRPM, young offenders who are serving custodial sentences may send complaints and petitions to the Public Prosecutor of Minors, who has the obligation to attend and respond by initiating legal proceedings when criminal acts are observed or addressing the public entity responsible for the administration and management of Juvenile Confinement Centres, urging change in any irregular or anomalous situation in relation to the organization. Juvenile Judge and Public Prosecutor of Minors will check the application of the measure adopted against complaints in favour of minors. It is very important: AUCTORITAS power that Public Prosecutor has in juvenile justice, which causes that when a simple investigation is opened against Administration, Recommendations and changes in favour of children shall be adopted by Administration in a better guarantee of child rights.

Also, minors have the right to appeal against any decision taken during the execution of the sentence that have been imposed on them. The appeal shall be presented in writing to the competent juvenile judge or to the Director of the Centre or institution where they are fulfilling the sentence, who in turn is obliged to communicate it to the judge within one business day. They can also appeal orally directly to the Juvenile Judge expressing verbally or through the Director of the Centre who will transfer it within one business day to Juvenile Judge.

The Judge shall immediately transfer it to the Public Prosecutor and, where appropriate, the minor's attorney, if this one was not aware of the facts, and resolve it within a maximum period of two days by reasoned order. Against this one sentence, appeal is possible to the higher authority level in Court (Juvenile Justice Rom in Magistrate Court - TSJ Andalucía). To decide on the appeal, unless otherwise reasoned judgment by the court, a public hearing will be held, giving direct participation to the minor.

In the case of an appeal against a disciplinary sanction given by the centre where the minor is serving his sentence, the minor may appeal in writing or orally to the Director of the centre, who shall forward it to the Juvenile Judge within 24 hour with its own claims. Then the judge will transfer it to the Public Prosecutor to defend the interests of the minor and after holding a hearing, issue an order modifying, confirming or cancelling the penalty imposed. The minor cannot appeal against that order.

Likewise, young offenders who are serving a custodial sentence have the right to put a formal complaint for acts or omissions of the staff employed in the CIMI's or against other minor constituting crimes against his persona, as they might be torture or inhuman or degrading treatment. The complaint may be filed by the attorney or the Prosecutor, via the Centre's or even by remission of the Ombudsman.

**Table nº 7. Difference judicial procedures/ extrajudicial procedures.**

Principle	Extrajudicial procedures	Judicial procedures
Presumption of innocence	Guarantee.	Guarantee.
Right to be informed	Guarantee.	Guarantee.
Right to participate/action of other persons interested	Guarantee.	Guarantee.
Right to be assisted by a lawyer	Guarantee.	Guarantee.
Right to appeal	Not obey.	Guarantee.
Celerity	Not obey, it depends of each case.	It depends of the accumulation of dossier.
Independence/ Impartiality	Guarantee for the Ombudsman. Relative for the Administration procedure.	Guarantee

## **IV. FROM THEORY TO PRACTICE: ANALYSIS.**

### **1. EVOLUTION OF MINORS DEPRIVED OF LIBERTY RIGHTS IN SPAIN.**

Below you can find described the level of satisfaction and guarantee of the rights of young offenders who are deprived of liberty in Spain. The sources of information are based on: analysis and updating of various reports and recommendations of international organizations on their visits to Spain; NPM reports on closed centres and interviews with minors and professionals in centres and other key informants.

#### **State of infrastructure seats ratio available / occupied.**

According to reports from the Ombudsman, the aesthetics of new centres has greatly improved compared to the old reformatory, while most of the old buildings still retain a prison like aesthetics.

According to minors, in general, furniture and comfort conditions are acceptable but austere. In this line, the Ombudsman has made several recommendations to the Administration that have been accepted and are mostly waiting for larger budgetary allocation (improve room facilities and remove items from the meadows and furnishings that can facilitate autolysis of minors, installation of a mechanical opening doors, installation of sound systems call from the rooms and intercom, etc.).

As for the number of places, even if we still cannot talk about overcrowding, we must say that the special rule has become general, to the extent that it is common to share rooms and an exception to have a single room.

#### **Location of sites.**

This is one of the most common and habitual complaints by juvenile offenders and their families, which has been observed by CPT (2011). As set out by law, minors should serve sentence in centres near their places of residence in order not to break the attachment to their city of residence and socio promote family reintegration and maintaining community ties. The reality is that the location of the centres depends on the availability of government property, and especially in the regions of greater extent there are provinces that do not have a centre, so minors must move from their city and province to more remote areas, which makes family visits more difficult, especially in families with low incomes. In some cases, closed centres institution offer some economic support for the transport of the families, but this is not a generalized practice.

#### **Video surveillance and video conferencing systems.**

This is one of the main recommendations issued by the Ombudsman, CAT and CPT in their reports to Spain. The need for video surveillance systems covering all areas where minors are registered or subjected to arrests, or isolated, recorded, interviewed, there is a need to incorporate audio devices. Likewise, the Ombudsman has also confirmed that the centres do not have protocols of the conditions under which the video surveillance system must be activated, their custody, the notice and information of the minors that they are being recorded and the management of data protection. It would also be advisable to incorporate recording audio system.

The minors interviewed, claim that video surveillance cameras in places where they receive visits from their family and intimate spaces should be removed. And that the security personnel shouldn't be present during family gatherings, because it generates them a lot of rejection and distress because it directly attacks their privacy in a space of great value for minors, especially since in many cases family visits are not very frequent. Management on its part and the professionals interviewed argue that it is a measure of supervision and control of the place where minors can easily be given prohibited substances.



On the other hand, the Ombudsman has also stressed the need for widespread use of telematic systems for video recording in order to avoid transfers to the courts to interview with Juvenile Court Judge, prosecutors, etc.

### **Legal services and communications with counsellor.**

This is one of the problems most frequently reported by youngster and lawyers interviewed as well as the Ombudsman in his reports.

In most cases, for reasons discussed in the next section, the lawyers do not carry a follow up of juvenile offenders while serving their sentence. Furthermore they are not given the transfer of disciplinary records open to the minor nor are communicated the sanction that is finally adopted, so in practice it generates helplessness to the minor as a result of the right to effective judicial protection.

In this sense, the Ombudsman in its 2012 report, advised to proceed to amend Article 76 of Royal Decree 1774/2004, in order to make clear the obligation of the director of the Centre to inform and give notice of the opening of disciplinary record and the adoption of the sanction to the minor's attorney. Although we believe that the article recognizes the right of the child, it is necessary to clarify and eliminate subsection preceding the recognition of this right << ... or possibly ... >> to avoid a restrictive interpretation practice. The Ministry of Justice has welcomed and transferred the recommendation issued by the Ombudsman and it will begin working on its incorporation; there have been no progress to date in this direction.

On the other hand, it is necessary to amend the Criminal Procedure Act to ensure that minors have immediate access to a lawyer in within 8 hours of detention. This was pointed out in 2010 by the Ombudsman and in 2005 by the CAT. The government said it was preparing a draft bill but there are not news in this extreme.

Administration usually operates with little transparency, very opaque and obscurantist, as referred by lawyers, not infrequently hindering their work while defending a minor's rights. Here you have to consider that sometimes the figure of the Legal Advisory Services offered to minors in the CIMIS minimizes the number of complaints or claims that could be initiated by youngsters.

### **Information on minor's rights.**

The Law requires that minors must be informed at the time of admission, of their rights, responsibilities, rules of operation of the centre, as well as systems of complaint and petition available to all in understandable language and written. While it has been found that in most cases this procedure is met, in practice the information systems are inadequate, either because they are in a not easily understandable language, either because they are not translated into the language of the foreign minor or because it is explained only verbally.

This practice results in greater ignorance of the minor of his rights and means of defence and court protection, which generates helplessness and frustration in the youngster. However, in most cases these errors have been rectified by the minors themselves, because minors with more experience inform them about how to exercise their rights and the means of complaint and representation available.

Meanwhile, the Ombudsman has stressed the importance of the right of the minor to exercise *habeas corpus*. The youngsters interviewed were unaware of this law and what this was.

### **Minor foster at the Centre. Protocols.**

Some anomalies in custody protocols are observed at initial reception. For example, the Ombudsman has detected that it is not scrupulously fulfilled the obligation to receive a medical examination and, where appropriate, psychological or psychiatric within 24 hours from the child confinement at the centre. This is particularly important when it comes to minors with behavioural



disorders or mental illness admitted to treatment centres that require medical treatment administered by a qualified practitioner.

In 2012 a minor committed suicide within days of his detention. Without having been refined legal responsibilities, as denounced by the defence of the family, the minor did not receive the required medical care or drug treatment that required by the recognition of a psychiatrist.

Furthermore, it has been reported by the DP and has been confirmed in interviews that the foster care during the first days in some cases can be very restrictive and develop in isolation. All the children interviewed recall the initial process as the worst moment of your stay in Central adaptation.

### **Educational project centres. Internal policies and disciplinary rules.**

Each centre has its own educational project. According to reports the Ombudsman and with the interviews conducted with minors (adults who have been deprived of liberty), there are educational models that opt for an incentive system that allows minors to get promoted and advance in phases of education and thereby obtain greater privileges and there are more restrictive models based in an expansive system of penalties with the standardization of the day to day centres and develop an excessively punitive regime. The extensive use of the disciplinary system, causing minor to accumulate an excessive amount of disciplinary offenses in many cases they don't even know them.

The problem occurs when the satisfaction and enjoyment of their fundamental rights is conditioned on a favourable assessment of behaviour (it was found that the family visits or telephone calls are conditioned by the minor behaviour). This in itself is a violation of minor's rights, but also attends several factors to consider.

First, in the case of a conflictive minor, it may be that the goals set by the rules of the institution in general, did not take into account the specificity of the different profiles of juvenile offenders, and It has fixed goals too far from their real possibilities and self-development, which would be deeply frustrating for the minor.

Second, the RD 1774/2004 has established a distinction between educational measures and disciplinary measures. So that the disciplinary regime is applicable as a result of a prejudicial conduct to the security and good order of the centre. In practice, according to information revealed in the interviews, the professional staff at the Centres doesn't know how to clearly distinguish these two areas, neither it seems clear the meaning of risky behaviour against the security and good order of the centre. This plays against minors, in case of doubt about the regime to be applied, it is always the most restrictive to the minor the one adopted with a large arbitrariness on the part of educators when apply the rules.

Third, the rules of operation of the centres contain information that is not very clear, which deprives the minor to know accurately of punishable conducts. An example is the requirement that minors are obliged to take a nap in their rooms. This is due to a reduction in employed staff as a result of shift work lacer, this becomes an inescapable obligation to minors and could be considered a forced isolation by the Centre.

Fourth, we must draw attention to the fact that the application of very stringent rules runs the risk to violate the rules hierarchy, becoming stricter in practice the regulations of the Centre than the RD 1774/2004 itself that develops the law 5/2000.

Finally, it should be appreciated that when juvenile offenders commit offenses against security personnel or employees of closed centres, the principle of NOT BIS IN IDEM may be violated if it is applied to the minor on one side the penalty system and on the other hand they open proceedings.

As good practice, the Ombudsman has reported in its 2012 report the educational proposal called "booster packs" implemented by the closed centre "Pi Gros Castellon de la Plana". In this centre the application of disciplinary measures is very limited. The project is based on a system of

individual rewards that the minor is reaching as progressing well in developing his Individual Educative Program. The minor knows obtained credits for good behaviour and positive development and the measured cost of credit privileges are granted. This information is displayed on a bulletin board in the centre permanently and openly.

This type of system of incentives and positive discipline are applied in practice guaranteeing extensive rights of minors as exit permits, permits, participation in leisure and recreational activities. To further the progress in the generalization of this system would be desirable, as we have been told by Prosecution, it needs larger financial resources and greater collaboration between private and public entities.

### **Disciplinary measures. Group separation measure.**

The application of this penalty is contemplated both as a measure of restraint and as disciplinary sanction regime. Its application, which according to the regime and the conditions of application may violate Article 3 of the European Convention on Human Rights and suppose a criminal offense of ill treatment or torture; it should be exceptionally used as a last resort and for a specific duration. Also, according to APDHA and others NGO's, it will a cloak case of measure o solitarily confinement. It is banned by Beijing Rules.

All youngsters interviewed reported having been in separate group on more than one occasion while serving their sentence, although in the detailed information, only four cases can be said to have followed the procedure laid down in the Act: separation in appropriate room (it could be the minor single room or one in similar conditions), normalized right to education (no interruption of formative-educational work), visits to doctors, educators and psychologists and handling of reports, two hours of free air per day, and the performance of those individual program activities that could be carried in your his room and the guarantee of play sport or other physical exercise according with the CPT Recommendations (2007).

In all cases, minors report that the group separation and confinement in the isolation room made them feel worse about themselves. The emotions suffered are distress, isolation and anxiety. Two of the minors even report having attempted self-harm as a result of anxiety. They all agreed that the feeling they had when they left the separation cell was a feeling of shame and distress having once more to go through a process of integration to the group and be identified by the rest. In two cases, adults persons who has been interviewed relate that they tried to auto injured during the solitary confinement time.

Abuse of this penalty can end denaturing it. Also, keep in mind that there is no individualized modulation of this measure according to the characteristics and capabilities of each child. The measure applies equally regardless of the level of emotional and psychological development, without assessing whether the child has the ability to calm himself through self-reflection. As the minors themselves have referred, the effect in most cases is the opposite.

Regarding the maximum duration time of this measure, while the children interviewed refer not remembering the maximum time and the professionals interviewed assure that it meets the limits fixed by the law of 7 days, the Ombudsman in his visits in 2013 could check that there are centres where this deadline is not respected, even when separation sanctions accumulate it is not fulfilled with adequate resting time between sanction and penalty (the Ombudsman recommended at least 12 hours between the end of the first one and the starting second one). All minors interviewed reported having exceeded this limit and often ignore the number of penalties they had accumulated, and this made them more frustrated and even careless about themselves.

According to Prosecution reports, is the most contested measure by minors and with the greater number of complaints. In 2011, a child died while he was in solitary confinement with mechanical fastening.

**Containment means (rubber sticks, physical restraint, mechanical restraint, group separation).**

The Spanish Constitutional Court has validated the use of rubber sticks by security personnel in closed centres. The Ombudsman has noted the use of shackles a measure of containment within Closed centres. Meanwhile, two of the minors interviewed who have been in two different centres recognized being in solitary confinement, handcuffed or shackled. It is evident, therefore, that in Spain is used quite frequently minors containment.

Punishments that minors relate the most are squats and mechanical fasteners.

Besides closed centres, as CPT report after the visit to Spain in 2007, the use of violence by police in detention custody exceeds the legal's limits. For the moment, even the number of complaints against police actions is in a lower level that in the past because the afraid for the repression, but in relation with the social movement which it causes in Spain for the political and economic crisis, there have been very media news about violence uses by police against protesters, minors includes.

### **Isolated detention.**

As noted by the Ombudsman, it is necessary to review the system of protocols and expressly prohibit isolated detention for minors. This is one of the measures for which a legislative change is requested according with the CPT and the HHRRC Recommendation's. In this sense, the law 5/2000 has decreed an additional measure for minors (communication with the family, interview by doctor, film in the detention area, separation of adults, limit of 24 hours and communication with lawyer).

Now it is de important interest to point the 2/2005 General Prosecutor Normative about the right of the minor to interview with the lawyer before to do policies declarations, with the exception for terrorism cases.

### **Personal searching.**

Although Law 5/2000 and Royal Decree 1774/2004 approving the Regulation that develops it establish a clear and respectful protocol with children's rights, in practice that protocol does not conform to the Act. According to interviewed minors, they remember few occasions where had to have total searching, which required them to be naked, was made in the presence of medical personnel. Instead, it has always been conducted in the presence of teachers and at least two security members, something they considered excessive and unnecessary and that made them feel humiliated.

Meanwhile, the Ombudsman, in his report of 2011 reports that this records (or test) has not always been transmitted to the judge, and in many cases these are directly made by educators and security personnel without the judge's approval.

As for the records of personal dependencies, all children interviewed recall records as indiscriminate and excessive. They say that at the slightest hint of holding prohibited substances, all rooms were searched in a very disrespectful way toward minor's belongings. This seems to conflict with the principles of proportionality and opportunity that govern search protocol. Therefore, it is important that the searching comply with the protocol set by Law and not become an indiscriminate and punitive act because it ends up generating a sense of provocation, helplessness and arbitrariness to the minor.

### **Right to education and professional training.**

All children enjoy the exercise of this right in external resources in a standardized scheme or inside the centre, depending on the individual plan of action and the evolution of the child. It is found that the exercise of this right is fulfilled satisfactorily in closed centres, minors interviewed have not mentioned any limitations or restrictions beyond those mentioned in relation to the group separation

measure. In the other point, it is necessary to consider that the hard and punishment style of the educational programs.

In relation to the training and work activities, there is a request or complaint about the need for wider training opportunities, as those minors with in long-term detention, are forced to repeat in each course the same training modules within the centres. Also claim that the courses must have an equivalent that subsequently helps them to find job.

In this sense, CRC (1990, 2010) pointed the importance which educative programs in each centre and IEP shall addressed to re-education and reintegration of the minors instead of the simple entertainment with the aims of relaxing climate and prevention of violence inside the closed centres. We can confirm that there are some progresses in this direction, but it depends finally of the private organization which is working in agreement with Administration.

A major problem is that the Unaccompanied Foreign Minors, in many cases, they are denied the processing of documentation if they come of age after being admitted to the centre. This is a loophole that jeopardizes the fulfilment of the purpose of the measure and violates the rights of these minors, because while they are not documented they cannot have access to other resources and cannot satisfy their rights to education, health, professional training, etc. The law obliges the confinement centres to document the UFM if they are minors, but obligation loses its strength if they have reached the majority of age, which is why the Administration often turns a deaf ear to calls for regularization when UFM have come of age.

#### **Right to health and health care.**

These services are generally provided by the medical staff of primary care and emergency health system. The Ombudsman warns that relations between doctor-patient in the closed centres don't respect the privacy and intimacy of the child, and that those medical records are available to all staff employed at the centre.

They have proved to be good practice in some centres developing protocols in case of pregnant girls, infectious diseases, suicidal and self-harm and health emergencies. Another good practice in relation to the food given to minors is the storage of food samples for an eventual analysis by the agencies of health surveillance and control for the purpose of detecting possible cases of poisoning.

But, not all centres have developed a suicide prevention protocol although its creation is spreading.

#### **Contact with families.**

It is the main complaint referred by minors. Everyone agrees that visits, permits and phone calls are insufficient. In some cases it is noted that it is very restrictive. Keep in mind that this is a right and that in no case the enjoyment of this right can be conditioned to the child's behaviour, at least, the essential core of this right should be respected.

According with the case law (AP Madrid, auto 47/2004, 25 March; AP Madrid auto 105/2004, 1 September) and with the article 55.3 law 5/2000, permissions are an essential and a very important support tool for the re-education and reintegration aim. For these causes, the interpretation of the closed centre rules and the RD 1774/2004 must guarantee the superior interest of minor, according with the IEP and respecting the minimum intervention penal principle.

#### **Staff training. Dispensed treatment and professionalism. Knowledge and respect of the child's rights.**

In relation to this element, we can see that there are opposites. While it appears that all detention centres have qualified and trained (university degree in social work, psychology and education) staff and there was a very positive evolution in the profile of professionals, it warns that with a generic degree is not sufficient and should be strengthened with training in human rights and child

rights and done it extended to police, with focal interest in prevention, identification and eradication the torture, according with CAT (2010) and CRC (2010).

In practice, 6 of the 8 children interviewed say to keep a good memory of their educators and were considered adequately treated by their reference educators. Instead, they all refer that in the centres where they were confined they had more than one incident with educators, social workers, psychologists or similar members of technical staff where they felt that their rights were violated which generated helplessness, feeling misunderstood and not aided in the specific problem they faced.

It highlighted the need for specialized staff in crisis situations. It is found that most of the suicides and deaths of minors occur when they are subject to group confinement scheme or subject.

### **Therapeutic Centre in protection regimen.**

After the Obusdman report in 2009 ("Study about Centres of protection of minors with disruption behaviour or in situation of social difficulties") and the Amnesty International Spain reports in 2009 and 2010 ("If I come back I kill myself I and II"), CAT Recommendations' in 2009 and 2010 showed the existence of tortures and other degrading treatments suffered by minors in closed centres. Special mention in relation with educative and sanitation point, because there were an abusive use of solidarity confinement and containment forced measure, even with pharmacological treatment opposed to the choice of the minor and without the approval of the minor's legal representative.

In his camp, we can sure that there are some progress but not substantial, like a new protocol about action of Administration and a new protocol about control action of Public Prosecutor. Actually, there are in curse a new project of Law for a Child Protection Legislation which includes a special regulatory of this area, providing guarantees for children in a therapeutic centre protection with the special force for the Public Prosecutor and Judge addressed for a plus in control and respect children rights.

### **Keeping and updating records and log book.**

According to Law 5/2000 and Royal Decree 1774/2004, the closed centres must have log books to record incidents and protocols followed in relation to minors. In this sense, each centre should have the following books of record updated:

- Record Book entry.
- Record Book personal records and dependencies.
- Record Book application of disciplinary measures.
- Record Book containment and confinement.
- Record Book complaints about the centre.

The Ombudsman has found that its existence and use by Centres is uneven. According to the Ombudsman, usually they are not updated or filled as it should. In some centres they don't even exist. This hampers the work of monitoring by the Prosecutor and NMP, so this is an important focus to attend it.

## **2. SYSTEMS OF CONTROL AND MONITORING: GOOD PRACTICES AND DIFFICULTIES. OMBUDSMAN PROSECUTOR, ADMINISTRATION, JUDGES AND LAWYERS.**

### **Good practices.**

The Ombudsman has developed over the years a number of good practices in his work as NMP among which are the following:

- The incorporation of doctors, psychologists and psychiatrists to the visits that the institution has been conducting to the detention centres.
- Conducting monitoring visits to places previously visited and which have issued recommendations or suggestions for improvement, to make sure they are implemented.



- The establishment of an Advisory Council for NMP, figure under the Law and which has its fundament on finding balance and counterbalances within the Ombudsman institution to strengthen its independence and impartiality. Members of this Council are professionals with great prestige in medicine, law, psychology, etc. They are nominated by their professional associations and organizations representing civil society. During 2014 they have accompanied the Ombudsman as NMP on their visits to juvenile detention centres and adult prisons.
- The studies and researchers carried out in juvenile justice, which promote legislative changes and better practices by Administration.

Regarding the **Prosecutor of Minors** and the protective function entrusted to prosecutors, lawyers and judges, we can highlight the following good practices:

- The establishment of specialized juvenile prosecutors in each district court has improved the level of expertise and training of juvenile prosecutors on child rights.
- The Public Prosecutor has a protocol containing a guide of standards to follow and test in follow-up visits to closed centres. Visits are unannounced and can drill down details. In Andalusia there are Prosecutors (Cádiz, Jaén) where juvenile prosecutors have done a very rigorous and continuous monitoring with weekly visits to children in closed centres.
- Communication between the Administration and Juvenile Prosecution is very fast. It is done in a matter of hours by fax. Furthermore, in the Autonomous Community of Andalusia there is a software application that allows you to share real-time updates from Administration, Prosecution and Courts records. This allows a comprehensive and rigorous monitoring of the measure compliance to ensure greater protection and control of children's rights.
- In the same way that it has created a specialized Juvenile Prosecutor, lawyer association have also created a shift specialized in minors. To access it you have to have previously received specialized training in human rights and child rights that is provided by the school itself. This ensures that children have a defence that knows their rights and is specialized in the field.
- In some cases, especially in those closed centres that are located in provincial capitals, the centres have a help desk and own permanent legal guidance to children, facilitating the exercise of their rights, although, as has been alleged by lawyers, plays a cap effect.
- Within the Juvenile Courts, was created in some provinces a turn for minor incidents, which is responsible for addressing any incidents that occur during weekends and holidays in closed centres and those serious offenses committed by minors. This allows an automatic control by the courts, for example, the searches and registrations that occur on weekends when children return to the centre of their permits.
- Regarding the Safety and Security of the closed centres OL 1/92 Closed centres Protection of Public Safety, attributed the National Police the powers of inspection and control of private security companies which operate in closed centres. For this they must establish visits to the centres to monitor the operation and existence of security protocols (fire protection systems, information transmission between vigilantes, training of guards, video surveillance systems, etc.).
- There has been a widespread use of video surveillance systems and teleconferencing in closed centres. In some cases, Administration is waiting for budget reasons.

#### **Main obstacles.**

#### **In relation to NMP:**

From the Coordinator for the Prevention and Reporting Torture argues that the fact that at the same institution (Ombudsman) two parallel mechanisms are developed, such as NMP and the Mechanism of Complaints and Reports clearly creates confusion on the citizenship. They also point out a weakness that before any denunciation or complaint on which evidence has constitutive acts of torture or ill-treatment should refrain the ombudsman in favour of the courts, and that in practice causes some frustration on the part of people deprived of liberty who have lost confidence in justice. It is thus that in cases of ill-treatment or torture, neither NMP nor the Ombudsman specific area for complaints could intervene.



In general, they criticize the eradication and reference to the word torture in NMP reports, opting for other euphemisms such as "incidents." They claim that the reports do not deny torture, but they obviate it. In this sense, these organizations complain that the NMP reports do not contain information on centres where mistreatment or torture practices occur or the role of the courts when investigating complaints of torture or ill-treatment (Recommendation issued by the CPT in its report on its visit to Spain in 2005).

The institution of the Ombudsman as a National Mechanism for the Prevention of Torture has an apprenticeship of four years of continuous work in the field. For this reason, we can consider the body for the Prevention of Torture requires more time to develop better organizational skills.

It is important to consider that the budget of the Ombudsman has considerably been decreased in recent years, which negatively affects MNP. In this sense, one of the main challenges to be addressed is to increase the budget of the institution and increase the provision of manpower and equipment to the unit of the Ombudsman for the Prevention of Torture. It is also necessary to strengthen the external communication, for civil society and more specifically, the detainees and their families so they have a better knowledge of the existence and functioning of the institution, as well as available means of complaints.

At jurisdictional and inter-institutional level it would be desirable to coordinate the ombudsman Unit and its akin at ACs in order to harmonize actions and enforce strategies for the prevention of torture as well as enhance the outcomes and impact of prevention of torture tasks.

Another weakness, again the result of the economic crisis and structural adjustment measures introduced by the Government, is that in practice most of the Recommendations, Suggestions and Reminders of Legal Duties issued by the Ombudsman as the MNP, haven't been implemented in the Administration when it comes to accommodation infrastructure and facilities involving budgetary investment (increased number of places, incorporating teleconferencing and video surveillance systems, etc.).

The crisis is having a negative impact in the management of closed centres. This translates into greater privatization of centres by the Administration and worse conditions of the centres that are managed through agreements with private organizations against those managed directly by the Administration. It is also a weakness of closed centres the precarious staff policies that private entities operating in such centres have. For this reason, it is necessary to provide more stability in staff policies in order to prevent the exhaustion of staff syndrome. Besides, it would be recommend encouraging the training of staff in Human Rights and Child Rights camp.

A factor to recall, according to civil society, is that about 80% of those employed in the closed centres in security has a criminal record. This in itself should not be considered an obstacle, but requires extreme caution and the adequacy of recruitment process, training and monitoring of the staff employed in centres.

In relation to the technical teams of the Administration responsible for the monitoring and protection of juvenile offenders during the time of serving their sentence, according to the interviews, there is a need to promote the education and specialization of employees. It would be advisable to create a specific body of civil servants specialized in the field.

ACs need to develop common rules and standard protocols for all detention centers so that all of them are ruled with the same pattern, preventing each director or private organization that manages the centre to develop a distinct style of the rest of the centres, which in practice can lead to discrimination and unequal treatment and operation on the place where the child is confined. Currently the "Junta de Andalusia" is working on a Regulation which is in process of public information process and amendments.

Finally, it is essential that centres have the different record books and are updated to allow the Ombudsman and the Prosecutor to be able to adequately monitor the guarantees of the rights of young inmates.

**At the level of the judicial function monitoring and control exercised by lawyers, prosecutors and judges,** one of the main problems encountered for the monitoring, control and protection of the rights of children in detention are the limitations and obstacles that lawyers face regarding the defence of juvenile offenders.

So, first, the remuneration received by each case is clearly insufficient (180 €, regardless of the length of the case, which may take half a year or more, regardless of displacement to another province where the child is detained) and also usually pay late.

Second, it is necessary to encourage a change of attitude on the part of government and private entities that manage closed centres allowing lawyers to perform its function without constraints. In this regard, it is essential that pursuing Law 5/2000 and Royal Decree 1774/2004, the directors of the detention centres give transfer to the minor's lawyers of the disciplinary proceedings, since in practice, lawyers are aware of it once the children turn the judge's sanction requesting a reduction or modulation of it. In the same vein, it would be desirable that from the moment a child is detained in a juvenile facility, his attorney must be given the internal regulations of the centre, so that it can conveniently handle appeals and opposition to sanctions and disciplinary measures. Besides, it would be necessary to transfer for the lawyer the full dossier of the minor since, independently of the cases (if the lawyer is defending by a minor causes or by a disciplinary sanction). It is very important in order to the lawyer knows which is the superior interest of minor in each case.

Similarly, lawyers interviewed, has reported cases of Centres hindering communication with minors. For example, allow them to call their lawyers only on weekends (when law firms are usually closed), do not respect privacy lawyer-minor during visits or violate the confidentiality of written communications between lawyer and client. It is necessary to stop bad practice and restrictions to guarantee the right for defence and effective judicial protection

Thirdly, something that works against the defence of the minor is the fact that for every open procedure with the minor and depending on the court where the case is opened, they transfer it to a different lawyer. It is something that clearly works against the interests of the child, as the new lawyer doesn't have a broader view of the path of the child and a multidimensional assessment of their educational, social and family conditions. It would be desirable, therefore a unification of records and that the first lawyer to know the case would be responsible for all the causes related opened after.

The previous section has the consequence in some cases, and particularly in those centres that are in cities far from the main urban centres and provincial capitals with judicial district, difficult to find attorneys assigned to juvenile court representation. In many cases, we report that lawyers do not have the necessary expertise or are not interested in taking personal implications for the cause with the staff working in the detention centre. This generates a clear defenceless to the minor.

Finally, although there is an improvement in lawyers training and specialization, it is necessary to continue, improving international standards knowledge and promote a comprehensive and multidisciplinary approach that integrates educational, social and psychological approaches on children rights.

There is a special concern about the new reformation in curse of the legal aid body. It may be an obstacle for the effective defence of children rights in conflict with justice.

**Regarding the work of prosecutors** although harmonizing efforts have been made, prosecutors criteria should be unified, since in many cases are disparate and that leads to that within a same

region in the same centre there are minors serving different sentences having committed similar acts.

**Regarding the role of the courts**, we find that while recognizing the right of *habeas corpus* is a breakthrough in juvenile justice, we must specify its application and knowledge by the Magistrate's Court Guard instead of the Juvenile Court which contradicts the principle of specialty. It is necessary to establish a protocol for joint action between the Police Court and Juvenile Court.

In general, there is a trend in the Spanish legal system to a subtraction of judicial Administration. In the field of Juvenile Justice, in the field of the management of closed centres this becomes more evident. The difficulties are compounded when, in addition, the Administration has the authority to sign agreements with private organizations to manage them.

It is necessary to reform the PC and LECRIM, according with CAT and CPT, so that the definition of torture suits CPT standards, becoming extended to staff working in juvenile justice as responsible of a crime of tortures, beyond the civil servant body. In the practice, Spanish jurisprudence considers this point (STS 718/2013, 1 of October).

Finally, and according with CPT Recommendations' (2005), it is necessary to accelerate the legal investigation procedure in torture camp in order to avoid the impunity sensation and encourage the prevention tools of penal justice.

### **3.2. COMPLAINT OPERATION SYSTEMS. GOOD PRACTICES. DIFFICULTIES AND CHALLENGES.**

#### **Good practice.**

With regard to the figure of the Ombudsman we consider the following actions as good practices in the development of mechanisms of complaint:

- In the case of Andalusia the Commissioner for Children, part of the Ombudsman of Andalusia, has signed a cooperation agreement with the Department of Juvenile Justice and Interior, which allows in all detention centres for juvenile offenders has friendly information about the figure of the Commissioner for Children and complaint forms available to minors.
- A few years ago (2006, 2007) in Andalusia there was a live radio where young offenders could refer to that answers their questions regarding their situation. It was called "With children nobody plays".
- It has been revealed as a good practice in the centre of "Pi Gros" when a child enters the centre he receives a form for requests and one for complaints and the explanation on how to use it.
- Some entities managing centres, conduct external audits of the management of the Centres which reports important information used to improve work processes and management of the Centre. Moreover, it also applies a satisfaction survey to children and families.

#### **Difficulties and challenges.**

In 2013 there was a decrease in the number of complaints of ill-treatment and / or torture according to the reports submitted by the Committee for the Prevention of Torture. This, as pointed in their report of 2013 is due to several factors: a) the growing distrust of institutions and counterclaims fear and distrust in the courts; b) the decreasing ability of organizations defending human rights affected by the crisis; c) the effective reduction of police violence.

In general we can see that **the number of complaints that juvenile offenders have submitted to the Ombudsman, or the Prosecution or a lawyer, is reduced**. This may be due to the following factors:

First we can consider the situation of juvenile offenders in detention centres as a result of legislative reform with the entry of Law 5/2000 and its Regulation has improved a lot in our country. This is noted in the employees profile, as we have noted above, has evolved from a safety and control profile based on force to a profile of educator and social worker based in education and re-socialization of the child. This suggests that the number of incidents of abuse, assault or torture against minors in closed centres has dropped considerably.

Secondly, keep in mind that the profile of juvenile offenders, especially coming from broken families and having a low level of education and training, corresponds to an increased tolerance to the use of force by standardizing the same in their family and social environment and takes corrective violence and coercion as necessary and standard measurements. In addition, the stigma of guilt and re-victimization, coupled with low self-esteem, leading in many cases the minor to accept and tolerate the application of punishment and violence as a normalized situation and own order checker. This same phenomenon is shared by the families of the young offenders.

Third, complaints by children, in most cases there is a lack of specificity and uncertainty of facts. This, coupled with the fact that when judges, prosecutors and lawyers are made aware of the allegations it has been too long since the time of the commission of the offense and children have the tendency to forget past events, which leads to most of the complaints get filed.

Furthermore, even if that complaints prosper, once the Prosecutor initiate the research, he must consider the following elements that do not contribute to the clarification of the facts: a) the destruction of the evidence; b) resistances that occur within centres to clarify the facts, when the professionals of the centre are covered and protect each other, hiding the facts.

Fourth, most of the complaints that are filed with the Ombudsman are verbal complaints are made to the Ombudsman as MNP during his visits to closed centres, which is a weakness it doesn't proceed to Prosecution and Courts.

Fifth, the profile of juvenile offenders has changed; it is quieter, less aggressive. In addition, children with conduct disorder, presenting more aggressive behaviour are usually placed in Therapeutic Treatment Centres.

Sixth, must consider that the insufficient knowledge, concrete and detailed on the initiation and management of the complaint procedure by minors, besides the lack of communication and advice from the attorney assigned to the minor for the reasons previously detailed, difficult to use and exercise of the systems of complaints and claims by minors. In this sense, it is not an extended practice to give a copy of the request for the minor.

Complaints, requests and petition which minors commence above Public Prosecutor of Minors are in late respect the time that successes were appeared. Furthermore, although the system of communication between centres and prosecution is fast (via fax), knowledge and processing is not automatic, as it is conditional to the caseload at that time. This means that most of it are going to be filed and minors are left with the feeling they are neglect by the authorities, which increases their frustration and sense of impunity. Against this, further specialization should be considered and providing targeted bodies of Prosecutors and Civil Servants to streamline mechanisms for protection and complaint in those offices that appear more saturated and caseload.

Optional measures to get past the overload of working in Judge and Prosecutor of Minors could be to promote the conciliator solutions between victims and offenders, or the creation of a Judge in Penitentiary Vigilance, similar body that in adults regimen, responsible only to the application of the measure; or simplified procedures especially when it comes to cases involving minor offenses.

An option would be to propose a reform of the systems and procedures of the Ombudsman

Institution, so that when it receives a specific complaint, the Ombudsman can thoroughly investigate the facts and to issue them to both the Prosecutor and the Juvenile Police Court to open a preliminary investigation. This would be an investigation without legal assessment of the facts, focusing rather on the organization of events, to thus facilitate the admissibility of complaints, since in most cases, as has been indicated, the complaints that reach the Ombudsman, the Courts and the Prosecution are formulated in an inconsistent, vague way and are remote in time relative to the time the acts were committed. It would decisively contribute that law schools could offer a weekly service of integrated legal advice in Juvenile Detention Centres.

Another of the issues and challenges to address in Spain is **the right filling of lesion parts by doctors in order to facilitate the clarification of facts constituting torture or ill treatment offenses**. The Ombudsman has developed in 2014 a 'Study of injury reports of persons deprived of liberty.' In it, it highlights the importance of the report as a tool to clarify possible torture or ill-treatment and finds, in line with the CAT and CPT, that in Spain between 40% -65 of injury reports issued by the emergency services and primary care are flawed and inadequate. In this sense, according with CPT Recommendations' (2007), it is important to remain the importance of a harder investigation in tortures and ill treatments cases, because have been reported some cases in which persons are damaged by special methods that not causes signal injured susceptible to be confirm in an injury report. Besides, it is important to consider verbal ill treatments according to CPT Recommendations' (2001).

Furthermore, and in relation to the monitoring and the defence of the rights of juvenile offenders confined in closed centres carried on by the NGO's in Human Rights as locus stand on behalf of the families of the children, is being increasingly complex according to these NGO's, conditioned by the following factors:

- There is a growing interference by the government and private entities that manage closed centres to grant permissions to access.
- The impact of the economic crisis on NGOs has led to the disappearance of some who had a strong presence in this sector and has seriously diminished the incidence and monitoring capabilities of the majority.
- Much of the closed centres are located in towns where there isn't a strong component of associations capable of reporting.

Regarding the **procedure for disciplinary measures** applied to juvenile offenders we can observe the following deficiencies<sup>2</sup>:

- The burden of proof lies with the young offender who committed the alleged violation of the Internal Regulations. Besides, just the simple report of an educator employed in the closed centre counts as incriminating evidence removing the presumption of innocence of the minor. They need to order and ask for more tests and different quality and category.
- It does not apply or it applies insufficiently the principle of conciliation and court settlement under Law 5/2000, in the case of disciplinary proceedings
- Failure to comply with the fundamental principles of juvenile justice: opportunity, proportionality and culpability. It is important that the child knows the illegality and enforceability of his behaviour. This is important to assess whether there is fraud or negligence for graduating sanctions
- The power to exercise disciplinary authority is allocated to the governmental entity, primarily through the Centre Manager. It is criticized that one member (Director of the Centre), rather than a collective body who does the valuation of the disciplinary infraction.
- With regard to the assessment of the facts as serious, very serious or minor offenses, there is difference of opinion. To avoid this arbitrariness it would be advisable to apply common criteria such as the following in the basis of sanctions:

<sup>2</sup> Las palmas.



- a) In the case of very serious offenses, those that relate to physical assault, threat or coercion, should be proved by production of an injury report.
- b) In the case of a serious insult or disrespect anyone who is in the centre, should also be valued, whether this occurs in the presence of third persons cohabiting in the centre.
- c) In the case of the introduction or possession of drugs or alcoholic beverages in the centre, there is often the problem of identifying the author when two or more children are sharing a room.
- Concurrent enforcements. Not applicable zealously applying the appropriate penalty to the most serious offense committed, if you opt for separate sanction for the same events (example: insulting centre workers are often sanctioned by regular insults to any person in the centre and as disobedience of orders and instructions of the centre staff).
- There is a shortage of legal aid in proceeding sanctioning regime as we have explained above. In one side the silence of the Administration and the Management of Closed centres not informing the attorney when a disciplinary file is opened.  
This failure should be solved if the children were to inform their own lawyer, but in practice this does not occur, either due to ignorance or lack of information or because they see it unnecessary.
- The procedure is fast, since the initiation of proceedings until resolution and notification to the minor there is no more than five days. In most cases children appeal, especially when it comes to very serious penalties being estimated by the judge establishing a rebate or penalty graduation.  
But the final decision by the court usually takes two to three weeks on average. This creates a dilemma of whether applying the sanction in a precautionary manner and give utility to the corrective-educational value of the penalty or wait for the resolution and give priority to guarantor-legal value.

## V. CONCLUSIONS:

### **Normative, social and criminal evolution of Juvenile Justice in Spain.**

In Spain the juvenile criminal law has evolved progressively and significantly during the past 20 years, especially after the year 2000, when it enters into force the Organic Law 5/2000 Regulating the Criminal Responsibility of Minors, which can be considered as the first legal instrument of Juvenile Justice in Spain.

As discussed in this study, LRCPM has created a framework of justice specialised in juvenile offenders, based on international standards and the move towards Restorative Justice. However, since its entry into force and relying on several highly publicized cases, opponents lobbied to tighten the punitive part of it, thereby taking them to revoke the provisions that extended the application of this special right to youngsters. However, despite this and other reforms that represented a clear setback and hardening of the Law, in practice, the legal practitioners have always acted with greater flexibility, so we can say that the hardest and the more penalized regulations of the Law and its Regulations have been inactivated.

So it is that it has been found in the initial analysis and mapping of the study, the number of young offenders serving measures involving deprivation of liberty under a closed Juvenile Rehabilitation Plan, is the lowest percentage in the statistics of juvenile delinquency. We can say, coinciding with the most authoritative doctrine in the field, that it is a residual percentage, that on the other hand creeps largely as a systemic failure, as most of these young offenders come from Protection Centres, Minor Conduct disorders or social difficulties.

In parallel to the development of the regulations and in response to it there is also a satisfactory evolution of the profile of the professionals who work with children in reform. Prior to LRCPM, professionals working with children had a safety and containment profile, while among current professional takes precedence educational and social profile needed to guide the implementation of the measure to the social reintegration and education of the child offender as ultimate aim.



On the other hand, we have noted the change in trend in the Juvenile Offenders profile, as it has evolved since the majority profile of children and youth with features of very marked crime as a result of conflictive family structures, criminal background and risk situations or social exclusion, to the lower profile trailing primarily a behavioural problem; it is a minor offender more disobedient, abusive, disruptive, defiant, having addictions and mental illness or psychopathy derived from drugs intake. Therefore, it is one of the main challenges of the juvenile justice system: adapting protocols and educational intervention strategies to the new profiles of juvenile offenders who require therapeutic treatment. It is precisely in this area and within the protection system, where major concern and violations of children's rights have been detected (Ombudsman report 2009, Amnesty International Report 2009 and 2010, CPT and CAT Observations).

The system should try to answer in reform to situations and to profiles of children with whom it had been working with little success from protection. The answer should be addressed once more from the multidisciplinary and integrated educational approach, controlled by the MF and the Judge in these cases from the protection system element that is advanced in the Draft Law on Protection of Minors.

In any case, we find that the number of offenses committed by children has declined in recent years and continues in clear decline, having to emphasize that it presents very low recidivism rates with respect to the total population and especially with respect to adults system, which shows the assertiveness and success of systems based on restorative Juvenile Justice.

Contrariwise, the social perception of juvenile crime is very negative and contrary to reality. Since political power has opened a debate on the desirability of further tightening of Criminal Law of the Minor framework and a party in the government (Conservative) has shown signs during the last legislature to reform the OLRCPM considering to even lowering the minimum criminal age responsibility. This responds to the need for a strong response to certain rare cases where a minor have suffered serious offenses committed by other minors but who have had a high media repercussion firing social debate. Any reform undertaken in this direction would be disproportionate and contrary to the reality in the field of minor's criminology.

### **National Mechanism for the Prevention of Torture and the Prosecution: lights and shadows of two childhood friends' institutions.**

The Ombudsman as NMP meets the requirements established in the OPCAT. However, it has been criticized by civil society as AI or CPDT, mainly by the use of euphemism in their reports to always avoid the term torture or degrading treatment, as well as the shallowness of their research in identifying allegations of torture and, on the other side as these organizations claim, is a widespread phenomenon in our country.

With respect to the operations of NMP on juvenile offenders, we can state that the institution operates with high efficiency according to the parameters established in the OPCAT.

We can assure, not without a tinge of caution, that the institution has fulfilled its role in the prevention of torture at reform. The prestige of the institution in Spain, as well as the media and political power it represents, make that in practice the vast majority of observations, Reminders and Suggestions addressed to Administrations for the reform to be accepted. However, in line with the criticism targeted by the organizations of civil society, it is required to make more specific and deepening in those cases where there is suspicion or evidence of torture or ill-treatment committed against children, or at least act as facilitator of a plot sequence of events that occurred as the basis for the courts to grant leave to the complaint and initiate an investigation, since it is precisely the lack of specificity and sustenance of the complaints that are the main reasons why they are rejected.

Another additional guarantee, considered a good institutional practice, is the creation of the Commissioner for Children by the AC. It is a figure of similar functions that ensures respect and defends the rights of children in relation to the actions of the Administration. In this sense, in an AC as Andalusia, the monitoring activity of the Commissioner is complementary to NMP, and in

practice means added pressure to the administration, which certainly strengthens the control system and monitoring of the rights of juvenile offenders deprived of their liberty.

But the big hurdle to overcome by the NMP is insufficient budget. In the general context of fiscal adjustment measures, the institution, under the Parliament, has been considerably reduced its budget, which results in reduced capacity for monitoring and control.

The NMP is complemented in Spain with the figure of the Public Prosecutor as guarantor of the interests of the child. After the OLRCPM the Prosecutor has acquired greater capacity for action on child, becoming an effective guarantee for the control and monitoring of the enjoyment of the rights of young offenders and a mechanism for complaints and claims available to them. In this line, it has adopted a more effective and has made the effort to equip Prosecutors with greater specialization on the rights of the child. Despite the efforts and progress, there are the two points that require further progression in order to get a more expeditious judicial handling of appeals, complaints and requests, and monitoring and control of the continuous closed centres.

The other item that should work to improve the function of the Prosecutor is the unification of doctrine and criteria by the Prosecution. While various Circulars have been issued in this matter, which have given the body of protocols for joint action (eg there is a protocol for visits), the disparity of criteria followed in the adoption of measures requires greater harmony and unification criteria, for which it would be advisable to strengthen specialized training corresponding to international standards.

The third essential figure in Juvenile Justice is the lawyer, who as discussed and although the law gives him an important role in defending the rights of juvenile offenders, in practice it is the figure whose roll has been strengthened to lesser extent and encounters greater obstacles by the Administration to perform his function. The Lawyer is a cornerstone of the juvenile justice system, because not only he is there to strengthen the guarantees of NMP and the Prosecutor, but he also, in practice, act as subsidiary guarantor in cases where their action is insufficient or inadequate, caused by ignorance or remoteness and detachment from the minor. It is from this customer-counsel close relationship where the attorney gets involved in the process, exercising and defending the child rights against abuse of government.

But, conversely, it is observed that the conditions for the development of this relationship are not met and in most cases the attorney-minor communication is deficient. In one hand, is the Administration which fails to fulfil its obligations to notify the child's attorney open issues (disciplinary proceedings, changes measures, etc.); on the other hand, a weak system of free justice (underpaid) weaken the roll of the figure of the lawyer resulting and generating in many cases helplessness to the child. In this regard, it would be desirable that all juvenile facilities count with a counselling service and also legal advice and legal material aid each week by their lawyers on duty.

Regarding the number of complaints and requests issued by minors, we have found it striking that the rate is so low. Section 4 of this study has deepened the possible causes. In any case, without regarding it as a failure of safeguards and procedures offered by the system, we consider that to be faced the here targeted improvements relative to the Prosecutor, the NMP and the figure of the lawyer, the complaint system would provide greater effectiveness and guarantees, counteracting the feeling you get in many cases among juvenile offenders of impunity and mistrust of Justice.

#### **Administration and closed centres: disciplinary system as tightening measures.**

The question of applied Disciplinary Centres for Juvenile Offenders is, in our view, the most controversial element, having shortages in relation to juvenile justice and the prevention and eradication of torture and ill-treatment in Spain.

While OLRCPM and the Regulations that develop it have contemplated a framework based on the rehabilitation and reintegration of the child, relying on the conciliation proceedings and the imposition of measures under open environment, all in tune with Restorative Juvenile Justice and international standards, it has been found that in practice the disciplinary regime that applies in

certain closed centres is narrower and punitive more than the Act itself and therefore violates the spirit of the Act and the educative purpose of the measure.

Thus, it has been shown that minors often don't know the rules of procedure of the centre which, on the other hand, often have excessive standardization of life in the centre. It is remarkable the high number of penalties imposed on juveniles, and especially the use of isolation from the group, as a measure of restraint widely practiced, applied either as sanctioning measure or as a containment measure and not always with the due guarantees that collects the Act and its Regulations.

Moreover, in many cases it does not seem clear the distinction between corrective measures and countermeasures. As the regulation itself indicates 1774/2004, punitive measures should only be applied when the order and security of the centre has been violated, a principle that is not always followed.

Faced with all this, we need to pursue two key elements under the Act and its Regulation: conciliation and positive discipline or incentive system. It is unacceptable that the Administration arrogate the powers of the legislative and the closed centres disciplinary regime enforcement goes beyond the Law itself and its regulations and in practice end up imposing a restrictive approach to the exercise of rights to juvenile offenders. It would also be desirable to revise and harmonize the regulations of the Centres and discipline by the AC.

In another direction, and in order to facilitate monitoring and control by the NPM and the Prosecutor is important that the Administration adopts the recommendations made by international organizations and by the Ombudsman. We refer mainly to the installation of surveillance cameras and the implementation and proper compliance of record books of containment measures applied in closed centres.

In Spain an average of 2/3 minors commit suicide per year. It is necessary to undertake a thorough research on these suicides and determine responsibilities of professional physicians, safety professionals and Administration. To prevent such unfortunate episodes continue to occur it is necessary that intervention protocols for suicide prevention in each centre are generalized and to put a greater effort implementing the measures of isolation and containment by medical services, educators, psychologists and security personnel of the centres, as most of these suicides occur during the execution of the measure.

## RECOMMENDATIONS

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### Regarding the regulatory framework:

- To change Penal Code addressed to staff working at closed centres whose have not official range will be included in the crime of torture definition.
- To prohibit solitary confinement detention in accordance with international standards, making the necessary legislative changes in LAW 5/2000 and PC.
- To modify the RD 1774/2004 and Law 5/2000 addressed to guarantee by law an effective communication between children deprived of liberty and his lawyer, which would force to the closed centre's direction in order to notify him any incident related to compliance with the measure of the minor.
- To modify the child protect law in order to Therapeutic Centres have a greater control by prosecution and courts, ensuring respect, defend and protect children rights. For the moment, there is an ongoing draft law to address these and other situations.

### In relation to National Preventive Mechanisms of Torture:

#### Ombudsman:

- To strengthen the value and functions of the Advisory Board of the Unity of the Ombudsman as the NMP. It is recommended that this figure win weight in the context of visits and final decisions to be taken on managing the government powers to Juvenile Justice in the line of strengthening the independence of the Ombudsman as NMP against Administration.
- To Keep up visits and expand it, increasing the number of visits and time spent on detention centers.
- To adopt procedures with friendly approach in visits and communications with minors in the context of their work. For this, we recommend the development of a friendly guide in several languages available to children in closed centre detention which allows them a better knowledge about the functioning of NMP and control procedures.
- To reinforce the budget to the National Unity Mechanism for the Prevention of Torture.
- To improve media and communication procedure addressed to society get a closer and more accurate notion of the institution as well as its powers, responsibilities and procedures for control and defense the rights of the citizens that assumes as NMP.

#### Public Prosecutor:

- It is necessary to increase the speed in the judicial review carried out by the Public Prosecutor. For This purpose would be advisable to increase the number of Public Prosecutor of Minors. This way would help working download prosecutors, get more expeditiously in the process of complaint and representation exercised by minors and have more time to conduct visits to closed centres and thus more guarantee monitoring of the activity of Administration on Juvenile Justice.
- It is necessary to increase the effort for unification of doctrine by the Attorney General of the State's Public Prosecutor.

- It is necessary to bet more resource and empowerment for systems on a conciliation basis of Restorative Justice.

#### **Lawyers:**

- To ensure by law direct and effective communication between the lawyer and the child.
- To increase salaries of court-appointed attorneys for each procedure, so that the work on minors may be more attractive to lawyers. It should improve the quality of service, dedication and time provided by them.
- To allocate more resources to the training of lawyers in child rights and international standards.
- To develop from lawyers association a system of weekly free attendance in closed centres.
- Adopt recast records, so that the attorney at law who begins the defense of a young offender knows all open following cases against the same minor, regardless of the place of commission of offenses or province to which he is transferred following the application of a custodial measure.

#### **In relation to the Administration:**

- Autonomous Communities should produce an operating regulation in common in order to put the same basics rules for manage and work in all closed centres.

These operating regulations and discipline regimen cannot be in any case more restrictive than regulation developed by RD 1774/2004 and by Law 5/2000.

These regulations should bet on educational methodologies based on a positive discipline and system of incentives rather than punitive sanctioned regime, promoting reconciliation between monitors and social workers and minors deprived of liberty or between minors, within closed centres as alternative measure to the imposition of sanctions.

- Administration should take adequate measures, mainly financial type, to ensure that children deprived of liberty meet custodial measures in the same province in which they reside thus ensuring closeness and proximity to the social and family environment. In any case, should be made available to those low-income families, financial aid so they can move out of the province to visit the child.

- Administration should ensure adequate investment in closed centres providing in them systems of video surveillance. In the same way, Autonomous Communities should undertake the necessary reforms to equip closed centres with security measures and appropriate levels of welfare, in line with the recommendations issued by the Ombudsman. All children must have an individual room as a general rule and not as the exception.

To do this, it would be recommended that each region prepare an inventory on what needs to undertake in closed centres within its jurisdiction to comply with these measures improvements and prepare a schedule addressing them, setting annual commitments.

- Administration should monitor the policies of both the civil service staff and staff working in the closed centers with other entities in order to avoid and prevent *professional burn*. It would be advisable to proceed with the development of a special corps of civil service of children, which were specifically trained in the child rights and with a more stimulating labor regimen.

- It is necessary to promote and strengthen specific training in child rights and international standards in closed centres. Mainly, it is more important to strengthen training in the use of means of containment in accordance with international standards.

It would also be advisable to require passing previous tests or examinations to staff working in closed centres, especially in relation to security personnel, to ensure that staff know the context of the rights of children, the framework for action, protocols containment and isolation, and is able to handle conflict without an abusive use of force and restraint.

- It is recommended that Autonomous Communities could develop a friendly guide about the rights of juvenile offenders and complaints mechanisms that exist, protocols and operating regulations of discipline regimen, all in an understandable format and in different languages. These friendly guides should be available to minors in closed centres.
- Administration should provide specific training for primary care doctors who work in closed centres in developing parts of lesions according to international standards and according with the recommendations contained in the Study of the Ombudsman on the subject published in 2014.
- Autonomous Communities should ensure that entities that manage closed centres take care of a correct custody and proper monitoring of records books and personal files. To this purpose, it would be advisable to unification and provide training to staff of organizations working in closed centres on different protocols (infectious diseases, containment and isolation, suicide etc.) as well as the correct completion and custody of the record books.
- Finally, in relation to unaccompanied minors, Administration should ensure administrative adjustment and documentation of all children, without distinction between penal and protection system.
- In general, Administration must be more transparent and facilitate the control and intervention of civil society as it provides Law 5/2000. In this sense, the development of a protocol is recommended for organizations of civil society to follow-up visits and controls closed centres thus verify the respect and protection the rights of children deprived of liberty.

## **VI. ACRONIM LIST.**

<b>NMP</b>	<b>National Mechanism for the Prevention of Torture</b>
<b>CPDT</b>	<b>Coordinator for the Prevention and Advocacy of Torture</b>



<b>APDHA</b>	<b>Pro Humans Rights Association of Andalusia</b>
<b>AI</b>	<b>Amnesty International</b>
<b>AC's</b>	<b>Autonomous Communities</b>
<b>CC</b>	<b>Closed centre for minors deprived of liberty</b>
<b>P.C.</b>	<b>Penal Code Spanish</b>
<b>OLRPRM</b>	<b>Organic Law Regulatory of Penal Responsibility of minors. Law 5/2000</b>
<b>IEP</b>	<b>Individual Educative Program</b>
<b>RD</b>	<b>Royal Decree</b>
<b>NIS</b>	<b>National Institute of Statics</b>
<b>OPCAT</b>	<b>Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.</b>
<b>SPT</b>	<b>Subcommittee for the Prevention of Torture</b>
<b>CPT</b>	<b>European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment</b>
<b>CDDHH</b>	<b>Human Rights Committee</b>
<b>CRC</b>	<b>Child Rights Committee</b>
<b>CAT</b>	<b>Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.</b>

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