



# TWELVE

Children's right  
to participation  
and the juvenile  
justice systems

**NATIONAL REPORT**

**SPAIN**

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# **1. PARTICIPATION AND YOUTH CRIMINAL JUSTICE SYSTEM: Reflections and particularities of the national context**

## **From dictatorship to democracy and respect for human rights**

Spain had a major going from a dictatorship of nearly forty years after the adoption in 1978 of a democratic constitution that had an impact on the institutional and legal framework in the jump, but also in social dynamics.

This constitution was inspired by the principles and based on the Universal Declaration of Human Rights 1948<sup>1</sup> and the European Convention on Human Rights of 1950. Rome placed the individual at the center of legal protection recognized values and rights human<sup>2</sup> which must be respected and guaranteed by the Spanish State.

A number of legal rules changed, the result of this transformative framework and harmonized facing the Democratic Constitution adopted.

## **The creation of the juvenile courts:**

Note that one of them was the Organic Law 6/1985 of 1 July of the Judiciary (OLJ), which ensure the right to effective judicial protection granted to all Spanish citizens regardless of age, introduced a radical change for the future of the so-called juvenile justice. This Law, developing constitutional provisions, created the Juvenile Courts, fully integrated into the judiciary and attributed them to the knowledge of those acts classified as an offense punishable by law when committed by minors, thus separating the functions protectors of the reformers. However, its actions and proceedings continued to be governed by the Guardianship Court Act 1948<sup>3</sup>.

## **The ratification of the Convention on the Rights of the Child and the approach to the International Framework for the Protection of Human Rights:**

In 1998 United Nations unanimously adopted the Convention on the Rights of the Child (CRC), the regulatory, guarantees and protectionist international framework of human rights of children and adolescents governing globally with binding implications for States Parties . Spain ratified the CRC in 1990 and which involved again make major changes in the political, legal framework for the protection of childhood and adolescence framework but also impacted approaches, policies and programs that had been developed and would impact to which they were to developed.

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<sup>1</sup> Justice, equality, political pluralism, freedoms and civil, political, social, cultural and economic rights.

<sup>2</sup> Freedoms and civil and political rights and social, economic and cultural rights

<sup>3</sup> Conde María Jesús, the new Juvenile Justice System in Spain, UNICEF Regional Advisor for Latin America and the Caribbean

In the field of juvenile justice likewise he had its implications as it approached the judicial officers (judges, prosecutors, advocates, technicians, etc.) to the doctrine of comprehensive protection and human rights perspective Spring Convention on the Rights of the Child but in turn, they approached to a wider international framework for the protection of human rights, in this particular case, the Riyadh Guidelines for the Prevention of Juvenile Delinquency, the Standard Minimum Rules Management juvenile justice, called Beijing Rules and today the United Nations Rules for women offenders and prisoners, known as the Bangkok Rules

**A fact of great importance:**

An event of great significance was the constitutional challenge brought by a broad group of actors (including judges, prosecutors and other professionals in the social field) against art. 15 of the Courts Act then in force Guardianship of Minors (LTTM), which stated that:

*"Sessions held Guardianship Courts shall not be public and the Court is not subject to the procedural rules in force in other jurisdictions, limited in processing to the extent necessary to point out the facts that have been founded in the resolutions issued, the which are concisely drafted, making them specific mention of any steps taken. The decisions of these courts will take the name of agreements, and the designation of the place, day and time to be held sessions will be made by the President of the respective Court. Local acting in the juvenile courts may not be used for judicial acts "*

In 1991, the Plenum of the Constitutional Court in its Judgment 36/1991 of 14 February (STC) declared unconstitutional art. 15 of the LTTM, concerning the procedure applicable to the exercise of the right of correction or amendment, thus initiating what some experts say the second phase of the history of juvenile justice in Spain.

Below is a literal analysis of the implications of the judgment of the Constitutional Court<sup>4</sup> includes:

The judgment includes express the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child references, stating that the wording of these treaties "is absolutely clear that this procedure is nothing more than a variant of the criminal process, the basic principles You must respect "

The legal basis of the judgment of the Constitutional Court (STC) of the recognition that this article was inspired by the positivist and correctional model, which considers irresponsible least of his acts, "that are not to apply to examine its conduct, legal guarantees from other

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<sup>4</sup> Taken Conde María Jesús, the new Juvenile Justice System in Spain, UNICEF Regional Advisor for Latin America and the Caribbean

jurisdictions, to understand that it is not possible to impose repressive measures, which are considered penalties or sanctions ", where" the judge in charge of looking after their interests based on purely paternalistic ".

The High Court goes on to argue that in his reforming aspect, the aforementioned provision infringed the provisions of international treaties ratified by Spain and the constitutionally recognized fundamental rights and guarantees, to later say that the exclusion of guarantees is itself unconstitutional and, consequently, *"The radical diversity in processing procedures so that they are respected in some cases and in others ignore the rights guaranteed in art. 24 of the Spanish Constitution (CE) will be considered in violation of the provisions of art. 9.3 (principle of legal certainty). Since the latter is precisely the situation ... and we can now say that the art. 15 LTTM violates the principle of legal certainty enshrined in art. CE 9.3 ... and the principle of equality of art. 14 EC "*.

The Constitutional Court (TC) also considered that by declaring the unconstitutionality of art. 15 of the LTTM a regulatory vacuum was created, so in the same ruling ordered the courts to proceed to reform this legislation and instructed that "As this happens, will be the judges who will fill the vacuum", guided at all times by the provisions of art. 40.2.b of the Convention on the Rights of the Child and the constitutional doctrine of the rights enshrined in art. 24 EC, especially on the right to the impartiality of the judge.

### **The regulation of the Juvenile Courts**

In 1992, following the Constitutional Court decision of 1991, the Organic Law 4/92 regulating the jurisdiction and procedure of the Juvenile Courts went into effect. The same law recognizes *"the nature of urgent reform, overtaking part of a renewed legislation will be the subject of further legislative measures"*, but its importance is actually represents a transformation in the perception and treatment of childhood and adolescence from Legally-legal view from the incorporation of the governing international human rights treaties signed and ratified by Spain principles.

- a) Incorporating all derived from the constitutional guarantees;
- b) Establishment of a process and punitive in nature and measures

education, among which include, reprimand or internment period of one to three weekends, probation, foster care by another person or household, disqualifications from driving mopeds or motor vehicles, provision of services for the benefit of the community, outpatient treatment or admission to a therapeutic nature center, admission to a center in closed, semi-open or open regime. The detention order may not exceed two years;

- c) Creating a flexible framework for juvenile judges to determine the measures against violators of criminal law and the suspension of its performance, the age group between 12 and 16 years, attending at all times the interest of the child;
- d) Allocation to the Public Prosecutor of boosting research and upon the initiative with broad powers to agree the completion of the process when it deems that its continuation can cause distressing effects to a minor;
- e) Creation of interdisciplinary technical teams, functionally dependent charge of the prosecution and issuing reports on the psychological, educational, family and social background of the child in order to achieve the desired objective disciplinary education;

### **Towards Adolescent Criminal Responsibility Act**

Upon enactment of the Criminal Code of 1995, legislative reform is driven, and the age of criminal majority to 18 in Article 9 is set, and also required that criminal liability is regulated for minors in a separate law.

In 1992, the administration that ruled then undertook<sup>5</sup> to prepare a draft law for the development of a Law on Criminal Responsibility, this was done in parallel with the reforms to the Penal Code. The relevance of this process was legal and involving key actors responsible for the promotion, protection and reform of children and adolescents in different regions.

The next administration<sup>6</sup> which won legislative elections in 1996, took advantage of the previous process developed by the previous administration and in no more than a year of government approved the new Organic Law 5/2000 of 12 January, regulating the Criminal Responsibility minors (LORPM), which was endorsed and supported by the various political parties.

The January 13, 2001 came into force the Organic Law 5/2000, regulating the criminal liability of minors<sup>7</sup>, clearly recognizing them as subjects of rights in criminal proceedings. Procedural safeguards were treated with care giving a central role to the Judge / Judge in charge and with strong involvement of the Prosecutor in his capacity as defender of legality and human rights of persons under age.

Different studies and technical experts say the new law is better than the previous one, particularly because it was a process of consensus-building and between different operators of justice but that does not bring major developments with respect to the Organic Law 4/92 Law on Reform of Competition and Procedure Juvenile Courts.

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<sup>5</sup> The Socialist Party

<sup>6</sup> The Popular Party.

<sup>7</sup> published by Royal Decree 1774/2004

## **The definition of the ages:**

Article 1. General Declaration states:

1. This Act shall apply to demand accountability of those over fourteen and under eighteen for the commission of acts classified as crimes or offenses in the Penal Code or special penal laws.

2. The provisions will also apply in this Act for people under the age of eighteen and under twenty, on the terms set out in Article 4 thereof.

Exceptionally, the law extends coverage to young people over 18 and under 21, when the judge declares it an order, after hearing the prosecutor, counsel for the accused and the technical team, according to their personal circumstances and maturity, the nature and seriousness of the facts as it had not been convicted by a final judgment after the age of 18 years (Art. 4).

The LORPM states that the attention of public administrations under fourteen who perpetrate acts considered crimes or offenses in the Penal Code will be held from protection services of public entities with jurisdiction over child protection<sup>8</sup>. In this population under 14 years are called criminally responsible. However it should be noted that while the measures do not apply criminal liability if the liability.

## **The Impact of Crisis Austerity Measures on Social Policies and Programs<sup>9</sup>:**

The crisis that hit Spain has had negative consequences on the quality of life of the Spaniards and particularly in children and adolescents. Austerity measures and other measures of "recovery" likewise have felt particularly in the political and social programs; although today Management notes some improvements remain large challenges by the decrease in the guarantee of human rights for everyone on equal terms:

**1. Education:** the austerity policies have resulted in reducing the number of teachers, overcrowded classrooms and the decline in scholarships and grants. Education is a universal right enshrined in the Spanish Constitution and the International Human Rights Law and must ensure that education policies ensure access, retention and quality education for all children. DNI Spain to fulfill the right to education is central, as a gateway to other rights.

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<sup>8</sup> IASS, Department of Social and Family Government Aragon intervention with minors in conflict with the law: The educational care of children under age 14, p 205, 2009

<sup>9</sup> Taken from the release prepared under the 20th anniversary of the Convention on the Rights of the Child by DCI International Spain



**2. Health:** Access to health care and quality of service is hampered by the health copayment, the exclusion of groups of people<sup>10</sup> from access to health care, the budget reduction plans in prevention, health promotion and downsizing and by advancing the privatization hospitals. These measures negatively impact the health of people. If the trend and proposals to privatize health is realized that families can not have the possibility to access it and therefore children and adolescents may be affected.

**3. Inequality of opportunity:** 27.2% of children in Spain live below the poverty line, that is, 1 in 4 children in the country. Child poverty, not only is a limit to the development of children, but decrease their present and future opportunities. DNI Spain reminds the Spanish State and all States, which must meet their obligations and ensure conditions for the realization of economic, social and cultural rights<sup>11</sup>.

#### **4. The strengthening criminal measures to minors:**

In Spain launched a reform of the Law on Responsibility of Minors representing a decrease in guarantees and rights of adolescents in conflict with the law<sup>12</sup>. Before it was called to the competent authorities and remember the principles that should ensure, respect and fulfill the Spanish State. These principles are based on the Beijing rules establishing minimum international standards that States should consider the establishment of criminal justice systems for minors; the Riyadh Guidelines provide guidelines for a policy of prevention of juvenile delinquency, based on overcoming this concept of disability of minors and in creating opportunities for the exercise of cultural and social economic rights minors; the Convention on the Rights of the Child reflects in the best way these standards and rules, including also the provisions of the UN Minimum Standards for the Protection of Juveniles Deprived of Liberty. And the most recent "General Comment 10 of the Committee on the Rights of the Child", based on international experience, to develop and expand the provisions of the Convention and these international instruments, emphasizing the specialization of Juvenile Justice ( JPJ), the need for a general policy JPJ including prevention of juvenile delinquency.

**5. The dismantling of organized social base:** the current situation has put more people at social risk, whose needs are being addressed by different organizations. The exaggerated reduced spending on international cooperation and support programs in Spain has dramatically impacted the work of the organizations, threatening the sustainability of their programs and the care and quality of their services. In response, children are particularly vulnerable and therefore need to consider further support from the central and regional governments to local authorities and organizations to continue to provide their support and developing their programs in a responsible, efficient and high quality standards. Note that the Spanish State could not by itself address all the social issues and requires a coordinated work with organizations and sectors. We must not lose sight of the current context that

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<sup>10</sup> We refer to people of foreign origin in an irregular situation known as "paperless"

<sup>11</sup> According to the latest data published by Eurostat

([http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-CD-11-001/EN/KS-CD-11-001-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-CD-11-001/EN/KS-CD-11-001-EN.PDF))

<sup>12</sup> During the administration of the Minister Garzón

often social organizations are taking on the obligations of the State providing the guarantee of social rights and citizens.

#### **Latest developments:**

- Senate approves bills volunteer and Third Sector

The Commission of Health and Human Services Senate approved the draft Law on Volunteers and Third Sector of Social Action, which were submitted to Congress for final approval after the inclusion of two amendments.

The commission approved the inclusion of a compromise amendment in the Law on Volunteer extending permission for the participation of health personnel in humanitarian emergencies as well as an additional transitional provision of Law Third Sector Social Action establishing direct subsidies A total of 37 entities "in the year 2015 and the general procedure is established" While for some this is an important step, it is certain that the Administration recognizes only a small group of organizations and organized groups as spokesman game exercise<sup>13</sup> *"is evidence that the existing structures of the Third Sector of Social Action are the only statewide, have the capacity and solvency necessary to channel aid effectively and immediacy"* - these structures will visualize how articulates with other organizations working within the Third Sector in the country. Likewise it recognizes that the Third Sector is a "fundamental support and assistance network in the current crisis has collaborated with the government to meet the demands of the citizens punished."

- Approval System Reform Child Protection

The Spanish Parliament has finally approved the draft Law on Child Protection. A few days ago, the draft organic law that complements it, had the approval of the full Senate, giving the green light with individual approvals, effective reform of child protection promoted by the Ministry of Health, Social Services and Equality, with the participation of various social organizations working in Spain.

While it is true that the reform represents a step forward in the protection of children and adolescents and leads to a dozen regulations amending, among others; three are reforms that can be considered as the most relevant and affecting 1) the adoption system, 2) the regulation of the centers of children with behavioral disorders, 3) the role of children in court proceedings or their protection from domestic violence situations. This implies a better application of the principle of interests, more and better spaces with conditions and capacities to implement Article 12 in court proceedings and greater application of Article 17

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<sup>13</sup> Fernando Mendiola, spokesman of the Popular Party

with regard to providing better information to children and adolescents and it more accessible and ultimately in response and assistance from the government, it must deprive the principle of specialization and therefore higher quality.

## **1.1. NATIONAL LEGAL FRAMEWORK**

### **3.1.1. The right to be heard (CRC Article 12 thereof) and other articles of the Convention on the Rights of the Child (CRC) related**

Within the principles of the Convention on the Rights of the Child, it is the participation of children and adolescents who presented the CRC in several articles dealing with human rights which must be guaranteed and respected by States in order to They are exercised and enjoyed (art. 12, art. 13, art. 14, art. 15 and art. 17), the above from processes that include the development of capacities of the child and adolescent (Article 5) and they are acquired gradually

The Committee on the Rights of the Child United Nations<sup>14</sup> works on four guiding principles are<sup>15</sup>:

- a) Non-discrimination (Article 2).;
- b) Best interests of the child (Article 3).;
- c) The right to life, survival and development (Article 6).;
- d) Respect for the views of the child (art. 12)<sup>16</sup>.

In practice and in the direct work of the State and social organizations and other nongovernmental groups it has applied the principle of participation and rights involved from a variety of forms and proposals that do not always reflect friendly processes for with children and adolescents but from adultist vertical looks where power voltages prevail. Still, it should be noted that there are also many practical and positive efforts that promote and enhance child and youth leadership, where they are recognized as rights, social actors and agents of change.

Following these differences found worldwide, the Committee on the Rights of the Child United Nations, developed the General Observation 12 based on Article 12 of the CRC, through which guidelines are given for States first and various non-state actors promote and properly interpret the processes that have to do with promoting and restore views of

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<sup>14</sup> Body of the International Treaty and made up of experts whose central task formally verify compliance with the Convention on the Rights of the Child.

<sup>15</sup> Principle of non-discrimination; Principle of Survival and Development; Principle superior Principo interests of the child and to be heard. However from DCI's work under principles, realizing that children's rights are human rights, therefore he does not speak of the principle to be heard but the principle of participation, as well as develop other principles such as the principle of enforceability, principle of public interest and the principle of comprehensive protection.

<sup>16</sup> It is noteworthy that the Committee on the Rights of the Child United Nations does not use an amp concept more and not talk openly about the principle of participation and reduce the right to respect the views of children.

children and adolescents and how to listen to them, both individually and as a collective made up of minors<sup>17</sup>.

On the other hand and in decision-making bodies from authorities and from the work of NGOs, art. 12 has direct relationship with art. 3 and the best interests of the child. And that any decision should consider the child's opinion, before issuing its final decision. Likewise with art. 2 and the principle of non-discrimination, and that participation should be promoted and exercised for every child and adolescent without any discrimination and on equal terms.

Throughout the 25 years of the Convention, participation of children and adolescents has gained ground and today is almost impossible to generate projects, initiatives of promotion, protection, care, development and defense of human rights internationally, regional and national levels without including at least the opinion of these and these.

Still, it is clear that participation is much more than promote processes of opinion and listens, but carries and promotes other rights such as the right to associate, organize, to information, to freedom of religion (Articles 12, 13, 14, 15 and 17 of the CRC), exercising rights to be progressively according to the evolution of skills of the child (art. 5 of the CRC). Also it entails the exercise of citizenship and participation of children and adolescents on issues affecting them but also interest them.

The share is classified under the category of civil and political rights. In terms of political rights should not be understood only when the right to vote is acquired and therefore there is believed to initiate its citizens, but must be understood in all stages of development, gradually and without discrimination and citizenship social is realized when they are recognized as rights holders.

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<sup>17</sup> Note that the CRC is written in singular and from a "neutral" language that omits the gender perspective and also the look of the groups of children: ie workers, victims of trafficking, etc. When elaborating the General Comment 12, the Committee discussed this issue and finally made a recommendation to the States so they could listen to groups and groups and not just individuals. It left to the States to define whether or not they do so, which also reflects a latent becomes limiting in inclusive and participatory processes.

### **3.1.2. Specificities of the participation of children and adolescents and juvenile justice in Spain**

The right to be heard (Article 12 of the CRC) is protected by Spanish positive law in different provisions of the Spanish national legislation within the national and regional level given in the protection of minors.

At the state level Article 9 of the Organic Law 1/1996 of 15 January on the Legal Protection of Minors, the minor is entitled to be heard in judicial and administrative proceedings and always when you are involved and its decision concerning their lives family and social staff. Your right can be realized through themselves or through their representative when their opinion is not contrary to it, or will not be harmed.

In the case of the autonomous communities it can be seen in Article 13 of the Aragonese Law 12/2001 of July 2 for Children and Adolescents, in which the right to the hearing of the child is recognized.

#### **Art. 9 Right to be heard**

1. The child has a right to be heard both in the family and in any administrative or judicial proceeding in which it is directly involved and that leads to a decision affecting their personal, family or social sphere.

In court proceedings, the hearings will be held the child appropriately to their situation and the evolutionary development of this, taking care to preserve their privacy.

2. ensure that the child can exercise this right itself or through a person appointed to represent him, when exercising discretion.

However, when this is not possible or not in the best interests of the child, you can know their opinions through their legal representatives, provided they are not a party nor are contrary to those of lesser interest, or through other persons whose profession or special trust relationship with him can transmit objectively.

3. When the minor requests to be heard directly or through the person representing him, the refusal of the hearing will be justified and communicated to the Public Prosecutor to both.

Also Article 24 of Spanish Constitution and the Constitutional Court on the matter said that the right to effective judicial protection of the child is violated when not listening to the child, because his statement is a right not a diligence that is in the decision judge or prosecutor or the parents themselves but a right unless it is by a reasoned decision and to communicate to the public prosecutor and the child itself<sup>18</sup>.

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<sup>18</sup> SERRANO MOLINA, Alberto "The parental rights in the judicial process" Chapter 7, p. 159. Book minors in the judicial process, and ALCON YUSTAS JAASKELAINEN Montalvo, Edit. Tecnos, 2011.

### **Art. 13 Right to be heard**

The judge will hear the child in criminal proceedings when exercising discretion and family proceedings can be heard at the age of twelve, and if it is less than twelve can always hear and when sufficient judgment (Civil Procedure Act ).

### **Peculiarities of the Youth Criminal Justice System**

Reason in Law formally recognizes its criminal nature but essentially punitive-educational both the proceedings and the applicable measures, inspired by the interests of the child, the differentiation of age groups (14-16 / 17-18 ) procedural and enforcement shall, flexibility in the adoption and implementation of the measures as appropriate in the circumstances of the case, the jurisdiction of the Autonomous Communities for the implementation of the measures imposed and judicial control in the execution.

In the third point of art. 1 states that *"the people whom this Act applies shall enjoy all the rights recognized in the Constitution and the legal system, particularly in the Organic Law 1/1996 of 15 January on the Legal Protection of Minors, as well as the Convention on the Rights of the Child of November 20, 1989 and in all child protection rules contained in the treaties validly concluded by Spain "*.

The general statement LORPM does materialize in art. 22.1, recognizing the minor, his right to have the record is notified from the time of initiation, the generic rights of the whole process. In that sense and under broad principle of participation the following aspects that strengthen the provisions of that principle rescue:

- A. Be informed by the judge, the prosecutor or police officer of his rights;
- B. Appoint a lawyer to defend him or her to be appointed ex officio and meet privately with him, even before he testifies.
- C. intervene in proceedings that will practice during the preliminary investigation and the judicial process, and to propose and request, respectively, the execution of procedures;
- D. Ser heard by the judge or court before taking any decision concerning him personally.
- E. The emotional and psychological assistance at any stage and extent of the procedure, the presence of parents or other persons specified by the child, if the juvenile judge authorized his presence;
- F. The assistance services attached to the juvenile court crew.

G. At the same time, art. 37.1 recognizes the Public Prosecutor, in his dual role of teacher and defender of the law and the rights of the child, and this attorney the power to intervene before the judge, in the moment before the evidentiary phase to show what they see fit on the violation of any fundamental right (art. 15-29 CE) during the pendency of the proceedings.

The LORPM recognizes the right of minors to be informed in clear language and adapted to their age on any request or decision affecting their rights, the judge must within five days (art. 38) after holding the audience issue a reasoned decision, which will explain in plain language the legal and educational reasons for the choice of the measure, duration, content and objectives (art. 39).

But besides these, the LORPM, in the best interests of the child, enshrines other rights affecting any aspect of the life and safety of minors.

On the other hand, one of the peculiarities of the criminal justice system in Spain is the transfer that makes the State General Administration covered in the Spanish Constitution<sup>19</sup> to the Autonomous Communities on the protection and enforcement of applicable measures, establishing its own organizational model, however it means that there is a disparity of models in achieving solutions.

The Organic Law of Criminal Responsibility of Minors, recognizes its criminal nature but is materially educational penalties in the procedure and the applicable measures, which are flexible in the adoption and implementation of measures depending on the circumstances in each case.

The criminal responsibility of minors is assumed by over fourteen and younger than eighteen who commit acts defined as crimes and offenses regulated in the Criminal Code and special laws. Not applicable to children under fourteen, for them the standards of protection and education of children under the Civil Code and the Organic Law 1/1996 of 15 January on the legal protection of the child are considered.

Following the reform of the Criminal Law of the child by the LO 8/2006, of December 4, the option in the art is finally deleted. 69 of the Penal Code and the art. 4 LORPM, applying juvenile criminal law to young adults of between 18 and 21 years.

Regarding the development of the judicial process develops in stages: a) preliminary investigation or criminal investigation; b) Intermediate phase; c) prosecution phase. If there is a conviction, we can talk about d) Status of implementation of the measures imposed.

It is the prosecutor who promotes research and provides procedural initiative with broad powers to agree the completion of the process when it deems that its continuation can cause distressing effects to minor.

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<sup>19</sup> Spanish Constitution establishes the division of roles in social assistance and for Sport and Leisure, established in Article 149, 1.19; 20. In the different regions of the country.



Has the creation of interdisciplinary technical teams, functionally dependent charge of the prosecution and issuing reports on the psychological, educational, family and social background of the child in order to achieve the desired objective disciplinary education, technical services team are assigned to juvenile court.

There is a catalog of measures imposed by juvenile judges according to the restriction of their rights internment in a closed regime, regime semi -open open Internment therapeutic regime, outpatient treatment Stay weekend, attending a day care center, Freedom Supervised Living with another person, family or educational group Services on behalf of the community. Making Reprimand socio-educational tasks. Deprivation from driving mopeds motor vehicles, or the right to obtain, or administrative licenses for hunting or use of any weapons. Disqualification

As for the decisions you can freely decide the prosecution:

If the offense is not serious (less than five years in prison) and has not been committed with violence and intimidation on people, the public prosecutor may withdraw from the archive file may not reach trial. (Principle of opportunity) even if the offense is not serious and the child reaches a settlement with the victim and repair the damage caused assumes the public prosecutor may withdraw the then record.

At trial (hearing stage) the judge is free to decide which media fulfill the juvenile offender and how long will the measure imposed. And the judge imposed the measure may at any time render it ineffective or reduce its duration or replace it with another.

- **3.1.3. State current regulations governing the rights of children and their procedure**

Since the ratification of the Convention on the Rights of the Child into national legislation, the right to participation is regulated in different regulations of national and regional, rules contained in international treaties. These include:

The Organic Law 1/1996 of 15 January on the legal protection of minors, amending the Civil Code and the Code of Civil Procedure. (Valid until August 12, 2015)

It also contains a set of articulated manifesting the right to participation of minors expressly stated with reference to the right to join associations and to promote children's and youth, with certain requirements, complete with the right to participate in public meetings and peaceful demonstrations, establishing the requirement of parental consent or guardians. (Article 7) also the right to freedom ideology, conscience and religion, freedom of expression in the terms established by the Constitution. (Art 6) Right to be heard (Article 9), to receive information (Article 5).

- Organic Act Regulating the Criminal Responsibility of Minors 5/2000 of 12 January. Criminal liability under 18 and over 14 years in crimes and offenses under the Criminal Code;
- Royal Decree 1774/2004 of 30 July approving the Regulation of Organic Law 5/2000 of 12 January. Conduct of the Organic Law Regulating Criminal Responsibility of Minors;

- Law 8/2006 of 12 January reforming the Criminal Procedure Act and amends Article 433, 448, 707, 731 bis. And lack of specificity Circular 3/2009, issued by the Attorney General's Office to address the rights and needs of children as victims and witnesses in criminal matters.

### **3.1.4: The Case of the Community of Aragón**

Law 12/2001 of July 2, Children and Adolescents in Aragon (establishing a policy framework for children and adolescents in the community of Aragon in Chapter II Rights of childhood and adolescence are regulated rights that are related to participation Article 12. Right to information. Article 13. Right to be heard Art. 14. Right to freedom of thought. Art 15. Right of participation, association and assembly. Art 16. Right to freedom of expression.)

- Compact Aragonese Cortes of Aragon Children March 25, 2014

- II National Strategic Plan for Children and Adolescents 2013 - 2016 (II PENIA) Framework cooperation of local autonomous governments, social partners childhood platforms to propose a strategy for putting children as a political strategy it is obj. 8 promote child participation in environmental settings and defending the leisure time to play and equal opportunity

### **3.1.5. The right to speak and be heard in criminal proceedings of minors in conflict with the law**

There are different areas and with different meanings in the minor's use of the law review and be heard in judicial proceedings and professionals have the faculty of book space on one hand and listen to the child can express their views the facts occurred spontaneously and freely without coercion or threats, and secondly, the obligation to inform at all times clearly and concisely about their rights and the development process at different stages of the process in which it is immersed.

The right to speak and to be heard has been integrated into the LO.5 / 2000, Organic Act Regulating the Criminal Responsibility of Minors, during the criminal proceedings and court settlement to resolve conflicts. Certain spaces and times are contemplated. Configured in the phases of the judicial process (before, during and after the trial): a) preliminary investigation or criminal investigation; b) Intermediate Phase; c) Phase of prosecution and conviction if we can speak of d) Phase of implementation of the measures imposed. The lower part of the procedure in which he serves as an active citizen and a subject and protagonist of the process as such is entitled to participate and understand the process.

STAGES	STAGES OF PROCEDURE	MOMENTS OF HEARING AND LISTENING
BEFORE	PHASE OF INSTRUCTION	Moment of detention Moment initiation of proceedings
DURING	PHASE OF HEARING	-Before passing hearing before the judge -During The conclusion of the hearing -Once Sentencing
AFTER	PHASE OF THE IMPLEMENTATION OF THE MEASURES IMPOSED	court settlements

Source: Authors

## BEFORE

### PHASE INSTRUCTION

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At the time of his arrest

"The authorities and officials involved in his detention is obliged to inform in a clear and understandable language immediately from the facts alleged against him the reasons for his detention and what their rights they enjoy." (Art 17.1) LORPM

"His statement at the time of arrest must be in the presence of his counsel and those exercising parental authority, guardianship or custody of the child. And that in turn should provide information on the reasons why they process the crime charged and advice on the consequences that entails." (Art 17.2) LORPM

At the time of the initiation of proceedings

Once started the record the child has procedural rights:

- a) "Be informed by the judge, the Prosecutor, or police officer of his rights.
- b) Appoint a lawyer to defend him or her to be appointed ex officio entitled to a private interview with his lawyer prior to and at the end of the practice of diligently making statement

c) To intervene in the proceedings that are practiced during the preliminary investigation and the judicial process, and to propose and request, respectively, the execution of procedures.

d) To be heard by the judge or court before taking any decision affecting that person. "(Art. 22.1) LORPM

Y

"Right to be notified dossier from the moment of its opening" (Art 22.2) LORPM

There are other kinds of rights essential nature of the child as (Morenilla 2007: 81)

e) Effective and psychological assistance at any stage and grade of the procedure with the presence of parents or other person indicated by the child, as long as the judge authorized his presence "(Article 22.1e) and

"The assistance of the services of technical staff assigned to the juvenile court (Art. 22.1 f)"

## DURING

### PHASE OF HEARING

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Before turning to the hearing before the judge

"The lower pay and under his counsel and civilian officials on the measures provided for him." (Art. 32) LORRPM

"The juvenile judge shall inform the minor expedientado with understandable language adapted to their age on the facts alleged against him as well as measures and liability requested by the public prosecutor, the prosecution and civil parties in their pleadings" (Art. 36.1) LORRPM

"When the judge asked the child if it is declared of the facts and if you agree with the actions requested and civil liability in the event that it were as issue a decision in accordance" (Art 36.2) LRPM

During the celebration of the hearing

"After hearing the parties the prosecutor and the lawyer of the child on the assessment of the evidence and legal classification proposed measures will also hear the technical team and when the judge will hear the child, leaving the file ready for judgment." ( Art 37.2) LRPM

Thus assuming that the child's right to be heard is incompatible with justice decided in advance with no open space for listening. When the crime is solved through a court settlement requiring that the child's right to be heard is performed it becomes more evident. Especially since at the base of extrajudicial measures proposed by the LO 5/2000. Restorative Justice (Bernuz 2015: 21)

Are the juvenile courts that determine the measures applicable to minors who have performed acts that might be classified as criminal offenses.

## JUDGMENT

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Once sentencing:

"The judge will write the sentence ensuring that their reasoning is expressed in a clear and understandable language for the child's age." (Art. 39.2) LRPM

The juvenile has a right to appeal both court decisions and resolutions taken in the implementation of measures.

## THEN

### IMPLEMENTATION PHASE MEASURES IMPOSED

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#### **Write the various extrajudicial measures**

##### **Court settlements**

"The adoption of the proposal by the existence of court to withdraw the dossier is pending the proposal is made to the appropriate lower the child's interest and that of the victim and subject to its decision may be their conformity or nonconformity" . (Art. 5 a) b) c) RD 1774/2004

"The technical team once contacted the victim and shew pursuant to participate in mediation both summon a meeting for reconciliation and repair agreements" (Art. 5 d) e) and f) RD 1774/2004

"In the implementation of measures will be informed about their rights it has at all times and health care to exercise." (Art. 6), c) RD 1774/2004.

"In the implementation of measures of outpatient treatment, the child will have to consent to begin treatment." (Art 16) RD 1774/2004.

"When treatment is aimed at the cessation of drinking narcotic drugs or psychotropic substances

"In providing benefit to the community professional will meet with less personal characteristics to determine their capabilities in order to determine the most appropriate business and offer existing spaces with its contents and schedules. Pending the approval of the child "Art.20, 7) 8) RD 1774/2004.

"In carrying out educational tasks the child will be interviewed for the development of an individualized program running on the extent to which specific tasks will cultural and educational training purposes should make the slightest" Art. 21.1) RD 1774/2004.

"In therapeutic measures internment professional requires the consent of the child to start or be subject to controls or abandon it once started or refuse to take those controls" (Art 27) RD 1774/2004.

"In the stays of a weekend, the lowest previous interview with the professional develop an individualized program for implementing the measure consisting dates and hours distribution where the measure is fulfilled. Also propose socio tasks to be performed and the lower prior approval of the measure by the juvenile judge you will start the implementation of the measure "(Article 28) RD 1774/2004.

### **3.1.6. Participation in the internal operation in the detention centers**

The law review and be heard is also present when internal rules in the operation of the centers. In the development of activities, listening approaches, developing mutually involved with the professional (teacher, social worker or psychologist) assignments that have to do with the organization of daily life at the Centre. Meetings with professionals to track their control tasks undertaken and also spaces where you can also engage in leisure activities. Article 30 e), RD 1774/2004 says "will be a time in which the different activities are managed and leisure"

Other rights of freedom of expression and finding information, freedom of thought and religion, freedom of association, the right to access to the media and other information sources, to rest and leisure are articulated, and to challenge the legality of the imprisonment.

Once admitted to the intended center, they are informed about their rights and obligations as well as guidelines on how the Centre works existing services and information from the operating mechanisms of how resources, complaints and requests are processed, if the child does not speak the language of the caller will have to provide other appropriate means such as a translator or a professional who could speak in their native language. The information will also be for internal and will be communicated regularly changes their rights. And obligations in detail. 32. Thus Art 6), 56 RD 1774/2004. "All children will receive at the time of their entry written about their rights and obligations questions of general organization operating rules of the center, disciplinary rules and means of making complaints requests or information resources. The information will be provided in a language they understand or are explained by other appropriate means ".

The manager can manage the necessary measures for access to compulsory basic education (Art 37.1), health care (Art. 38.2) to address part of a religious confession without being

forced into acts of other confessions (Art 39.1) and right to enter the labor market if you are of working age (Art. 53) .rd 1774/2004.

Regarding the right of communication can do with family, prosecutors judges Prosecutor lawyers and other professionals at appropriate times within or outside the premises of written or verbal, telephone or written communication Art. 40, 41,42, 43, 44 RD 1774 / 2004

Communications with his legal counsel may not be suspended by administrative decision unless a court order.

As for complaints requests or processing resources you may be the minor or his legal representative orally or in writing on open or closed requests and complaints to the body or the center director on matters concerning their internment, the Ministry Prosecutor and the Ombudsman (Article 57) RD 1774/2004.

Regarding permits may request the child enjoy both ordinary outputs as long as they are special cases of illness and death. (Art 45 to 49) RD 1774/2004.

### **3.1.7. Conditions in which a minor made his statement in adult criminal proceedings.**

The law regulates basic conditions to prevent any law and does not violate the guarantees necessary for their protection are in force, always taking into account the interests of the child and the right to a fair trial.

In the absence of protection would be settled under a protocol of performances like judicialized, proportionality and justification for the decision, ensuring that the defense is not only agreement on the basis of age without the concurrence of the actual risk.

For the child witness to be heard by the judge, protective mechanisms are created to avoid traumatic events reliving past experiences attending a court "that judicial procedures appearances child be conducted appropriately to the situation and development cognitive guarding her privacy this Organic Law 1/1996 Article 9.1, second paragraph.

With the reform of the Organic Law 8/2006 of December 4 amends the Criminal Procedure Act affecting articles 433, 448, 707, 731 bis; But lack of specificity remedied by the Attorney General. Circular 3/2009 of the State Attorney General issued in order to ensure the protection of minors in the judicial process even involved in the status of victims or witnesses.

### **Child protection measures at the time of his statement.**

Commissioning of new technical means declaration to avoid visual confrontation between the accused and the child witness and a meeting between them will not occur (Art.433 and 707 LEC.) Circular 3/2009 establishes ways to use screen, the use of video conferencing, placing the child at the point that can not be seen by the accused, using one-way mirrors and bidirectional communication and simultaneous image and sound. Paragraph 3 of Article 229 of the Organic Law of Judicial Power.

Testimony in the presence of the prosecutor and professionals, legal experts and representatives as representative practicing of parental rights, child custody saved as long as they are allocated or when the judge orders otherwise reasoned decision (Art. 433LEC).

Testimony if they are in criminal age of 18 years shall pay oath in the name of God or religion. The judge is obliged to inform in a clear and understandable language, of the obligation to be truthful and the possibility of incurring a crime of false testimony in a criminal case.

Right to be heard in the presence of the prosecutor in the examination in the presence of experts through its legal representative.

Agree recording of the statement by the judge being investigated for the purpose of a pre probation constitution possible and can be useful in capturing the first statement of the child with detail taking into account their age and may lose the quality of with considerably over time. LEC 433.

### **MEASURES IMPOSING JUDGES TO MINORS**

ACTION BY RESTRICTION OF THEIR RIGHTS	CHARACTERISTICS
Closed internment regime.	They reside in the center and develop in the same formative, educational, employment and leisure activities.
Semi Internment Regime	They reside in the middle, but made out of the same formative, educational, employment and leisure activities
Open detention regime.	They perform the activities of the educational project on standardized environmental services, residing in the center as habitual residence, subject to the program and the same internal rules.
Therapeutic internment.	They perform specialized educational services or specific treatment aimed at people who suffer from mental abnormalities or disorders, a state of dependence on alcohol, toxic drugs or psychotropic substances, or changes in perception that determine a serious



	<p>disturbance of consciousness of reality. Alone or as a complement to other measures provided for in this article as applicable. If the person concerned refuses treatment for addiction, the judge must apply another measure suitable to their circumstances.</p>
<b>outpatient treatment</b>	<p>They must attend the appointed with the frequency required by the physicians that attend and follow the established guidelines for proper treatment of the abnormality or mental impairment, addiction to alcohol consumption, toxic drugs or psychotropic substances, or changes in perception center suffering. This measure can be applied alone or in addition to other measures provided for in this article. If the person concerned refuses treatment for addiction, the judge must apply other measures suitable to their circumstances</p>
<b>Attendance at a day center.</b>	<p>They reside in their habitual residence and attend a center, fully integrated into the community, to support activities, education, training, work or leisure.</p>
<b>Stay weekend.</b>	<p>They remain at home or in a facility up to thirty six hours between the afternoon or Friday evening and Sunday evening, except for the time to be devoted to the socio-educational tasks assigned by the judge</p>
<b>Probation</b>	<p>It should track the implementation of its activities and helping to overcome factors that determined the offense. Undertakes to follow the socio-educational guidelines according to the intervention program developed for this purpose and approved by the juvenile judge. The personan have to conduct interviews with the professional rules of conduct:</p> <ul style="list-style-type: none"> <li>* Support teaching center regularly and justify absences.</li> <li>* Obligation to undergo training programs, cultural, educational, professional, job type, sex education, driver education or similar</li> <li>* Prohibition to reside in certain place, going to certain places and leave the place</li> </ul>

	<p>without prior judicial authorization.</p> <ul style="list-style-type: none"> <li>* Obligation to appear before the juvenile court or professional appointed to report on their activities.</li> <li>* Any other designated by the Juvenile Judge</li> </ul>
<b>Services on behalf of the community.</b>	The person subject to this measure, which can not be imposed without their consent, has to perform unpaid activities that are directed, social interest or for the benefit of people in precarious situations. It will seek to relate the nature of such activities with the nature of legally injured by the acts committed by the minor.
<b>Making social and educational tasks</b>	Specific activities of educational content aimed at facilitating the development of their social competence.
<b>Reprimand.</b>	Retribution of the person conducted by the juvenile court judge to make him understand the gravity of the acts committed and the consequences that they have had or could have had, urging him not to commit such offenses in the future.
<b>Deprivation from driving mopeds motor vehicles, or the right to obtain, or administrative licenses for hunting or use of any weapons.</b>	Legal consequence when the crime or offense was committed using a moped or a motor vehicle or a gun, respectively.
<b>Disqualification.</b>	Final deprivation of all honors, jobs and public positions on which is undertaken, whether elective; and the inability to obtain the same or any other honors, public office or employment, and being elected to public office, during the measurement time

Prepared Source: Royal Decree 1774/2004, of 30 July, approving the Regulation of Organic Law 5/2000 of 12 January, governing the criminal liability of minors is approved.

Custodial measures consist of two periods:

The corresponding first and second center in probation chosen by the Juvenile Judge. The crew must report to the content of both periods, and the judge expressed the duration of each in the sentence.

## **PRESCRIBING OFFENSES FOR MINORS**

<b>DURATION</b>	<b>MISDEMEANORS OR OFFENSES</b>
<b>FIVE YEARS</b>	<b>SERIOUS CRIME (PENAL CODE SANCTIONED TO 10 YEARS).</b>
<b>THREE YEARS</b>	<b>ANYTHER SERIOUS CRIME</b>
<b>YEAR</b>	<b>MISDEMEANOR</b>
<b>THREE MONTHS</b>	<b>FAILURE</b>

Prepared Source Article 15 of the Organic Law 5/2000 prescription.

### **PRESCRIPTION OF MEASURES**

<b>DURATION</b>	<b>PRESCRIPTION</b>
<b>MEASURES THAN TWO YEARS</b>	<b>THREE YEARS</b>
<b>OTHER MEASURES</b>	<b>TWO YEARS</b>
<b>REPRIMAND BENEFIT THE COMMUNITY AND STAY WEEKEND</b>	<b>YEAR</b>

Prepared Source Article 15 of the Organic Law 5/2000 prescription.

## 2. CHILD PARTICIPATION AND YOUTH CRIMINAL JUSTICE SYSTEM IN PRACTICE

### ***2.1. A Good Practice: The Case of the Autonomous Community (CC) of Aragon and intervention with minors in conflict with the law<sup>20</sup>.***

After having reviewed and analyzed several experiences of autonomous regions, it was considered that the approach of Aragon is a proposal being worked nearly fifteen years and has achieved a high degree of development and maturity, has served as input for other regions and also It has elements that differentiate it and that make it ideal for presentation as good practice.

While other communities have minor population to be served, Aragon was the first autonomous community to penetrate and form a team to implement specific under fourteen who have committed crimes programs. This team has developed its work since 2003. This particular work with criminally responsible and excellent coordination that exists within the juvenile justice system and child protection is in doubt one of its unique characteristics.

Therefore. Aragon model rescuing the aspects that have to do from how they have been working on the issue of participation and in particular Article 12 on the right to speak and be heard is presented. Similarly some aspects rescued in the consultation process with different key actors in the process of intervention with minors in conflict with the law and child protection are rescued<sup>21</sup>.

The system of intervention with minors in conflict with the law is divided into 6 parts:

I- Education Project Area Child Welfare in social conflict	1. Education Project area care of children in social conflict 2. extrajudicial mediation. Socio-court interventions under Aragon 3. The Role of the Autonomous Region in
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<sup>20</sup>Development from direct interviews with key and based on the publication "The intervention with minors in conflict with the law" actors, IASS Government of Aragon, 2009

<sup>21</sup> Both in the field of protection and reform of minors, Aragon has models and methodological publications recover process approaches. The publication "The hospitalization with minors in conflict with the law" published in May 2009 by the Department of Social and Family IASS- Government of Aragon, is an excellent publication that shows step by step logic and interrelationships and coordination in each area.

	the enforcement of measures
II- Measures aimed at young offenders in an open environment.	1. Educational Development enforcement of measures in an open environment 2. Methodology of socio-educational intervention in an open environment
III Measures aimed at young offenders	1. Educational Development enforcement of judicial detention measures
IV - Area of social care of children in conflict and other institutions: institutional coordination	1. The area of social care of children in conflict and other institutions: institutional coordination
V. Protection operations aimed at young offenders less than 14 years	1. The educational care for children under 14 years
VI. Supports Program	1. Support programs: a) prosocial thinking, b) service orientation and integration; c) Flat emancipation d) Program Family therapy and group of Adcara

### I- Education Project Area Child Welfare in social conflict

This area works through two groups of equipment referred educators as follows:

EMCA (equipment under fourteen) which applies educational programs under fourteen who commit criminal fact.

EMA (education team open environment) is responsible for implementing the measures provided LORPM not apply internment and carry out the reconciliations and extrajudicial repairs.

The Community of Aragon is divided into three provinces: Huesca, Zaragoza and Teruel. To make better use of the resources they have agreed to work as follows:

- Province of Zaragoza in four geographic areas
- Province of Huesca: A Head of Department and three educators
- Province of Teruel: Area Manager and an educator and professionals dealing with the measures open environment.



## II- Measures aimed at young offenders in open

A measure that assists the child in a Day Centre, which should be integrated into the activities programmed at the Centre, in order to compensate for their difficulties and develop their skills according to Individualized program execution (IMEC).

The Day Center is regulated in the LORPM in Article 7 f. which states *"Persons subject to this measure will reside in their habitual residence and attend a center, fully integrated into the community, to support activities, education, training, work or leisure."*

The activities are conducted in a structured environment with a socio-educational component, it can also be combined with other places or other cutting or cultural resources leisure and living at home.

Other possible measures provided LORPM are:

- **Services on behalf of the community:** Article 7 j: "That the person subjected to this measure, which can not be imposed without their consent, has to perform unpaid activities they provide on social interest for the benefit of people at precariousness will be sought to relate the nature of the legally injured by the acts committed by the minor. " And Article 9, Rule 1 sets the duration of the measure "in a maximum of fifty hours for faults, and up to one hundred hours for crimes" Art 9 Rule 3.; "May reach two hundred hours for persons who have attained the age of sixteen at the time of the commission of he facts" Art. 9 Rule 4.

In this regard they have been determined 3 types of practices: Repairers; Hypothetical relationship having any objective relationship with the cause or effect that could have caused the infringement and paradoxical that reinforce the implicit behavior of the infringement, but within appropriate coexistence rules.

- **Living with a person, family or educational group:** The LORPM Article 7 states: "*The person subject to this measure, must live together during the period of time with another person, with a family other than his own or with a group educators appropriately selected to guide one in their socialization process. "*

This applies to those children or young people who require your personal situation to be away temporarily from their family environment, thus allowing to know a different emotional atmosphere, socializing, and positive.

- **Conducting socio-educational tasks:** Article 7.1 of the LORPM states that "The person subject to this measure has to perform, without imprisonment or probation, educational content specific activities designed to facilitate the development of their competition." This is expected to support the social reintegration of the child.
- **Probation:** is defined in Article 7.h. as follows: "*In this measure it is to track the activity of the person subjected to it and of their attendance at school, vocational training center or workplace, as appropriate, seeking help to that to overcome the factors that determined the offense. This measure also force if necessary, to follow the socio-educational guidelines to bring the public body or the professional in charge of monitoring, according to the intervention program developed for this purpose and approved by the juvenile judge. The person subjected to the measure also is obliged to maintain that professional interviews established in the program and to comply, where appropriate, the rules of conduct imposed by the judge. "*

This measure aims to intervention and closely monitor activity on your child, and labor training, health and leisure family.

- **Outpatient Treatment:** Article 7 of the LORPM states: *"Persons subject to this measure, will have to attend the center designated by the periodicity required by the physicians that attend and follow the established guidelines for proper treatment of the abnormality or alteration psychological, addiction to alcohol consumption, toxic drugs or psychotropic substances, or changes in perception suffering. This measure can be applied alone or in addition to other measures provided for in this article. If the person concerned refuses treatment for addiction, the judge must apply other appropriate to their circumstances as "The Royal Decree 1774/2004, 16 Art- contains the rules for its implementation.*

### III Internment measures aimed at young offenders

The Aragon took an important step in a Guardianship Center<sup>22</sup> to a Detention Center for Judicial Education and Action.

The center aims at integration and social reintegration of children and young people sentenced to detention measures, by applying eminently educational programs and responsabilizadores and custody of all children and young adults with interim or final measures.

The Detention Center for Education and is part of the Educational Project Area Social Conflict least DC Aragon. The Project of educational services is based on the principle of criminal responsibility of minors which defines the Organic Law 5/2000 and applies to people over 14 years of age and under 18 for committing acts defined as crimes offenses established in the Penal Code.

The Center works through three modules.

- 1) Measures also has internment Internment Precautionary area and works closed, semi-open regime.
- 2) The therapeutic internment,
- 3) Other measures weekend stays and performance benefit to the community

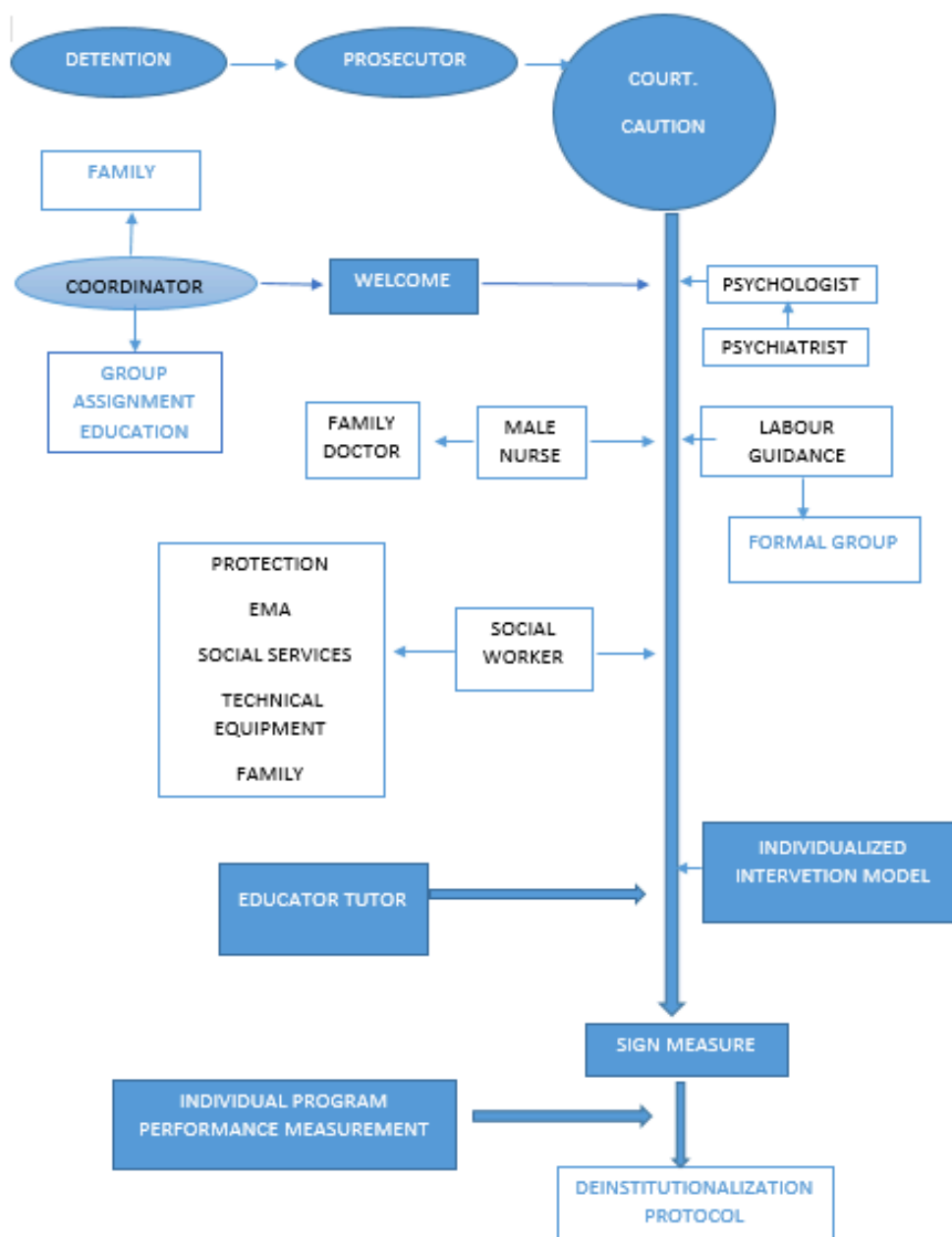
The procedure is performed under four areas are:

Personal area, family area, Relational area and training area.

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<sup>22</sup> Tutelary Center "Good Shepherd"





Source: IASS Aragon: "Intervention with minors in conflict with the law, May 2009, p. 113

#### **IV - Area of social care of children in conflict and other institutions: institutional coordination**

Note that with the delivery into force of LORRPM caused significant changes in judicial procedures and determined that the implementation of the measures adopted by the Juvenile Courts must correspond to the relevant government entities in the field. This leads to a coordinated and joint work between public administrations.

The narrow and smooth coordination between the Juvenile Courts, Juvenile Prosecutors and professionals in Child Welfare in Social Conflict is essential to ensure that the system works efficiently and that the human rights of children and youth in conflict with the law are respected criminal.

#### **V. Protection operations aimed at juvenile offenders with children under 14**

According to LORRM, the attention of public administrations under fourteen years of age who commit acts considered crimes or offenses in the Penal Code, will be gray protection services from public entities with jurisdiction child protection.

The Law 12/2001 on Children and Adolescents of Aragon, stipulates that the protection measures under those acts with children under fourteen who have committed acts classified as crimes or offenses in the Penal Code or special penal laws. Similarly, define the least social conflict as those children or adolescents who could be at risk of causing harm to themselves or others, as well as those applicable to them the Organic Law 5/2000, of January 12, governing the criminal liability of minors.

Since the implementation of the law in 2001, the Juvenile Prosecutor Zaragoza asked that juvenile offenders to the law under 14 years of age, they were referred to specialized child protection services of the IASS

Care Team Under 14 (EMCA) was created in 2012.

## VI. Supports Program

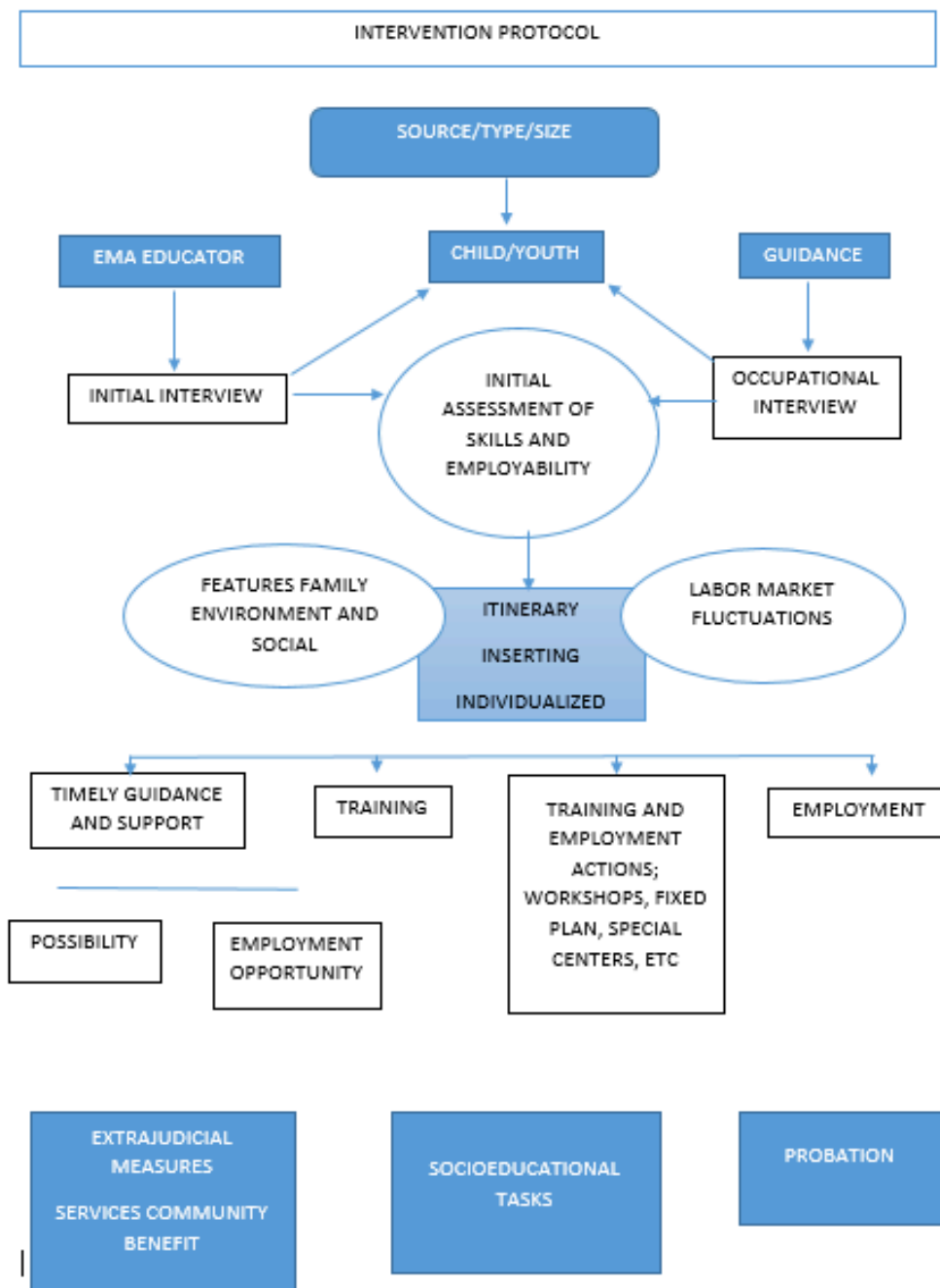
**Four support programs are developed to provide specialized care to children and young offenders of criminal law**

1) Program of social thinking that is pro eight thematic: a) Solution to problems; b) Negotiation skills; c) Emotional Control; d) Critical Thinking; e) Negotiation skills; f) Development of values; g) Moral Dilemmas and h) Critical thinking.

2) Service Orientation and Integration: working through the Foundation for Comprehensive Care for Children (FAIM) in four performance parameters: a) Employment Programs, b) Judicial measures users, c) Collective Care; The professionals.

3) Floor emancipation a key to autonomy and empowerment that promote social reintegration stage.

4) Family Therapy Program: through ADCARA program creates and manages a care program for adolescents in family conflict. Since 2006 the EMCA and EMA teams involved with families and adolescents who have committed crimes or misdemeanors in the current penal code.



Source: IASS Aragon: "Intervention with minors in conflict with the law, May 2009, p. 235

### **2.1.2. Participation in within the Protection System and Reform in the Community of Aragón**

From consultations and literature review and interviews with adolescents and young people in conflict with the law, we can say that in the field of reform of Article 12 of the Convention is fulfilled in a large percentage relative the child's right to an opinion and to be heard and to a lesser extent other items related to participation (art. 13, 14, 15 and 17 of the CRC).

This can be understood as the system of justice is itself a structured and rigid system and children who have gotten offenses or offenses either under 14 years of age or over 14 and under 18 years of age are in a system mechanisms and procedures that have to be met and the measures open, semi-open or closed require a series of protocols to be accomplished and respected, thus the right to speak and be heard responds more to the relationship of power and adult relationship - young or institution - young, that if it is developed by educators and respectful of human rights highly qualified technical personnel and is still a relationship of hierarchy and not equal.

Also in practice this view and hear is provided but the final decision deprives the implementation of the interests of the child, which is not always consistent with the interests and desire of the teenager or young.

It should rescue the intervention with minors in conflict with the law has fundamentals and methodologies that promote and guarantee the implementation of the right to speak and be heard and informed, a right that applies at all times of the intervention.

1. The change of law, the new role to the courts, the role of prosecutors and close coordination with technical teams and other organizations have strengthened the response and chain and responsible roles within the juvenile justice system.

2. While the Organic Law takes into account Article 19 of the Penal Code setting the age of criminal responsibility, it is based on the principle that the responsibility of minors is a main feature and is the socio-educational intervention that transcends legal regulation and disciplinary procedures.

3. The Organic Law 4/1992 establishes a framework for the Juvenile Courts to determine the measures based on the best interests of the child. Instructs the prosecutor's initiative process and broaden powers granted to mitigate the effects that the process can have on the child. And it proposes a specialized technical team to implement the measures proposed a punitive-educational activities to which they give guarantees, fulfilling article 40 of the Convention on the Rights of the Child.

4. The rights of minors are subject to LORPM, according to Article 1 point 2, those "recognized in the Constitution and in the legal system, particularly the Organic Law 1/1996 of 15 January, and Child Protection and the Convention on the Rights of the Child of 1989 and all the rules on the protection of minors contained in the treaties validly concluded by Spain".

5. The principles of judicial interventions with children in Aragón are based on: a) educational nature; b) immediate and minimal intervention; c) principle of opportunity; d) voluntariness of the parties; e) identification of the intervention; f) respect for the rights of the child; g) responsibility for the child; h) parental responsibility; c) Protection of society in general and victims. Further promote extrajudicial solution to encourage the parties (the offender and / the injured / a, reach an agreement that is facilitated by the action of a mediator or mediator, who is who communicate the results to the Public Prosecutor for defining whether or no case file. At this stage therefore work mediation, conciliation and reparation.

6. The team of educational development in the enforcement of measures in open work developing socio-educational measures can somehow compensate for the shortcomings of the child and improve the possibilities for family and social environment.

7. The methodology of the educational intervention in open methodology is based on 10 principles: a) the interests of the child on any other; b) respect the free development of the personality of the child; c) information rights that apply at all times and the necessary assistance in pursuing; d) the implementation of actions to age, personality and personal and social circumstances of children; e) the adequacy of actions to age, personality and personal and social circumstances of minors; f) the priority of activities in the family and social environment itself, provided it is not detrimental to the interests of the child; g) Encouraging the involvement of parents, guardians or legal representatives during the implementation of the measures; h) The interdisciplinary preferential basis in making decisions that affect or may affect the person; i) confidentiality and the absence of unnecessary interference in the private lives of the children or their families in the actions carried out; j) coordination of actions and cooperation of other agencies involved with children and young

people, especially those with responsibility for education or health. These principles intersect with the principles-based intervention: contextualization, individualization, enhancement, integration, standardization, guidance and assistance relationship, negotiation and mediation and training, learning social skills.

8. The basic principles underlying the methodology of intervention in detention are: a) socialization; b) liability; c) standardization; d) the identification; e) compensation; d) the flexibility and e) globalization. The development intervention center or center life has several stages: i) host; ii) groups of coexistence; iii) daily life (appointments with the professionals in the center or outside, food, leisure, housing, sports, school activities); iv) employment actions; v) health; vi) participation; vii) the individualization and personalization of interventions; viii) progress in implementing the measures; ix) working for good.

Participation is a central part of the Individual Project Implementation of the measure was imposed for the commission of a crime.

To achieve tutorials where it talks about the short-, medium and long term are to be achieved are made. Prisoners have the right to get to the address, the court or prosecutor requests or individual complaints, the written and reviewed by the technical team who then delivered to the address or person concerned. This must be answered in writing and addressed to the child. Another area of importance is their involvement and participation in the call Assembly held every fortnight. Here discuss issues of interest and responsibilities are divided and evaluate the functioning of the group. This assembly is energized by the educational coordinator. All children contribute to the content and discussion and decision making. There is also an internal magazine called the Voice of Refor. where inmates can bring some writing or drawing. There are efforts to ensure proper integration with minors of foreign origin and also with women prisoners who live in the center but in different areas, but being a very small number of larger living spaces exist in the prison population in general .

9. As for therapeutic internment measures, is expected to minors with alcohol, drugs or other mental health problems that require more specialized and structured attention. The Educator or / to accompany the child's life in the center throughout the process. Informs and listens to their demands and reflect and dialogue with him / her constantly. Therefore it is working under criteria: flexibility, active listening, self-regulation and accountability; coordination and reflection.

10. Working with families is central to understanding the reality of smaller but sometimes this diverse and dispersed core is a trigger for instability or containment. Spaces are created so that the child can talk and share with your family at the center and it can come into contact with the / the minor at all times. Similarly not expected to pass in the center is reason to cut all social ties, so visits are established protocols and also has a space defined for the use of computers and the internet.

11. Judges, prosecutors and lawyers involved in different ways in the center and the Judges visit children regularly to listen and watch their progress in implementing the measures.

12. A multiplicity of coordination to ensure the best results of all stages for the implementation of the measures and after his opinion was made. In that sense there is coordination between:

- Courts and prosecution of minors
- Detention Center for a judicial education and equipment Juslibol open environment
- Educators EMA and child protection coordination
- Group under the judicial police
- Technical equipment for the prosecution of minors
- Educators EMA and Municipalities and Regions for the enforcement of stockings in an open environment
- The basic social services for the enforcement of measures under the ope
- Educators of EMA with the educational system

13. The purpose and principles of action with providing education to children under 14 years of age is based on: a) principle of derivation or social order; b) principle of opportunity; c) voluntary principle; d) principle of intervention in the child's own means; e) principle of social disapproval; e) principle of preparation and reconciliation; f) principle of accepting the offender educational fact and circumstances of the child g) principle of social return. In that sense the record protection is sought, are in the background prosecution they are reviewed if there is a history in the primary network, if the procedure has no history begins, an interview with families or friends is done, the resources that are analyzed They are related to the minor (community services



social services; Education, healthcare and non-governmental organizations) an assessment is performed and educational intervention programs (not individual preventive educational actions are defined; reprimand; reconciliation, reparation to the victim, reparation to society pro social program thought; protocol family agreement, outpatient treatment, family counseling, program of cognitive and social skills intervention program of continuing education; and tertiary prevention action to demand service.

14. With regard to support programs working with a methodology based on the needs and possibilities of the child / youth, trying to make this the protagonist and responsible for their own educational development work and their life project.

## ***2.2 Other experiences of participation***

Participation has been the subject of various actions and from different starting points. For several years the Children's Parliaments were developed as an action related to the participation and schools are the places where more action with children and adolescents in particular fail to make the coverage has been the school system in Spain. Although from different organizations educational programs addressing different topics to support the teaching and the students are developed, consultations are also developed to study the perceptions and opinions of children.

In the case of Aragon it can highlight three actions that show a systematic and political commitment that administrations exceeded interest.

1) Section of Child participation of the Directorate General for Citizen Participation of the Government of Aragon, has been developing a process of reflection and work around the involvement of children and adolescents in Aragon, developing networking, generating specialized training and defining strategies.

In addition to various meetings (four to date) who have had the participation of national and international experts, it has promoted the formation of councils of children in different parts of Aragon.

Within this framework UNICEF and the Government of Aragon put in place since 2011 Aragon child participation<sup>23</sup> strategy centered on awareness to all citizens and local actors in particular, to increase their efforts to promote the rights of children, get them They pledge to initiate policies and promote initiatives that recognize them as full citizens, facilitating the creation of sustainable channels of participation for children and other sectors of the Aragonese population.

In 2014 a commission of high level is formed to support the child participation strategy in Aragon.

2) Since 2012, the Youth Service and the Department of Citizen Participation of the Government of Aragon promote a space of theoretical and practical training and collective reflection among managers and technicians of residential resources under the IASS to lay the foundation model child and adolescent participation in these centers.

18 and 19 October 2012, the training workshop for the actions 5.2.3.1 action is performed. the PIAA for the design and implementation of a model of child and adolescent participation in residential resources in the field of protection.

In 2013 and 2014 the vision of the children themselves is incorporated, which is a pioneer in Aragon experience.

In 2013 the design and implementation of a model of children's participation and adolescents in residential resources in the field of protection (25 and 26 June 2013) is performed

From June 30 to July 1 2014 held a workshop under the IASS residential part of the promotion of child and adolescent participation in the autonomous community of Aragon through training activities and revitalization of Aragonés II Meeting Tips for Children.

11 and November 12, 2014 the workshop is held with technicians IASS residential resources under the Promotion of child and adolescent participation in the autonomous community of Aragon through training activities and revitalization of Aragonés II Meeting of Councils Children.

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<sup>23</sup> <https://aragonparticipa.wordpress.com/tag/participacion-infantil/>

The second (October 6 morning), with technicians and helps analyze the reception process in the centers.

With the idea of continuing the involvement of young people and to respond to the proposals made by technicians, this year, the workshops revolve around working together with respect to a key issue: the process of receiving the child in center. In that sense the 2015 training workshop on Child Participation takes place in residential resources in the areas of protection.

The workshop is divided into four sessions<sup>24</sup>:

In 2013 and 2014 the vision of the children themselves is incorporated, which is a pioneer in Aragon experience.

- The second (October 6 morning), with technicians and helps analyze the process of reception centers.

With the idea of continuing the involvement of young people and to respond to the proposals made by technicians, this year, the workshops revolve around working together with respect to a key issue: the process of receiving the child in center.

- The third (October 6 pm) is mixed between minor and technical and aims to incorporate the vision of young people in the care process.

## Goals

- Progress in implementing the action lines 3, 4, 7 and 8 of the Decalogue of Child Participation in residential resources under:

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[http://aragonparticipa.aragon.es/sites/default/files/2015/PROCESOS\\_INFANTIL/TALLERES\\_IASS/infotallerias.pdf](http://aragonparticipa.aragon.es/sites/default/files/2015/PROCESOS_INFANTIL/TALLERES_IASS/infotallerias.pdf)

- Build bridges between the vision of participation in schools that have the lowest and technical / responsible.
- Propose next steps in implementing the model of child participation.

### **2.3. Obstacles**

1) Although there are several initiatives throughout Spain very redeemable, each has its peculiarities and its processes. In the field of juvenile justice are important differences in the models so difficult to make a comparative analysis are unique.

2) participation spaces while in the process of reflection reflect a broad view and focus the recognition of citizenship and be subject to rights in practice actions are focused on promoting its view, to know their perceptions but not in the exercise of participation as inserted and engaged in the issues that affect them and interested social partners. While the councils of children and adolescents is an important exercise of political participation, they remain still incipient participation and subject to the resources and opportunities provided from the institutional spaces.

3) The crisis has limited resources, but despite this, participatory processes have been able to continue thanks to the efforts of technical and political support received, but still processes that rely on political support at their disposal, which It may affect their continuity. If however the fact that participation is inserted into the Plan for Children and Adolescents of Aragon, that makes its continuity can develop.

### **3. THE OPINION OF CHILDREN AND TEENS ON THE RIGHT TO PARTICIPATION**

#### ***3.1. Understanding, perceptions and awareness level***

From the processes performed with adolescents and young people were able to engage in a dialogue around the issue of participation.

One of the main challenges of this dialogue was to be done in an enclosed space where they are serving in a detention so that participation is an element present but regulated.

It was not possible to develop spaces for dialogue with other teens / young participants of other measures outside the center because there were no suitable conditions for its realization.

He had a baseline questionnaire, which served as a guide, however the development of the activity was giving according to the dynamics presented and accomplished with adolescents and young people in a relaxed and open manner.

As the facilitator was the daily dynamics of adolescents and youth center and external agent, he allowed them to open more freely and express their views.

Participation in principle, law and process is understood as an action that takes place within the activities and is regulated according to the measure to be met. So it is not as natural but as something planned and under the direction and leadership of the adult and the institution.

Participation in the family see it as something that also has its limitations and is dependent on the coexistence have, so it varies from one to another. But they see also related to freedom and the possibility to enter and leave the house when they wish, to open the fridge whenever they want and sit and watch TV whenever they want. Participation in the family was also seen as something done when they are home alone.

In explaining about participation, scope and process to be progressively exercising that is central to the process of emancipation and autonomy and their development, thinking it was not as visible as a complete action to achieve in their future and outside the center. While some want a complete release where participation becomes finally do what they want, others were able to get ahead and achieve work and relate to their welfare and their closest family.

#### ***3.2. Existing ways of participation***

There are spaces and well-defined forms of participation in the Center and identified by adolescents and young people:

a) the information they receive upon arrival at the center, during the time spent in the center, particularly point out a good dialogue and relationship with the teacher in charge.

b) Regular visits by the judges feel it as a space for open dialogue about their situation and their progress.

c) The activities carried out mainly individual and group are opportunities for participation and personal and group development that appreciate it.

d) The school is the space generated more rejection because they see (some not all) positive education and do not see that they will serve in the future. They feel it as something imposed and conditioned. However they contradict when they talk about their life plans, since most identified the need to learn a trade, to study to go ahead.

e) The written requests. These are seen as positive and value, just sometimes question how the written or expressed are censures for the technician or receives and must rewrite it in a more "friendly" forms

f) the Assemblies are an important space organization, but conditioned by adults because they feel it is not a fully built and energized by them space.

g) Space for sport value it some more than others, and they see need to improve their physical and mental health as well as space for sharing with others.

h) organized outings to cultural activities or other reasons are very positive but not sufficient.

i) They appreciate the space provided to them for the family or with your partner space, particularly for those who are married.

### ***3.3. Items unattended***

Written requests are always met and in most cases they have been satisfied nod.

In particular they would support a closer communication with management in some cases bypassing technical equipment and also wanted to have more living spaces (barbecue and exits outside the center).

\* With respect to the right to speak and be heard if they feel cared for.

\* With respect to the right to organize, they see that the Assemblies can be improved to achieve this right with more autonomy.

\* With respect to the right to freedom of expression they feel that is sometimes limited to express their identification with groups or trends court terrorist. But they understand that can be provocative and partly understand the reasons why they are not allowed to place symbols representing political symbols, religious, ideals and others.

\* With respect to the right to freedom of thought, conscience and religion they feel that this is respected and reflected when they applied for a type of food your own religion.

\* With respect to the right to receive and access information, they would be more informed and to have more access to computer use and social networks.

### ***3.4 Proposed improvements***

In particular they proposed:

- The Air to the visiting room, because in some cases the room is filled when the family is very large and it's hot.
- They point to improvements in food, but in general, without specifying either that improvements are required.
- Computer room and free wiki, they want more and more time existed for access.
- They want the requests are delivered as they write.
- They want the Assembly to be accompanied by a technical but dynamic and discussions are proposals for themselves.



## 4. CONCLUSIONS

Spain has made progress in implementing the Convention by proof of that in the regulatory framework and the reform of the Protection System. However its development remains uneven, in both the autonomous regions each is different and have the same processes and resources to achieve it.

The crisis has had a very negative effect on social issues and in the field of childhood and adolescence, children and adolescents have seen many of their rights truncated particularly those whose families are in a situation of high vulnerability and unemployment. The increase of children and adolescents living in poverty is a major alarm that Spain should have.

In the field of juvenile justice population profile has changed and today is more complex and inserted with a series of social problems. Affective, family disintegration, deprivation in early childhood that affect the structure and mental health of adolescents and young people, causing further instability in these. The problem of gambling addictions and not necessarily related to alcohol and drugs, young people show a complex profile that require more specialized care.

In Aragon, the fact that the same building and floor for the Juvenile Court 1, the Office of Children and Child Welfare Area Social Conflict and the proximity to the Juvenile Court 2 shares, has been very beneficial for expedite the implementation of the measures imposed and to maximize existing resources and time to start and extrajudicial repairs in the shortest possible time between the completion of the criminal acts and the intervention of the educator, in monitoring and collaboration in the implementation of the measures between the educator responsible and Prosecutors or the Juvenile Magistrate Judge in measurement changes, suspensions, changes in jobs and complemented by rules implementing the programs, creating a space that promotes communication and verbal intervention and enriching for all involved in the process<sup>25</sup>.

The lack of opportunities and employment in a context of crisis likewise affected the self-esteem and the exercise of citizenship of minors and young people.

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<sup>25</sup> IASS, Government of Aragon: "The intervention with minors in conflict with the law", May 2009, pages 189.190.

The child participation has been developed in the case of Aragon, with seriousness and perseverance and practice has focused on building a child participation model and adapted to the reality of residential centers teenager, consultation processes and perceptions or the development of more theoretical considerations of participation, as well as evaluating the program should be implemented 5.2.3. and measure 5.2.3.1. the Comprehensive Plan for Children and Adolescents 2010-2014 of Aragon again for the implementation of a model of child participation.

The participation of children and adolescents creates tensions in the relations of power in the adult child relationship and peer and structures defined, this is gradually acquired and should be its scope and its projection beyond or semi-enclosed spaces where minors are.

In that sense, it would be an assessment of the approaches and scope of the actions taken to date is not only a human rights approach but from the recognition of children and adolescents as social and political agent, to serve as inputs for defining and improving the strategy of the Community of Aragón and the complementarity of actions developed is encouraged.

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1. Organic Law 5/2000 of 12 January, governing the criminal liability of minors.
2. Law 12/2001, of July 2, Children and Adolescents in Aragon
3. Law 21/1987, of 11 November, amending certain articles of the Civil Code and the Code of Civil Procedure are changed.
4. Law 1/1996 of 15 January on the legal protection of minors, amending the Civil Code and the Code of Civil Procedure.
5. Organic Law 7/2000 of 22 December, amending the Organic Law 10/1995 of 23 November, of the Penal Code and the Law Organic 5/2000 of 12 January, regulating the Criminal Responsibility of Minors, in connection with terrorist offenses
6. Law 8/2006 of 4 December 2006 amending Organic Law 5/2000 of January 12 governing the criminal liability of minors is modified.
7. Real Decreto 1774 / 2004 Criminal Responsibility of Minors.
8. Law 26/2015, of July 28, modifying the system of protection of children and adolescents.
9. Royal Decree of 14 September 1882 Criminal Procedure Act
10. Aragonese Covenant Children
11. Instruction No. 11/2007 of 12 September from the Secretary of State for Security by the "Protocol of policing with less" Interior Ministry approved.

12. Circular 3/2009 on the protection of child victims or witnesses issued by the Attorney General.

13. Penal Code

## **REPORTS**

14. Report presented on the Convention on the Rights of the Child in Spain Thirtieth Session Geneva May 20 / June 7, 2002.

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17. Reports of Child Participation Workshop held since 2012, the Government of Aragon, Directorate General for Citizen Participation, External Action and Cooperation

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Madrid newspaper "The community of Madrid allocate 38 million for the rehabilitation and reintegration of young offenders" 10/31/2014

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