



Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Spain

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Executive summary

Overview of the general elements of child-friendly justice in criminal proceedings

The Spanish judiciary system is governed by the General Council of the Judiciary (*Consejo General del Poder Judicial*). The Spanish Court system is hierarchical, with a system of jurisdictional appeals. While no extraordinary legal system exists in Spain, special Courts have been set up by virtue of their subject matter¹. In accordance with the Organic Law 6/1985 of 1 July on the Judiciary², special Courts include, for example, commercial courts, courts dealing with violence against women and juvenile courts (*juzgados de menores*). *Juzgados de menores* hear cases concerning crimes and petty offences committed by persons aged between 14 and less than 18. This requires in the first place specifically trained judges (*jueces de menores*) and prosecutors (*fiscales de menores*). Cases involving children as victims or witnesses are, on the contrary, dealt with by regular courts and professionals involved are not required to undergo specific training.

The Youth Justice System of Spain is based primarily on the Law for the Protection of the Child (LPC) and the Law for Criminal Responsibility of Children (LCRC) which both recognise the best interests of the child as a guiding principle for public authorities' action. The public authorities and relevant courts involved, as well as relevant laws and policies, may vary according to whether the child is a victim or a suspect (for the most part witnesses are treated in the same way as victims though victims' rights are slightly more extensive). Public authorities may additionally vary in relation to the autonomous communities in which the specific events take place. The Spanish legislator has also foreseen compulsory training for key professionals (in the first instance judges and prosecutors) taking part in the proceedings in cases involving children as offenders.

Overview of children's involvement before, during and after judicial proceedings

Generally, a child may report a crime through his/her parents or guardians, given that collaboration with the family always takes priority if they are not associated with the crime. A child demanding assistance to report a crime of which he/she been victim or witness is entitled to immediate assistance from any citizen, any social services and any public authorities. Children acting as victims or witnesses in Spanish judicial proceedings must be aware of their rights, of which they are informed in the presence of their parents, tutor, guardian or qualified representative. Details of both the child's rights and procedure of the case must be facilitated at all stages of the process and with adequate feedback.

Protecting all children from harm is a major obligation for all Spanish public administrations which entails a number of procedural guarantees with respect to the right of children to be heard and protected. At a general level, the Juvenile Prosecution service (*Fiscalía de Menores*) must be heard in all judicial cases concerning children as offenders and has the statutory duty to represent the interests of the latter before any national jurisdiction. In addition, in order to prevent secondary victimisation prosecutors are expected to restrict appearances of the victims, limiting declarations before the courts to those essential for the course of justice and in general authorities are required to prevent "returns" to the elements of the violation and "speeding up" procedures in order to reduce the traumatic experience of the child.

Spanish norms³ recognise children's right to legal counsel, legal assistance and representation, and stress the necessity that such assistance be provided in accordance with his/her best interests, and therefore must result from his/her choice, together with that of parents or guardians when not in contradiction with the interests of justice.

Compensation for victims of crimes is foreseen in the norms, and those found guilty are required to repair and compensate for the damage caused. For child victims or witnesses of a crime affecting their honour, privacy and/or image the prosecuting authorities must request compensation along with security measures.

¹ See the [e-justice portal](#).

² Organic Law of the Judiciary (*Ley orgánica del Poder Judicial*).

³ Act 35/1995 of 11 December on Support and Assistance to Victims of Violent Crimes and Crimes against Sexual Freedom establishes specialised offices (public service) supporting victims of crimes, including children.

Criminal responsibility is established from 14 years of age. Children who are aged between 14 and less than 18 years can be held criminally responsible based on the commission of a criminal infraction foreseen in the Criminal Code or in other special criminal laws. Below the age of 14 years, children may not be held criminally liable but can be subjected to educational measures.

Special rules are provided with regard to a child suspect's right to information. Children have the right to be informed promptly and in a suitable language of the nature and cause of the charge against them, of the reasons for their privation of liberty, as well as their rights, such as the right to access to a lawyer⁴. If the child, or his/her parents or legal guardians do not appoint a lawyer, such appointment will be carried out *ex officio*. When a child is arrested and brought to a police station, Authorities must immediately report the detention to parents or guardians and inform them of the place of custody of the child. In case the child is a non-Spanish citizen, the authorities must report the situation through the relevant consulate. Detention by police authorities may never exceed the period strictly required, and its duration must be restricted to the time needed for the adjudication of facts, and may never be longer than 24 hours.

As a general rule, Court hearings are open to the public. An exception may be made when the interest of the child so requires. In these cases, the Law authorises the judge to sit in Chamber. Furthermore, the Court can ask for the child's removal from the room, at its own initiative or at the request of either party, if it considers that it is in the child's best interests. Further, Spanish legislation foresees the possibility of resolution of the proceedings out of court through reconciliation between the victim and the child offender for minor offences. The most frequent alternatives to judicial proceedings are mediation whenever possible or giving greater emphasis to educational measures. Several other measures have been introduced in order to minimise the burden of court proceedings on child suspects/defendants. These include measures of promptness, reducing the impact on the personal development of the child, as well as special training or education required for judges who deal with child cases.

Spanish legislation requires that a child may only be deprived of his/her freedom when it is in his/her best interests or for his/her own good. This deprivation must form part of a programme with educational measures with the aim of reinserting the child into society. However, in certain circumstances the Criminal Code also provides for the possibility of giving priority to criminal responsibility. Child offenders who are deprived of their liberty are held in specific facilities in accordance with their age, maturity, needs and social capacities.

Promotion and monitoring of a child-friendly approach to criminal justice, with an overview of strengths and potential gaps

With regard to child offenders, the Juvenile Justice System in Spain relies upon the coordination of a broad range of professionals which must be specialised in this field, thus guaranteeing that all actions taken will be in the child's best interests. This includes in the first instance specifically trained judges (*jueces de menores*) and prosecutors (*fiscales de menores*). Social services, specialised police agencies and the office of the public defender or Ombudsman (*Defensor del Pueblo*) also have a central importance in ensuring protection of children's rights, including in criminal proceedings. The strengths in the Spanish system are related to the fact that law and practice are coherently focused on achieving the child's best interests, and this is greatly facilitated by a flexible approach of public action, tailored to the personal conditions, age and needs of the child.

However, despite the effectiveness of this framework for child offenders, it may be concluded from the research and consultations that the legal framework for child victims and witnesses in criminal proceedings should be extended in certain provisions that are indeed in force when it comes to offenders, such as the existence of specialised courts (*Juzgado de menores*) and involvement of specifically trained professionals (*jueces y fiscales de menores*). Likewise a comprehensive programme for remedies in all roles may contribute to an improvement in the situation of children after judicial proceedings. Finally, it may also be concluded that there is a need for comprehensive institutional collaboration and multidisciplinary cooperation and coordination among central and autonomous level that may be facilitated by the empowerment of appropriate bodies.

⁴ Police Protocol of action in cases of children of 2007.

Abbreviations

CA	Competent Authority
CoE	Council of Europe
EC	European Commission
EU	European Union
JC	Judges for Children
LCRC	Law for the Criminal Responsibility of the Children
LPC	Law for the Protection of the Child
Leccrim	Criminal Procedure Act
PA	Prosecuting Authority

1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children

This study provides a general summary of the institutional framework relevant to children's involvement in criminal proceedings in Spain. For a broader description of Spain's criminal justice system please visit the European Commission's E-justice portal and the European Judicial Atlas⁵.

In Spain, the rules concerning children are constitutionally required to be adapted to the requirements of international human rights treaties for the protection of children⁶. These constitutional rights of children are extensively reaffirmed in the practice of the Constitutional Tribunal. This Court has inter alia emphasised the necessity to adapt legislation and proceedings to the level of maturity of the child and his/her capacity to act⁷. As such, the Constitution together with the Civil Code define the most important legal aspects concerning children, which blueprint a number of organic laws and the practice of civil, criminal and administrative courts⁸.

According to article 149 of the Spanish Constitution⁹, the State has exclusive competence over procedural legislation, which includes criminal procedural law. Therefore, children's procedural rights in criminal proceedings are governed uniformly throughout the entire territory of the Monarchy by the Criminal Procedure Law Act¹⁰. The same applies to other pieces of legislation which fall within the exclusive competence of the State, such as Organic Act 1/1996, of 15 January, on the Legal Protection of Children. Nevertheless, article 148.1 of the Spanish Constitution allows the Spanish Autonomous Communities to legislate on children protection and social assistance's matters. Specialised courts (*Juzgados de menores*) hear cases concerning crimes and petty offences committed by persons aged between 14 and less than 18 while cases involving children as victims or witnesses are dealt with by regular courts.

The rights of children must be protected and their exercise facilitated by both parents or legal guardians, and all public authorities. The public authorities competent for children involved in criminal judicial proceedings may vary according to whether the child is a victim or a suspect. Public authorities may additionally vary in relation to the autonomous community in which the specific events took place. Public authorities may also be changed in the various stages of the legal proceedings. While the instruction and execution of sentence depends on the authority of the central administration, the execution of measures corresponds to the autonomic authority. Criminal proceedings against child offenders are conducted by specialised magistrates - the Judges for Children. In such cases, the Law¹¹ requires a specialisation of the Judges, Prosecutors and Lawyers involved and make their respective governing boards responsible for organising training programs. Beside specialisation courses, previous professional experience working with children and/or scientific studies or papers presented or published on this matter are also taken into consideration.

⁵ [European judicial atlas in civil matters](#) and [E-Justice Portal](#).

⁶ Articles 10.2, 39.4, and 96 of the [Spanish Constitution](#) (*Constitución Española*) BOE 311 of 29 December 1978:

⁷ For instance Constitutional Court Decisions (*Sentencia del Tribunal Constitucional*) 141/2000 of 29 May, 215/1994 of 14 July; 260/1994 of 3 October; 60/1995 of 17 March and 134/1999 of 15 July.

⁸ [Organic Law 1/1996 for the Legal Protection of the Child](#) (*Ley Orgánica de Protección Jurídica del Menor de Modificación Parcial del Código Civil*) BOE 15 of 17 January 1996; Hence forth LPC; [Civil Judicial Law](#) (*Ley de Enjuiciamiento Civil*) BOE 7 of 08/01/2000.

⁹ [English version of the 1978 national Constitution](#).

¹⁰ [Decree of 14 September 1882 approving the Criminal Procedure Law](#) (*Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal*) BOE 260 of 17 September 1882).

¹¹ Fourth additional provision of the LCRC.

All in all, most social and educational services, execution of measures and reintegration programmes for children fall within the competency of the autonomous administrations of Spain¹². Likewise, a number of rules may also differ between autonomous communities, differences that may also imply different security forces: *Mossos d'Esquadra* in the Catalan region and the *Ertzaintza* in the Basque Community, alongside with *Policía Nacional*, *Guardia Civil* and *Policía Local* in all communities¹³.

For the protection of children's rights, including in criminal proceedings, the office of the public defender or Ombudsman (*Defensor del Pueblo*) has a central importance, along with different and independent autonomic ombudsmen in a number of autonomous communities: Andalucía, Catalunya, País Vasco, Castilla La Mancha*, Aragón, Valencia, Canarias, Castilla y León, Galicia y Navarra¹⁴.

Likewise, the Observatory for Children (*Observatorio de la Infancia*) associated to the Government Ministry (*Ministerio de Trabajo y Asuntos Sociales*) has the mission to coordinate services and information while ensuring that the public administration adopts a suitable approach towards children.

Moreover, a specialised Victims' support Office was set up following the entry into force of Act 35/1995 on Aid and assistance to victims of violent crime and crimes against sexual freedom¹⁵. Services provided include development of standardized children information protocols as well as regulations concerning pre-trial visits to court facilities.

The principles for the action of public authority with regard to children are largely contained in the Law for the Protection of the Child (LPC) of 15 January 1996¹⁶. The LPC consequently has extensive applications for children in judicial proceedings, in all the three positions which are the object of this study. *Inter alia* the LPC requires:

- To give absolute priority to the best interests of the child;
- To keep the child in his/her family circle, except when this is not for the good of the child;
- To promote social and family integration;
- To prevent all situations that might hinder the development of the child;
- To promote the participation and integration of the child in the community;
- To ensure objectivity, impartiality and legal security in protective actions and guarantee that any measures are adopted after a specialist and interdisciplinary assessment.

As upheld in the relevant parts of the Constitution, the LPC aims to reflect the principles of the International Convention of the Rights of the Child within the framework of Spanish law. The LPC applies to all children in the Spanish territory and stresses the priority of the best interests of the child before any other legitimate interest¹⁷. Furthermore, the supremacy of the best interests of the child is recognised as a guiding principle for public authorities'

¹² Articles 148 and 149 of the Constitution.

¹³ [Policía Nacional](#); [Guardia Civil](#); [Catalan Mossos d'Esquadra](#); [Basque Ertzaintza](#).

¹⁴ [Ombudsman \(Defensor del Pueblo\)](#); [Andalucian Ombudsman \(Defensor del Pueblo Andaluz\)](#); [Catalan Ombudsman \(Síndic de Greuges\)](#); [Basque Ombudsman \(Ararteko\)](#); The [Ombudsman of Castilla La Mancha](#) was suppressed through the Law 12/2011 (*Ley de supresión de la figura del Defensor del Pueblo en la región de Castilla-La Mancha*) 9 December of 2011.; [Aragon Ombudsman \(El Justicia de Aragón\)](#); [Valencian Ombudsman \(Síndic de Greuges de la Comunitat Valenciana\)](#); [Canarian Ombudsman \(El Diputado del Común\)](#); [Castilla y León Ombudsman \(Procurador del Común\)](#); [Galician Ombudsman \(Valedor do Pobo\)](#). ; [Navarra Ombudsman \(Nafarroako Arartekoa\)](#).

¹⁵ Law 35/1995 of 11 December 1995 on help and assistance to victims of violent offences and offences against sexual freedom (*Ley 35/1995, de 11 de diciembre, de ayudas y asistencia a las víctimas de delitos violentos y contra la libertad sexual*).

¹⁶ Article 11 of the LPC.

¹⁷ *Ibid.*, Articles 1 and 3.

action¹⁸. The LPC is furthermore complemented by some autonomic rules in a number of autonomous communities¹⁹.

For the defence of the provisions of the LPC the central authority is the Prosecuting Authority (PA) of the *Ministerio Fiscal*²⁰. As determined by its Statute, the PA has a primary role in protecting the best interests of children in judicial proceedings. The PA has special prosecutors for children (*Fiscales de Menores*) that have a leading role in criminal proceedings with children, and in any request for security measures, which may include foreign affairs (*extranjería*) or the use of judicial police (*Policía Judicial*)²¹.

Youth Justice System and Criminal Trials – Child suspects, defendants and offenders

The age of criminal responsibility is set at 14 years of age. Children who are aged between 14 years and less than 18 years can be held criminally responsible based on the commission of a criminal infraction foreseen in the Criminal Code or in other special criminal laws. Below the age of 14 years, children may not be held criminally liable but can be subjected to educational measures. According to the article 5.3 of the LCRC, the applicability of this special legislation is based on the child's age at the time when the offence was committed.

The Youth Justice System for alleged perpetrators of criminal offences in Spain is largely defined by both the LPC and by the Law for Criminal Responsibility of Children (LCRC)²², complemented by a number of Organic Laws, orders and norms as well as a number of autonomic norms described in this study²³. *Inter alia* the objectives of the LCRC are:

- To ensure that the best interests of the child is of primary importance;
- To provide differentiated treatment for different situations in accordance with the best interests of the child;
- To provide different measures per age group: children under the age of fourteen, and children aged from fourteen to eighteen;
- To assign the PA a clear role in the protection of the rights of the child.

The LCRC applies to children aged from 14 to 18 years who are suspected of having committed a crime foreseen in the Spanish Criminal Code. When a crime has been committed by a child below the age of 14 years, the law applicable is no longer the LCRC but the provisions of the Civil Code. On the contrary, the measures on protection and

¹⁸ Ibid., Article 11(2).

¹⁹ In the Basque region important aspects on the protection of children may be found in the Basque Law of the Child, and also in a number of decrees. In the Catalan region the Catalan Law of the Child is also of prime importance, and is likewise complemented by a number of decrees. In Andalucía important aspects of child protection are detailed in the Andalusian Law of the Child, and the Galician Law of the Child follows similar objectives. Furthermore, specialised laws for the protection of children may be found in the autonomous communities of: Castilla La Mancha, Extremadura, Asturias, Cantabria, Castilla y León, Aragon, Navarra, La Rioja, Murcia, Canary and Balearic Islands.

²⁰ Article 3 and 4 of the LPC; [Law 50/1981 of 13 January](#) (*Estatuto Orgánico del Ministerio Fiscal*) BOE 11 of 13 January 1982; Hereinafter PA Statute. See also *Circular de la Fiscalía General del Estado* 8/2011 of 16 November.

²¹ Article 3 of the PA Statute.

²² [Organic Law 5/2000 Regulating the Criminal Responsibility of Children](#) LCRC (*Ley Orgánica Reguladora de la Responsabilidad Penal de los Menores*) BOE 11 of 13 January 2000.

²³ Parts of the LCRC have been amended by the Organic Laws 7/2000 and 9/2000 of 22 December, 9/2002 of 10 December, 15/2003 of 25 November, 19/2003 and Law Reform LCRC; Order of 7 November of 2001 on Educational Measures for Detained Children (*Orden de los Consejeros de Educación, Universidades e Investigación y de Justicia, Empleo y Seguridad Social, por la que se regulan medidas que garanticen el derecho a la educación de menores infractores acogidos e internados en los centros dependientes del Departamento de Justicia, Empleo y Asuntos Sociales*); Royal Decree 1174/2004 of 30 July (*Decreto Real por el que se aprueba el Reglamento de la Ley Orgánica 5/2000 de 12 de enero reguladora de la responsabilidad penal de los menores*); Document 1/2007 of November 2007 of the Prosecution Authorities (*Circular de la Fiscalía General del Estado, sobre criterios interpretativos tras la reforma de la legislación penal de menores de 2006*).

guarantees announced in the LPC are applicable to all ages²⁴. All in all, the application of the LCRC must be mindful of the provisions laid down in the LPC.

Criminal trials involving children in Spain must be mindful of constitutional and civil requirements outlined at a general level. Provisions laid down by the criminal legislation largely contained in both the Criminal Code and the Criminal Judicial Law²⁵ must also be taken into account as well as measures laid down by the LPC and the LCRC in cases involving accused children. Autonomic laws must also be followed as appropriate. The LCRC is the primary legislative source for criminal trials where the accused is a child between the ages of 14 and 18 years²⁶.

The LCRC also envisages a multidisciplinary approach with a view to obtaining a comprehensive understanding of the child. In this respect, upon request of the public prosecutor, a report focused on the child's personal or family situation, as well as any other relevant factors with regard to the adoption of the measures foreseen in the Law, is prepared by an ad hoc technical team²⁷. In addition, there are several provisions which ensure the right of a child to have the matter determined by the competent authority without delay. For instance, circular 3/2009 obliges prosecutors while presenting their charges to ask the Judge for the urgent holding of hearings.

Young victims and child protection systems

Protection systems for child victims of crime are generally available through direct or assisted request to the different Ombudsmen, the PA or specialised public agencies for children. Protection measures *must* provide adequate attention to the "prevention and reparation of situations entailing risk" for the child, and assist parents in ensuring the needs of their children²⁸. Child victims that require extensive protection in Spain are defined as being in a situation of *desamparo*, which is the state in which the child is in voluntary or involuntary abandonment. In this situation with a special regime of protection, the PA assumes the main role in assuring the protection of the child, having notified parents or guardians to that effect within 48 hours. This protection may also be petitioned by the parents or guardians, and in these situations the parents or guardians may accept or reject the measures to be carried out. In all events the priority must be determined for the best interests of the child, and his/her capacity to be reinserted in the family and society²⁹. The LCRC³⁰ stipulates the establishment of a specific technical team, integrated by a psychologist, a social assistant and an educator, entrusted to facilitate the Public Prosecutor's and Judge's decisions concerning the child's education and social reintegration. Although the LCRC applies solely to cases involving children as offenders, the Criminal Procedure Act foresees the possibility, within the judge's discretion, to seek the assistance of experts in hearings concerning children³¹. Best practices in this respect include the setting up of *ad hoc* technical teams in several autonomous communities, such as Catalonia.

Both PA and Judges for Children - *Jueces de Menores* (JC)³² have a primary role in the protection of children against abuse and neglect. Furthermore, a number of special polices forces are available for child protection³³.

²⁴ Article 3 of the LCRC.

²⁵ [Criminal Judicial Law](#) (Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal) BOE 260 of 17 September 1882. See also [Organic Law 10/1995 of 23 November \(Código Penal\)](#) BOE 281 of 24 November 1995.

²⁶ Article 1 and 16 of the LCRC.

²⁷ Article 27 of the LCRC.

²⁸ Article 12.2. and Article 17 of the LPC.

²⁹ *Ibid.*, Article 18 and 22; See also Articles 172, 174 and 232 of the Civil Code.

³⁰ Article 27 of the LCRC.

³¹ Article 433 of the Lecrim.

³² As said above, *Jueces de menores* only handle cases involving children as offenders.

General Approach towards children: definition of child, participation, age and maturity, discrimination

The definition of the child in the Spanish legal system is comparable to the definition of the International Convention on the Rights of the Child. As stated above, the child has rights reflected in provisions of the Constitution, Civil Code, Criminal Code, Administrative regulations and specialised laws³⁴.

Non-discrimination is a constitutional requirement in Spain³⁵. Norms require the rights of children to be guaranteed "without discrimination on any ground of birth, nationality, ethnicity, gender, disability or disease, religion, language, culture, opinion, or any other personal, family or social circumstance"³⁶.

Training

The continuous training for judges and prosecutors take place through specific courses organised by the General Council of the Judiciary (*Consejo General del Poder Judicial*) and Centre of Legal Studies (*Centro de Estudios Jurídicos*). More specifically, in order to access the position of Judge for children (JC), the following eligibility criteria apply (in order of importance): attendance at the training program organised by the judicial School; professional experience of at least three years during the previous five years working with children cases; the seniority rule. In the latter case, before taking up office, the person concerned must attend the specialization courses determined by the General Council of the Judiciary. These criteria, however, only apply with regard to cases involving children as offenders. Professionals intervening in cases where children are either victims or witnesses are under no obligation to undertake specific training. In such cases, specialisation courses are neither mandatory nor continuous.

³³ At a state level, the police special group for children GRUME has assisted the public authorities since 1986 in actions for protecting children against abuse and neglect, along with specialists in protection of children accused or victims of criminal offenses³³. In the Catalan region most social protection services are provided by a Service for Attention to Child Victims (*Direcció General d'Atenció a la Infància i l'Adolescència*: DGAIA). The DGAIA is complemented by the Area for Support of Children in alternative care (*Àrea de Suport a Joves Tutelats i Extutelats*) all of these in collaboration with the *Mossos d'Esquadra* autonomous police force.

³⁴ Article 39.4. of the Constitution ; Articles 162.1, 322 and 323 of the Civil Code; the LPC and LCRC and applicable autonomic norms.

³⁵ Article 14 of the Spanish Constitution.

³⁶ Article 3 of the LPC.

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

A child victim of criminal action is entitled to the general rights that victims enjoy in Spain, as well as the special rights provided for children under the Spanish legal system. As such, while the general rights will be reflected in the Lecrim and Criminal Code, the specialised rights are essentially contained in the LPC and in the Law 35/1995³⁷ as well as in extensive autonomic laws for child protection outlined above.

This section describes how children report a crime and the information that is made available for them. It also introduces the measures applicable when protecting children from harm, from intrusions into their private and family life, from secondary victimisation and during interviews. Finally this section is concluded by children's rights in Spain to participate in criminal proceedings, their legal representation, access to justice and special regime of compensations and remedies.

2.1.1 Reporting a crime

Generally, a child will report a crime through his/her parents or guardians, given that collaboration with the family always takes priority if not associated to the crime.³⁸ After evaluation of the report and relevant assessments, the authorities must determine the situation of vulnerability. If the child is declared in effective abandonment (*desamparo*) the authorities assume custody once PA and specialised services have been provided with adequate notice³⁹.

A crime involving children may be reported to all Spanish security forces: Police (*Policía Nacional*) Civil Guard (*Guardia Civil*) Metropolitan Police (*Policía Local*), and in the Catalan region (*Mossos d'Esquadra*) and Basque community (*Ertzaintza*) autonomic police force. Instances involving criminal action against children may be also reported to the specialised divisions of the police forces outlined above and sources of this study: the police special group for children (GRUME) and service for attention to child victims (DGAIA)⁴⁰.

The reporting of a crime affecting a child may begin with a telephone call to emergency or police numbers, via internet, or by going to the closest police station. Usually the child will have to provide a statement of the facts, which will be assessed by the police and prosecuting bodies. The child will receive a copy of the report submitted and be assigned a case number and contact details. Children and adolescents may also report being victim of a crime to the PA of the *Ministerio Fiscal*. Furthermore, a reporting by proxy may also begin through referral of the Office of the Public Defender or Ombudsman (*Defensor del Pueblo*), the social services of public administrations including educational and health centres, or by referrals of the autonomic Ombudsmen⁴¹.

All in all, it is a matter for all public authorities in Spain to respond immediately to any requirement that a child may have, and to act if competent or effectively refer the matter to the competent authority, representatives or PA⁴².

³⁷ Law on aid and assistance to victims of violent crime and crimes against sexual freedom.

³⁸ *Ibid.*, Article 15.

³⁹ *Ibid.*, Articles 18 to 21; See also Article 172 of the Civil Code.

⁴⁰ [Policía Nacional](#); [Guardia Civil](#); [Ertzaintza](#).

⁴¹ Article 10 of the LPC; For the Catalan region see also Articles 16, 17, 92 and 93 of the CLC.

⁴² Articles 3 and 14 of the LPC.

2.1.2 Provision of information

Along with the general entitlements for provision of information for victims of crimes⁴³, children have the right to search for, obtain and use the information they require for the advancement of their cause or personal development. The provision of lawful information to the child victim of a crime in Spain must be facilitated by parents, guardians, legal representatives and all public authorities⁴⁴.

However, the protection of child victims, including the provision of information during proceedings is regulated by general norms, and a comprehensive law for protecting children who are victims is not currently available in the Spanish legal framework, and thus cannot constitute a source to the present study. Nevertheless, according to information provided by national authorities in the process of validation of the present study, the adoption of a new comprehensive framework for the standing of the victim via a reform of the criminal procedural code is currently underway in Spain⁴⁵.

Law on aid and **assistance to victims** of violent crime and crimes against sexual freedom⁴⁶ requires Judges and magistrates, members of the Public Prosecution, public authorities and officials involved by reason of his position in the investigation to, inform the alleged victims about the possibility and procedure to request aid covered by this Act. They have the obligation to inform the victim of the course of the investigation. In all situations, research process interrogation of the victim must be made with respect to the personal situation, rights and dignity of the victim. The Judicial Secretary is in charge of ensuring that the victim is informed in clear terms of the possibilities for a restitution and compensation for damage sustained and the possibilities of achieving the benefit of legal aid⁴⁷. Also it is required to ensure that the victim is informed of the date and venue for the trial and that it will be served with the decision that falls, though not a party to the process. Even though this law is not specifically adopted for the protection of children, it does not exclude them from its scope⁴⁸.

As mentioned in the overview, a specialised Victims' support Office provides support to child victims and their families such as by providing standardised children information protocols and pre-trial visits to court facilities⁴⁹.

2.1.3 Protection from harm and protection of private and family life

Protection from harm

Norms require parents or tutors and all public authorities to protect children from harm. When a suspected crime is reported the police must carry out an assessment as to whether the victim's security may be at risk. In the case of children this assessment of vulnerability is required to be exhaustive and to carry out measures in accordance to the level of maturity of the child. In all situations the views of the child are to be taken into consideration, and assessments and procedures to be determined accordingly⁵⁰.

In situations of risk or vulnerability public authorities are obliged to make available all efforts to protect the rights of the child, reduce the factors that create the risk and manage the personal implications that a denouncement might entail. Along with measures to reduce the

⁴³ As outlined in the Lecrim.

⁴⁴ Article 5 of the LPC.

⁴⁵ For further information, please see : <http://www.senado.es/web/index.html>

⁴⁶ Law 35/1995 (Ley de ayudas y asistencias a las víctimas de delitos violentos y contra la libertad sexual), 11 December, articles 15 and 16.

⁴⁷ Article 2 of the Royal Decree 3/2013 grants the right to legal aid to children victims of situation of ill-treatment or abuse.

⁴⁸ This general obligation to provide information is also referred to in the Lecrim: Articles 448(3) and 707.

⁴⁹ Law 35/1995 of 11 December 1995 on help and assistance to victims of violent offences and offences against sexual freedom (*Ley 35/1995, de 11 de diciembre, de ayudas y asistencia a las víctimas de delitos violentos y contra la libertad sexual*).

⁵⁰ Articles 12 to 16 of the LPC.

impact on the child, the relevant public authority has the duty to monitor the developments of the child within his/her family. When a child is in situation of effective abandonment (*desamparo*) the public authorities must act in accordance to the provisions of the Civil Code, and adopt the guardianship of the child when the parents or tutors cannot provide for the child or when petitioned by the Judge ⁵¹.

The police and competent authorities must be mindful of the child's best interests, and protect the private and family life of the victim. In order to assure the security of the victim, the authorities should provide follow-up services, which may range from appointing supervisors to monitoring services⁵². Restrictions may be imposed on contact with certain persons, victims or witnesses, and likewise orders restraining access to certain locations or areas. In the most serious instances of threat or possibility of harmful actions, authorities may assign a specialised body⁵³.

When the perpetrator is a parent or a relative, they can be deprived of the rights of parents established in the civil code as a precautionary measure. In addition, Law 27/2003 allows for the adoption of interim measures for the protection of children.

Protection of private and family life

Norms establish that children have a right to their honour, and a right to their personal and family privacy, which includes their home and their communications⁵⁴. Furthermore, all public authorities are requested by the Law to provide adequate notice to the family or guardians whenever their child is under the effective responsibility of this authority, excepting cases with a specific restriction imposed by judicial resolution. Excepting these cases regarding the interests of justice, in all diligence the principle of collaboration with the family must be respected and "not interfere with [his/her] schooling, or social or professional development"⁵⁵.

All in all, the Spanish rules require the public authorities to protect the child in any situation that might represent an impediment to his/her personal or social development. The PA must act against any situation that may expose the personal image or information regarding the child, Likewise, in situations of risk the authorities must carry out assessments and follow-up to the child and his/her family. Specifically in situations of risk or vulnerability the public authorities are required to take into account the family needs of the child, especially in procedures of protection for voluntary or involuntary abandonment (*desamparo*)⁵⁶.

Sources of this study have indicated that certain aspects related to confidentiality may be in breach of the LPC provisions in criminal cases which are in the public eye. In these cases media investigations parallel to those carried out by the police may hinder the investigation and impair the rights of the children, by means of frequent diffusion of personal image and information in the media, giving family details and causing subsequent social consequences. The PA is bound to act in the face of such challenges and to request compensations for the damage caused⁵⁷.

2.1.4 Protection from secondary victimisation and ensuring a child friendly environment

In order to prevent secondary victimisation prosecutors are expected to restrict appearances of the victims, limiting declarations before the courts to those essential for the course of justice. Authorities are required to prevent "returns" to the elements of the violation and "speeding" procedures in order to reduce the traumatic experience of the child. Physical,

⁵¹ Ibid., Articles 17 to 19. See also Article 172 of the Civil Code.

⁵² Article 23 of the LPC. See also Article 174 and 232 of the Civil Code.

⁵³ Articles 10 and 14 of the LPC.

⁵⁴ Ibid., Article 4.1.

⁵⁵ Ibid., Article 22 and 15.

⁵⁶ Ibid., Articles 17, 18 and 21.1.

⁵⁷ Ibid., Article 4.

psychological and emotional consequences must be weighed up in any exercise of all public authorities, especially in sexual crimes⁵⁸.

To avoid multiple appearances of the child in court, the Spanish criminal system foresees the possibility to constitute an adjudicated fact or *preconstitución probatoria*. The object of this measure is to restrict the number appearances of children, while ensuring the fulfilment of the rights of the accused by providing access to the declaration of facts to the defence lawyer. However, legal practice documents indicate that the application of these measures may be complex in allegations of sexual offences⁵⁹.

Before the trial, several categories of professionals, such as specialised divisions of the police forces (notably the GRUME, see § 2.1.1) hold a duty to protect the children victims from undue hardship. The police forces consulted for this study have emphasised that a number of protocols and guidelines regulate their action with children. Nevertheless, these internal norms are only available to the authorities concerned and not available to the general public, and neither are they available as a source of this study⁶⁰. These rules cover aspects to ensure a child friendly environment within the tasks of the police, such as are not wearing uniform but rather normal clothing, or transporting children in a normal vehicle instead of an official police car. These sources have also assured that in all newly constructed police stations special rooms with toys are available for children. However, other sources to this study have stressed concern for the lack of infrastructure within the judicial system for children's concerns; both in human and material terms.

Moreover, there are no specific rules in place with respect to the pre-trial proceedings prescribing mandatory procedures for cases involving children as victims. Therefore, the application of a given protection measure, such as the involvement of experts (psychologists or social workers) or the use of *preconstitución probatoria*, are left within the sole judge's discretion.

However, in some autonomous communities, such as Catalonia⁶¹ and Andalusia, children hearings are conducted by well-established technical advice teams or Victims' support Offices.

With regard to the trial proceedings, Lecrim⁶² provides protection measures in the event the child victim is also witness.

2.1.5 Protecting the child during interviews and when giving testimony

The protection of child victims and witnesses is a core obligation of both the PA and jurisdictional bodies. On the basis of the Statutes of the Department of Public Prosecution⁶³, the Public prosecutor is made responsible for ensuring procedural protection of victims as well as protection of witnesses and victims by promoting appropriate mechanisms so that they receive effective support and assistance. The legislation in Spain requires that due attention must be paid to the protection of the child or adolescent during interviews and while giving testimony, and that this must be "adequate to the situation of the child, his personal development and privacy"⁶⁴.

⁵⁸ Legal Proposal to the Spanish Congress (*Proposición no de Ley aprobada por unanimidad en el Pleno del Congreso de los Diputados*) in 16 April 2002; Decisions of the Supreme Tribunal (*Sentencias del Tribunal Supremo*) 673/2007 of 19 July and 332/2006 of 14 March.

⁵⁹ Ibid.

⁶⁰ Nevertheless, according to information provided by national authorities in the process of validation of the present study, some of those norms are laid down in publicly accessible acts, such as the Police Protocol Action in cases of children of 2007.

⁶¹ See Law 25/2010 of 29 July 2010 on Book II of the Civil Code of Catalonia regarding the person and the family (*Ley 25/2010, de 29 de Julio, del libro Segundo del código civil de Cataluña, relative a la persona y la familia*).

⁶² Articles 448 and 707 of the Lecrim.

⁶³ Article 3.10 of the Law 50/1981.

⁶⁴ Article 9.1. of the LPC; See also Decision of the Supreme Tribunal (*Sentencia del Tribunal Supremo*) 429/2002 of 8 March.

Any questioning of the child must be exercised with respect for his/her personal situation, rights and dignity. In the case of children, interviews and declarations must be carried out in the presence of parents, guardians or any other person qualified to assist in the matter. When victims and witnesses make a declaration, visual contact with the accused must be avoided and any technical means available, such as screens, must be provided in order to facilitate this⁶⁵. Likewise, the Charter of Citizens' Right to Justice foresees the use of videoconferences or video links for hearing children⁶⁶.

2.1.6 Right to be heard and to participate in criminal proceedings

Spanish legislation extensively recognises the right to be heard for child victims. Children have the right to be heard in their family, as well as in any administrative or judicial proceeding that affects their personal, family or social life. The right to be heard must be weighed against the necessity to appear in court. Adequate attention must be given to the personal development and situation of the child or adolescent, and efforts must be made to ensure his/ her privacy⁶⁷.

The child must exercise the right to be heard by him/ herself. On certain occasions the child's right may be exercised by a person that the child wishes to represent him/her, or by a legal representative, provided neither of these have an interest in or are parties to the proceedings. A denial of audience must be reasoned and notified to the PA as well as to the parties to the proceedings⁶⁸. Furthermore, circular 3/2009 of the Prosecutor General's Office, even if this is not an statutory measure and thus non mandatory, provides guidelines and recommendations on how to interview child victims and witnesses (e.g., Public Prosecutors are instructed to take into account experts' opinions about the child's risk of testifying. They can suggest alternative ways of obtaining their statements, such as pre-constituted evidence or abstaining from testifying and using the statements of other witnesses as evidence. etc.). See more details in S. [2.1.4](#).

2.1.7 Right to legal counsel, legal assistance and representation

As mentioned in [S 2.1.6](#), Spanish norms require that the right to legal counsel, legal assistance and representation be mindful of the best interests of the child or adolescent victim. The legal counsel, assistance or representation of the child must be of their choice, and parents, representatives or guardians may participate along with the child, provided they don't have an interest in the proceedings or are parties⁶⁹.

2.1.8 Remedies or compensation exist for violation of rights and failure to act

Protection measures defined in the LPC call for the "prevention and reparation of situations entailing risk" for the child to be prioritised⁷⁰. Compensation for victims of crime is foreseen by norms, and those found guilty are required to repair and compensate for the damage caused. As indicated in [S.2.1.3](#), for child victims of a crime affecting their honour, privacy and/or image, prosecuting authorities must request compensation alongside security measures⁷¹.

⁶⁵ Articles 448 and 707 of the Lecrim. See also [Law 19/1994 of 23 December](#) (*Ley de Protección a testigos y peritos en causas criminales*) BOE 307 of 24 December

Hereinafter: Law Protection Witnesses.

⁶⁶ Charter of rights of citizens before the justice, section 16. Non-legislative proposal approved by the plenary Congress of the Deputies, by unanimous vote of all parliamentary groups, on April 16, 2002 (*Carta de derechos de los ciudadanos ante la Justicia*, section 16. *Proposición no de Ley aprobada por el Pleno del Congreso de los Diputados, por unanimidad de todos los Grupos Parlamentarios, el día 16 de abril de 2002*).

⁶⁷ Article 9.1. of the LPC.

⁶⁸ Ibid., Articles 9.2. and 9.3.

⁶⁹ Ibid., Articles 9 and 15.

⁷⁰ Ibid., Article 12.2. and Article 17.

⁷¹ Ibid., Article 4.2.

Spanish law requires that remedies or compensation for violation of rights may be requested by the judge as a part of the sentence⁷².

2.2 The child as a witness

To a large extent, the rights of children in criminal proceedings have similar provisions for both witnesses and victims. As such, parts of this section are similar to the provisions outlined in previous [S.2.1](#). As is the case for children in the situation of victims, the general protections for a child to be a witness in criminal proceedings are established in the Lecrim⁷³.

As in the case of victims, the protection of child witnesses is a core obligation of the PA, which must also determine and facilitate any measures required for meeting the needs of the child⁷⁴.

The code for the protection of child witnesses in criminal proceedings was reformed in 2006, introducing different amendments to both LCRC and Lecrim. This reform *inter alia* established measures to protect all children called to testify in court, without discrimination on grounds of age or the nature of the facts witnessed⁷⁵.

2.2.1 Reporting a crime

In Spain, when a child reports a crime as a witness, similar provisions to those outlined in [S.2.1.1](#) apply. Consequently, a child demanding assistance to report a crime that he/she has witnessed is entitled to immediate assistance from any citizen, any social services and any public authorities. Where not competent, the person or body requested to report must refer to the competent body and effectively notify the PA and representatives of the child⁷⁶.

Provided there is no interference with the course of justice, on most occasions a child may report a crime through his/her parents, representatives or guardians and thus the principle of collaboration is upheld⁷⁷. Children that have witnessed crimes may report at any police station, or by communicating the information to the PA. Likewise, a report may also begin via internet or by calling security or social services. The consultations carried out for this study revealed that this is frequently the option chosen by children concerned about possible consequences of reporting via one of the standard channels. The report may also start through a referral by social, health or educational services, or through the different ombudsmen outlined above⁷⁸.

Once reported, the authorities must carry out the necessary evaluations and adopt the necessary measures to resolve situation for the child victim.⁷⁹ In situations of effective abandonment of children, which may result from the crime being witnessed, the authorities must act with adequate guarantees that the situation of abandonment or *desamparo* requires⁸⁰. In situations that may entail risks for the child but where a request of custody for *desamparo* is not necessary, the public authorities must facilitate all measures to reduce the risk to the child, ensure the protection of the child and family, and provide adequate feedback⁸¹.

⁷² Articles 2.3. and 9.2. to 9.4. of [Law 1/1982 of 5 May on the protection of honor, personal privacy, family life and image](#) BOE 115 of 14 May 1982.

⁷³ Articles 433 and 448 of the Lecrim.

⁷⁴ Article 3 of the PA Statute.

⁷⁵ [Law 8/2006 Reform of the LCRC](#) (*Ley por la que se modifica la Ley Orgánica 5/2000 de 12 de Enero, reguladora de la responsabilidad penal de los menores*) BOE 290 of 5 December 2006. See also Law Protecting Witnesses.

⁷⁶ Article 14, 15 of the LPC.

⁷⁷ Ibid.

⁷⁸ Ibid., Article 10. See also Articles 17, 92 and 93 of the CLC.

⁷⁹ Article 16 of the LPC.

⁸⁰ Ibid., Articles 15 and 18 to 21. See also Article 172 of the Civil Code.

⁸¹ Article 17 of the LPC.

2.2.2 Provision of information

The provision of information to child witnesses follow the same procedure as outlined in [S.2.1.2](#). Children acting as witnesses in Spanish judicial proceedings must be aware of their rights, of which they are informed in the presence of their parents, tutor, guardian or qualified representative. Details of both the child's rights and procedure of the case must be facilitated at all stages of the process and with adequate feedback⁸².

2.2.3 Protection from harm and protection of private and family life

As indicated in [S.2.1.3](#), protecting all children from harm is a major obligation for all Spanish public administrations. Protection from harm and protection of the child's private and family life is established in the Civil Code (*Código Civil*), which sets a number of procedural guarantees with respect to the right of children to be heard and protected.⁸³

After the prescribed assessment of the declaration of the child witness, the authorities must ensure the security of the witness and prevent any further harmful actions that may result from having reported the crime. The authorities must also ensure that no confrontations or meetings with the accused or with victims take place, and be mindful of any possible adverse effects of such encounters on the child's personal development or on the family of the child. Protection provided by authorities may include special measures for cases of vulnerability and abandonment (*desamparo*)⁸⁴.

As such, children that have witnessed criminal acts are entitled to the specific protection defined in the LPC, along with the general application of measures foreseen in the Law Protecting Witnesses. However, a comprehensive norm detailing the rights of children providing testimony in any criminal proceeding could not be identified during this study.

The LCRC⁸⁵ refers to rules of criminal procedure for the protection of witnesses and experts⁸⁶. For instance, visual contact between the child and the offender should be avoided by any technical means possible. Face to face statements are also restricted. Furthermore, the Court can ask for the child's removal from the room, at its own initiative or at the request of either party, if it considers that attendance might adversely affect his/her interests.

2.2.4 Minimising the burden of proceedings and ensuring a child friendly environment

In order to minimise the burden of proceedings and ensure a child-friendly environment, similar provisions to those outlined in [S.2.1.4](#), may be applied.

As such, the PA has a primary role in minimising the burden of proceedings and ensuring a child friendly environment for children providing testimony in criminal proceedings. The PA must weigh up the child's best interests and possible situations of re-victimisation⁸⁷.

2.2.5 Protecting the child during interviews and when giving testimony

Similar provisions to those outlined in [S.2.1.5](#), apply to children being interviewed or while giving testimony in criminal proceedings. According to articles 416 and 707 Lecrim, the child witness-victim is exempted from the obligation to give testimony. The child is informed of this right according to the law.

The regulations protecting the child when providing testimony are equally applicable to all stages of the criminal proceedings, and thus to preliminary, pre-trial and trial declarations. Likewise, aspects detailed above on *preconstitución probatoria* or adjudication of facts prior

⁸² Articles 5 and 17 of the LPC.

⁸³ Articles 154, 172 and 173 of the Civil Code.

⁸⁴ Articles 17 to 19 and 21.1. of the LPC. See also Article 172 of the Civil Code.

⁸⁵ Article 37.3 LCRC.

⁸⁶ See Law 19/1994 on the protection of witnesses and expert in criminal proceedings (*Ley de protección a testigos y peritos en causas criminales*).

⁸⁷ Document of the PA 3/2009 on the Protection of Children Victims and Witnesses.

to criminal proceedings are also applicable within this context. Jurisprudence requires that testimony is formally requested by the competent trial chamber and that while giving testimony as a witness the Judge will provide adequate information in a clear and comprehensible language while confirming the existence of the allegations. This law also determines that children acting as witnesses in criminal proceedings must testify in the presence of experts and with permission of the PA. This declaration may be made in presence of parents or guardians, except by specific order of the Judge or when they have been charged in the same proceedings⁸⁸.

Furthermore, witness declarations of children must be exercised without visual contact between the child and the alleged perpetrator. The use of any technical measures is foreseen to that end⁸⁹. Nevertheless, the competent judge may request the child to testify when considered essential and determined by experts as not damaging to the best interests of the child witness⁹⁰.

Spanish norms foresee the possibility of testifying through videoconference whenever the court finds a serious concern for the best interests of the child⁹¹. Likewise the internal rules of the PA establish that these authorities may provide measures in the best interests of the child during testimony, such as making a statement in a closed session or together with family members or experts within the child's environment. The child is assisted in making a statement by members of the PA without formal clothing. Clear and comprehensible language is also used to assist the child⁹².

2.2.6 Right to be heard and to participate in criminal proceedings

Aspects concerning the right to be heard and to participate in criminal proceedings for child witnesses are largely the same as the rules identified in [S.2.1.5](#), as well as in the previous two sections.

All in all, the child's right to be heard is recognised in Spanish norms, and must be determined in accordance to the specific situation of the child, and his/her personal privacy and development. The child has the right to exercise this right by himself/herself, although parents and representatives may assist in the expression of this right provided that it is the will of the child and that they are not parties to the criminal case. Denial of audience must always be motivated⁹³.

2.2.7 Right to legal counsel, legal assistance and representation

As recalled in [S.2.1.7](#), the LPC recognises children's right to legal counsel, legal assistance and representation. It stresses that such assistance be provided in accordance with the child's best interests. It must therefore result from his/her choice, together with that of parents or guardians when not in contradiction with the interests of justice.

As in the case of victims, child witnesses are entitled to the assistance of a lawyer (*turno de oficio de menores*), as well as the assistance of the PA⁹⁴. Children may also access legal counsel and assistance through the different services for legal counsel and assistance (*servicios de orientación jurídica*), available in the different autonomous communities or linked to the Bar Associations (*Ilustres Colegios de Abogados*) in a great number of cities.

⁸⁸ Article 433 of the Lecrim.

⁸⁹ Ibid., Article 448 and 707.

⁹⁰ Ibid., Article 455.

⁹¹ Ibid., Article 707. See also Article 229 of the Law of the Judiciary (*Ley Orgánica del Poder Judicial*) and Law Protecting Witnesses.

⁹² PA Statute.

⁹³ Article 9 of the LPC.

⁹⁴ Article 119 of the Spanish Constitution;

These free legal services have a special division of legal counsel and assistance for children⁹⁵.

2.2.8 Remedies or compensation for violation of rights and failure to act

No special provisions have been identified for a particular regime for compensation for child witnesses. However, the provisions indicated in [S.2.1.3](#) and [S.2.1.8](#), for instances affecting the honour, privacy and/or image of the child, may also be applicable to witnesses, and likewise the PA must request compensations for any damages caused⁹⁶.

2.3 The child as a suspect/defendant

The present section refers to children in the position of alleged perpetrator, focusing on the age of criminal responsibility in Spain, together with the provision of information to the child and the action of the security forces. This section also outlines the conditions of pre-trial and custody detention, protection of family and private life of the child charged with the criminal offence, while considering the alternatives to judicial proceedings, measures for minimising proceedings and ensuring child-friendly justice. Finally this section discusses provisions relating to audience, counsel, protection measures and remedies.

2.3.1 Age of criminal responsibility

In Spain children may not be held "fully" criminally responsible⁹⁷. A limited criminal responsibility is foreseen for adolescents from the age of 14 and under the age of 18 years old⁹⁸. For children under the age of 14 years criminal rules are not applicable and the procedure is determined by civil protection rules⁹⁹.

As a result, the established sanctions for child offenders must entail a combination of both educational and sanctioning measures for both children between the ages of 14 to 16 and between 16 to 18 years old. However, in certain circumstances the Criminal Code also provides for the possibility of giving priority to criminal responsibility. These cases are when the child's actions represent a "serious offence, committed within a group or a gang"¹⁰⁰, as well as when there exists recourse to "violence or a serious threat to life or physical integrity"¹⁰¹. The LCRC also foresees that when the case is based on multiple actions, the action to be charged is the one that constitutes the most serious offence¹⁰².

2.3.2 Provision of information

Children between the ages of 14 and 18 liable for criminal action will be provided with the information and set of rights as defined in the LCRC and LPC. As explained in [S.2.1.2](#) and [S.2.2.2](#), children in Spain have a general right to access information affecting their lives¹⁰³.

The Clerk informs the child under investigation, in an understandable language that is suitable for the child's age level, of the measures and civil liability actions requested by the public prosecutor. Children have the right to be informed promptly and in a suitable language of the nature and cause of the charge against them, of the reasons for their privation of

⁹⁵ See for instance regarding legal counsel service at the autonomic level: [Madrid legal counsel service](#); [Basque orientation service](#); [Andalucian legal counsel service](#); [Catalan legal counsel service](#). With respect to legal counsel services linked to the Bar Associations (*Ilustre Colegio de Abogados*) see for instance in [Madrid](#); in [Valencia](#), [Sevilla](#); or in [Granada](#).

⁹⁶ Article 4.2. of the LPC.

⁹⁷ Article 19 of the Criminal Code.

⁹⁸ *Ibid.*, Article 1.1; See also Article 1 of the LCRC.

⁹⁹ Article 3 of the LCRC.

¹⁰⁰ *Ibid.*, Article 9.2.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*, Articles 11 to 13.

¹⁰³ Article 5 of the LPC.

liberty, as well as their rights, such as the right to access a lawyer¹⁰⁴. If the child, or his/her parents or legal guardians do not appoint a lawyer, such appointment will be carried out *ex officio*.

Furthermore, the PA bears the main role in the defence of the child charged with a criminal offence, and requires this authority to ensure the participation of the child in the proceedings. This law also requires the PA actions to be carried out with due regard to the best interests of the child and for the guarantees of a fair trial. This includes providing information at the different stages of the criminal proceedings¹⁰⁵.

2.3.3 Immediate actions following first contact with police or other relevant authority

While matters affecting civil responsibility are within the competence of JC106, the PA is responsible for the instruction of criminal actions and determines the most appropriate course of, once the JC has been notified¹⁰⁷.

At this stage the PA may substitute charges for correctional measures within the family or in educational centres, provided the actions brought against the child are constitutive of a minor offence without violence, and always in light of the best interests of the child. Likewise cases of child offenders under the age of 14 years will be transferred to the civil jurisdiction¹⁰⁸.

As previously outlined, Spanish norms state an obligation of 'immediate attention' to situations affecting children. All authorities and civil servants who are involved in the detention of a child are required to carry out their task in the manner least harmful to the child, using the most clear and comprehensible language, and providing adequate information of the actions brought against the child, including the reason for the detention and acknowledging his/her rights in the process. Authorities must immediately report the detention to parents or guardians and inform them of the place of custody of the child. Moreover, the 2007 Police Protocol of Action foresees the child's right that his or her parents or legal guardians are informed of their arrest and the place where they are being held. Where the child is not a Spanish citizen, the authorities must report the matter through the relevant consulate¹⁰⁹.

2.3.4 Conditions for pre-trial detention/ custody

At the pre-trial stage, the competent Judge can order several interim measures, such as: internment, controlled freedom, prohibition to contact or communicate with the victim, the victim's relatives or other persons. The decision must be founded on the risk that the child may either elude justice or aggress the victim¹¹⁰ and is made at the request of the Prosecutor.

In 2006 a prescription of six months of pre-trial detention was introduced for young offenders. This law also set the possibility of weekend custody for minor offences, while for serious offences provision is made for the possibility of transfer to a penitentiary centre¹¹¹. In cases of child offenders from 16 years of age, detention may be included (*internamiento en régimen cerrado*) and may be prolonged for up to 6 years¹¹². For crimes including homicide, sexual aggression or terrorism this period may be extended for up to 8 years, and even for

¹⁰⁴ Police Protocol of action in cases of children of 2007,

¹⁰⁵ Ibid. See also Article 6, 25 and 36 of the LCRC.

¹⁰⁶ Articles 2, 6 and 16 of the LCRC.

¹⁰⁷ Ibid., Article 16.

¹⁰⁸ Ibid., Article 14 and 18. See also Article 27.4. on measures proposed by specialists.

¹⁰⁹ Article 17 LCRC and Article 520 of the Lecrim.

¹¹⁰ Article 28.1 of the LCRC.

¹¹¹ Law Reform LCRC. See also Article 15 of the LCRC.

¹¹² Article 10.1. of the LCRC.

up to 10 in cases of multiple offences (*concurso criminal*), when it would also entail subsequent security measures for a period up to 5 years after the offender is released¹¹³.

While in detention, the child must remain in custody in adequate premises and be separated from detention facilities for adults. Children must receive adequate care and protection, as well as social, psychological and medical assistance, all of which must be provided in accordance to their age, gender and individual circumstances¹¹⁴. Detention by police authorities may never exceed the period strictly required, and its duration must be restricted to the time needed for the adjudication of facts. It may never be longer than 24 hours¹¹⁵.

However, if detention is referred to the PA, this may be prolonged for another 24 hours, with adequate notice to the competent JC. It is also possible to submit a writ that a child in detention be brought before a court for their detention to be reviewed (*habeas corpus*.) In such circumstances both the PA and JC must immediately attend to the matter¹¹⁶.

2.3.5 Protection of private and family life

Excepting those cases exposed to mass media/public interest, most criminal cases involving children as perpetrators in Spain protect the child's name and identity, his/her image and rights, as well as implications for his/her privacy and family life. Names, pictures, personal details and information may be made public and may include those of family members and persons close to the alleged offender.

For the purposes of avoiding any prejudice for the children which may result from their defendant status being disclosed to the general public, mass media may neither obtain nor publish images of the child and/or data that allow his/her identification¹¹⁷. The Judge and the Prosecutor are legally bound to demand strict compliance with this provision. Additionally, every participant in the proceedings is obliged to respect the child's right to confidentiality and cannot diffuse their personal data or other relevant information included in the file¹¹⁸. As a general rule, Court hearings are open to the public. However, they may be closed by exception when the interests of the child so requires. In these cases, the Law authorises the judge to sit in Chamber¹¹⁹. Furthermore, the Court can ask for the child's removal from the room, at its own initiative or at the request of either party, if it considers that it is in the child's best interest.

2.3.6 Alternatives to judicial proceedings

Spanish legislation¹²⁰ foresees the possibility of resolution of the proceedings through reconciliation between the victim and the child offender (*Sobreseimiento del expediente por conciliación o reparación entre el menor y la víctima*). This arrangement is only possible for actions that represent a minor offence (*falta or delito menos grave*). The PA may also decide not to press charges with respect to non-violent offences where the child offender has offered to:

- apologise and to make reparation and this has been accepted by victim,
- to take part in an educational programme or mediation service suggested by the assigned specialists.

¹¹³ Ibid., Article 11.2.

¹¹⁴ Ibid., Article 17.3.

¹¹⁵ Ibid., Article 17.4; See Article 520 Lecrim.

¹¹⁶ Articles 17.5, 17.6, 16 and 28 of the LCRC.

¹¹⁷ Article 35.2 LCRC.

¹¹⁸ Article 35.3 LCRC.

¹¹⁹ Article 35.2 LCRC.

¹²⁰ Article 19 LCRC.

When reparation is made to another child, the consent of the parents or guardians is required. The most frequent alternative to judicial proceedings is mediation whenever possible, or giving greater emphasis to educational measures¹²¹. The Police Protocol¹²² for action in cases of children provides guidelines for law enforcement personnel when dealing, amongst others, with children deprived of parental care. These rules cover the provision of a child friendly environment within the tasks of the police, such as are not wearing a uniform but rather normal clothing, or transporting children in a normal vehicle instead of an official police car.

2.3.7 Minimising the burden of proceedings and ensuring a child friendly environment

Structural factors of the Spanish legal system similar to those described in [S.2.1.4.](#) and [S.2.2.4.](#) are applicable with respect to ensuring a friendly environment for children accused of a crime. The minimisation of the burden of proceedings for children largely depends on the judicial adjudication of facts, and thus on the complication of each case. However, most of the provisions of the LPC and LCRC are also applicable to children accused of perpetrating crimes, and therefore these are measures of promptness, reducing the impact on the personal development of the child, his or her family and society at large. The forthcoming additional provision of the LCRC provides that the General Council of the Judiciary, the Minister of Justice and the National Council of Lawyers have a duty to specialise in so far as they deal with juvenile justice related issues.

2.3.8 Protecting the child during interviews and when giving testimony

All children charged with a criminal offence must make their statement before their assigned specialist child lawyer (*turno oficio de menores*) and in the presence of their parents, guardians or legal tutors when not in contradiction with the interests of justice. When parents or guardians are parties to the proceedings, the PA must be present during any statements and represented by a different person from the one in charge of the instruction of the case¹²³.

2.3.9 Right to be heard and to participate in criminal proceedings

It follows from what has been described in [S.2.1.](#) and [S.2.2.](#) that children have a basic right to be heard in criminal proceedings. This study's sources have indicated that this right to be heard is more often enforced and offers more factual guarantees for child offenders than for child victims or witnesses largely due to the fact that the general rights of the accused are more extensive compared with general rights for victims.

2.3.10 Right to legal counsel, legal assistance and representation

Children accused of having perpetrated a crime have the same right to legal counsel, legal assistance and representation as that described in [S.2.1.7.](#) and [S.2.2.7.](#) As in the adult system, the lawyer in the juvenile justice system is involved in each phase of the process in order to safeguard the child's rights. Moreover, legal assistance is compulsory in criminal proceedings and the right to legal assistance cannot be waived¹²⁴. In particular, the child has the right to a lawyer¹²⁵ from his very first contact with the legal system, i.e. from the time of his arrest by the police¹²⁶. If the child is a foreigner he or she has the right to an interpreter to

¹²¹ As defined in Article 19, LCRC. See for instance Law 1/2008 of 8 February on Family Mediation (*Ley de Mediación Familiar*).

¹²² Article 4.

¹²³ Article 17.2. of the LCRC.

¹²⁴ T. Spronken, G. Vermeulen, D. de Vocht en L. van Puyenbroeck, *EU Procedural Rights in Criminal Proceedings*, Antwerp-Apeldoorn-Portland, Maklu, 2009, 78-79.

¹²⁵ *Rectius*, the right to appoint a lawyer or have a lawyer appointed *ex officio* and to meet privately with him/her, even before to make any statement: «Designar abogado que le defienda, o a que le sea designado de oficio y a entrevistarse reservadamente con él, incluso antes de prestar declaración », Article 22.1 LCRC.

¹²⁶ From the very opening of the procedure (*incoación del expediente*), as stated in article 22.1 LCRC.

be able to understand and contribute to the proceedings. When children are held in short-term custody, before a statement is taken, a written notice of the time, place and purpose of the taking of the statement is given, *inter alia*, to their lawyer.

2.3.11 Remedies or compensation for violation of rights and failure to act

No specific provisions have been identified concerning remedies and compensations for defective sentencing or accusation for instances of criminality involving children. Nevertheless, child suspects who had their identity or image, or any other protected right exposed to public opinion and media attention are entitled to the general rights for remedies and compensation established in general criminal law.

As regards judicial review and appeals, judicial decisions of a JC may be reviewed by the Supreme Court (*Tribunal Superior de Justicia*). Such appeals must be lodged with the JC who determined the sentence within five days from the date on which the formal notification of the decision subject to appeal was made. The decision for appeal may be public or private in accordance with the child's best interests, with the presence of all parties to the trial, along with specialised personnel assisting in the provision of protection measures established for the child. During appeals a reconsideration of facts may be carried out if these facts were not established in accordance with the provisions of criminal law¹²⁷.

With regard to procedural appeals affecting the trial, judicial review may be also requested for such decisions within a period of three days from its formal notification. The corresponding decision may also be appealed¹²⁸, as may decisions for provisional measures (*medidas cautelares*), reprimands (*amonestación*) or suspension (*suspensión de la ejecución del fallo*)¹²⁹. Appeal decisions may also be a matter for judicial review (*recurso casación*) when the child defendant is over the age of sixteen and formally accused of criminal behaviour involving threat and violence that entails a sentence of up to five years in a closed regime (*régimen cerrado*) followed by another period of up to five years of monitored probation¹³⁰.

Such appeals may be requested by both the defence counsel of the Child and PA, and may also be reasoned for the purpose of the unification of doctrine. This form of appeal must be extensively reasoned and describe the procedural contradiction which would be damaging to the child's best interests. The resulting decision for certification may be also appealed, and must be adopted within a period of three to ten days, depending on whether this appeal meets its grounds for admission. Finally, the LCRC foresees the possibility of *habeas corpus*, which provides for a special regime involving *prima facie* attention of both JC and PA¹³¹.

¹²⁷ Ibid., 41.1. of the LCRC. See also Lecrim.

¹²⁸ Article 41.2. of the LCRC.

¹²⁹ Ibid., Article 41.3. See also Lecrim.

¹³⁰ Articles 9.4. 9.5. and 42.1. of the LCRC.

¹³¹ Ibid., Article 42.2. to 42.8.

3 Child-friendly justice after judicial proceedings

The ultimate aim of criminal regulations for children is their reinsertion in society. This reinsertion must be facilitated by educational measures and specialised personnel. As outlined in the previous sections, the provision of child-friendly justice after judicial proceedings is to a large extent the competence of the autonomous community. The autonomous community has the prime responsibility for seeing that measures of rehabilitation, community service or education are carried out after sentencing of children between the ages of fourteen and eighteen years.

3.1 The child as a victim or offender

Children who are victims of criminal offences are provided with social services adapted to their particular case. Children victimised by their parents or guardians may be in a state of effective abandonment, and in such a case, authorities acquire custody of the child as foreseen in the regulations for effective abandonment or *desamparo*¹³². Children that are victims of minor offences committed by other children may reach an informal settlement, which may require the permission of parents or guardians¹³³.

With regard to children as offenders, on certain occasions the measures constituting the offence may be reviewed with the agreement of the parties at trial together with the assessment of a team of specialists. This review may provide for a reduction or a termination of the measures imposed, once established that this decision is in the best interests of the child. Such decisions of the JC must be reasoned and may be appealed by legal representatives of the child within the prescribed terms¹³⁴. In cases of multiple offences, the assigned JC, the PA, the defence for the child and the team of experts may substitute all or any measures for subsequent fulfilment of alternative measures, that may never exceed the total prescription of the original sentence¹³⁵.

3.1.1 Provision of information

The provision of information for both offenders and victims must be facilitated by all public authorities, as imposed by the norm that children be immediately attended to¹³⁶. This obligation is thus applicable to the execution of measures after sentencing. Likewise, all actors involved in the execution of measures after judicial proceedings must take into account the views of the child and when applicable their parents or guardians¹³⁷. With regard to the weight to give to the child's views and opinion in accordance with his or her age and maturity, instructions issued by the Chief State Prosecutor's Office¹³⁸ emphasise vulnerability to outside influences and the subsequent need for rigorous selection of weighting criteria.

The right to access information relevant to the child is a recognised right for all children in Spain and must be upheld by all public authorities, parents and therapists and carers¹³⁹.

With regard to children in custody of public authorities after being sentenced, norms affirm their right to communicate with parents, guardians, family, legal representatives and other persons, according to regulations, which may also entail permissions. Rules also affirm the capacity to communicate with the PA, Ombudsmen, lawyers, JC and inspecting personnel of the correctional facilities involved in the sentencing. All legal representatives have the right to be informed as to the situation and evolution of the child, and of his/her consequent rights.

¹³² Article 18 of the LPC.

¹³³ Articles 18 and 19 of the LCRC.

¹³⁴ *Ibid.*, Article 14.

¹³⁵ *Ibid.*, Article 13.

¹³⁶ Article 14 of the LPC.

¹³⁷ *Ibid.*, Articles 15 and 22.

¹³⁸ Circular 1/2006.

¹³⁹ *Ibid.*, Article 5.

Furthermore, the child has the right to access updated information on his/her rights and obligations, of his/her personal and judicial situation, and regarding the rules of the detention centre (*centro de internamiento*)¹⁴⁰.

3.1.2 Sentencing

Sentence must be pronounced within five days of the resolution of the facts, and must include all the standard prescriptions of a legal sentence under Spanish Law¹⁴¹. The sentence must take into account the views of both the PA and defence counsel, as well as the particular facts adjudicated and their gravity. Adequate attention must also be paid to the conditions of the child's family and personal welfare as well as his/her age at the time of sentencing. The sentence must be justified and expressed in clear and comprehensive language¹⁴². The Sentence may be appealed within five days of its publication, and may be resolved in private or public session in light of the particular facts of the case and the best interests of the child. Appeals may be attended by parents or guardians social representatives¹⁴³.

The list of measures which can be imposed on children is broad and includes the following¹⁴⁴:

- different kinds of ordinary (and therapeutic) detention (in close regime, half-open regime and open regime);
- visiting a day-centre;
- week-end arrest;
- supervised freedom;
- prohibition to enter in contact or in communication with the victim;
- custody by a family or educative group etc.

Measures imposed on child offenders must be both educational and sanctioning for both children between the ages of 14 to 16 and between 16 to 18 years old¹⁴⁵. However, the law foresees a number of special cases, in particular for serious offences¹⁴⁶. However, in certain circumstances the Criminal Code also provides for the possibility of giving priority to criminal responsibility. These cases are when a child's actions represent a "serious offence, committed within a group or a gang" as well as when there was recourse to "violence or a serious threat to life or physical integrity"¹⁴⁷. The Law also foresees that when the case is based on multiple actions, the action to be charged is the one that constitutes the most serious offence¹⁴⁸. There are also some general limits in the imposition of sanctions in case of child offenders, such as: in the light of the accusatory principle¹⁴⁹ the Judge for Children is prevented from imposing a more severe measure than the one demanded either by the Prosecutor or by the accuser; furthermore, for misdemeanours only a limited range of

¹⁴⁰ Article 56 (h) to (n) of the LCRC.

¹⁴¹ Sentencing for criminal actions of children is established in the fifth chapter of the LCRC.

¹⁴² Ibid., Article 39. See also Law of the Judiciary (*Ley Orgánica del Poder Judicial*).

¹⁴³ Chapter 6 of the LCRC. See also Lecrim.

¹⁴⁴ Article 7 of the LCRC.

¹⁴⁵ Article 9.3 of the LCRC.

¹⁴⁶ For instance, children aged more than 16 who have committed either a serious offence or a less serious offence with violence or coercion (...) can serve measures up to six years.

¹⁴⁷ Article 9.2 of the LCRC.

¹⁴⁸ Articles 11-13 of the LCRC.

¹⁴⁹ Article 8 of the LCRC.

measures, such as supervised freedom (up to six months), warning, week-end arrest (up to 4 week-ends), and community service (up to 50 hours) can be applied¹⁵⁰.

3.1.3 Deprivation of liberty

Spanish legislation requires that a child may only be deprived of his/her freedom when it is for his/her best interests or for his/her own good. This deprivation must form part of a programme with educational measures with the aim of reinserting the child into society. Provided there are grounds for doing so, a JC may impose sanctions on children between the age of 14 and 18 years charged with a criminal offence.

The measures to be executed range from: detention in closed, semi-open or open regime, rehabilitation internments, daily attendance in a community centre and probation (*libertad vigilada*), to relocation of family, community service or social or educational measures, such as banning or removal of driving licences otherwise obtainable at their age.

The execution of such measures may combine different modalities, with educational factors being of central importance. Measures should never exceed the requirements set forth by PA¹⁵¹. The Spanish rules give to the PA the power to monitor detention centres (*centros de internamiento*). Likewise, the PA is responsible for adopting measures, including decisions on protection, for the best interests of the child¹⁵².

The Law ensures children's rights to mandatory education, to be visited, and to communicate¹⁵³. In principle, children must be kept in institutions close to their residence, although the judge can decide otherwise if the best interests of the child so requires. Each centre must be organised in sections, adequate to the age, maturity, needs and social capacities of the children detained. Children are entitled to the right to education, training, health, religious assistance, and, as far as they have attained the minimum age to work, the right to carry out a remunerated activity.

The fundamental principle of re-socialisation¹⁵⁴ requires the life inside the centre to be organised in a similar manner to the one in the outside world, with a view to minimising the negative effects that detention can have on the child or his/her family, by promoting social links and family contacts, collaboration and participation of public and private agencies (particularly those geographically or culturally close) in the process of social integration of the child¹⁵⁵. The attainment of the age of majority does not put an end to the execution of the measure imposed¹⁵⁶.

3.1.4 Criminal records

The PA establishes a file for every offence, excepting offences that are related to each other. Every file of every child is kept by these authorities, together with a record of the proceedings in the possession of the respective court of law (*Juzgado de Menores*). When

¹⁵⁰ Article 9.1 of the LCRC.

¹⁵¹ Ibid., Article 7.

¹⁵² Article 4.2. PA Statute, Article 5.6.2. LORPM, Instruction 3/2008 of 30 July, Announcement 1/2000 of 18 December (*Criterios de aplicación de la Ley Orgánica 5/2000 de 12 de enero regulando la responsabilidad penal del menor*), Instruction 2/2000 of 27 December, Art. 7 Law 5/2000, Instruction 3/2004 of 12 May, Instruction 3/2008 of 30 July (*sobre el Fiscal de Sala Coordinador de Menores y las Secciones de Menores*), and Protocol of the Prosecution Authorities (*Protocolo Sobre Inspecciones a Centros de Internamiento de la Fiscalía General del Estado, Fiscal de Sala Coordinadora de Menores*), 1- 34.

¹⁵³ Article 60.12 of the LCRC.

¹⁵⁴ Article 55 of the LCRC.

¹⁵⁵ Article 55.2 of the LCRC.

¹⁵⁶ Nonetheless, internment in closed regime imposed to (or still in execution by) 21 years old persons will be executed in a prison, in principle; the same rule will be applied if the young person becomes 18 years old in closed regime and his/her behavior is not in accordance of the objectives proposed by the sentence or if, before initiating the execution, he/she has already executed totally or in part an imprisonment sentence or an internment measure in a penitentiary establishment (Art. 14).

establishing a unique record for multiple offences that involve different regions within the Spanish territory the authorities must give priority to a location near the child's residence¹⁵⁷.

Every trial chamber has a record of sentencing for cases involving children¹⁵⁸. Files and records involving children in criminal proceedings in the position of accused may be kept secret upon request of the child, his/her family or the PA. The request may be granted by the assigned JC, and the decision must be justified and may apply to the whole or to parts of the request¹⁵⁹.

In addition, the PA must keep a record of the visits taking place at these centres, visits that include interviews with children. The PA must carry out inspections to ensure adequate security measures and standards of hygiene, and correct any deficiencies observed¹⁶⁰. With regard to the erasure of conviction records, after 10 years, to be calculated from the day on which the child has reached majority in so far as the judicial measures imposed have been fully executed or else become time-barred, the Minister of Justice would proceed, on its own initiative, to cancel the criminal records of the person concerned¹⁶¹.

¹⁵⁷ Article 20 of LCRC. See also Article 18 Lecrim.

¹⁵⁸ Article 39.3. of the LCRC.

¹⁵⁹ Ibid., Article 24.

¹⁶⁰ Article 4.2. PA Statute, Article 5.6.2. LORPM, Instruction 3/2008 of 30 July, Announcement 1/2000 of 18 December (*relativa a los criterios de aplicación de la Ley Orgánica 5/2000 de 12 de enero regulando la responsabilidad penal del menor*), Instruction 2/2000 of 27 December, Art. 7 Law 5/2000, Instruction 3/2004 of 12 May, Instruction 3/2008 of 30 July (*sobre el Fiscal de Sala Coordinador de Menores y las Secciones de Menores*), and Protocol of the Prosecution Authorities (*Protocolo Sobre Inspecciones a Centros de Internamiento de la Fiscalía General del Estado, Fiscal de Sala Coordinadora de Menores*), 1- 34.

¹⁶¹ Article 24 of the Royal Decree 95/2009 regulating the administrative records system of the Justice Administration (*Real Decreto por el que se regula el Sistema de registros administrativos de apoyo a la Administración de Justicia*).

4 Strengths and potential gaps

The strongest point concerning the protection of the rights of children is the high level of preparation of all intervening public authorities, and their practical approach in the defence of the child's best interests, though mandatory training requirements only apply to professionals dealing with children as offenders. Furthermore, Spain has strong detection mechanisms provided by all possible actors: parents, local authorities and community members, specialised bodies, and educational/health institutions that guarantee access to justice of children. Another strength identified in this research and confirmed in the consultations is the effectiveness of the great majority of public services with regard to their role in detecting ill-treatment and abuses of children in the home. Likewise effective measures have been established for handling cases of gang-crime and new forms of crime, especially for new forms of crime in the internet. An additional strong point appreciated has been the lack of racial prejudice on behalf of authorities in their measures for the protection and promotion of the rights of children.

All in all, the consultations carried out suggest that Spain has adopted a number of steps in the transpositions and implementation of international and European standards for the protection of children, including those concerning the justice system for children. A great number of both specialised laws and institutions are available for protecting children in all regions in Spain, with specialised measures for the different ages, gender and personal conditions.

However, the institutional framework for the protection of children in Spain outlines a number of potential gaps identified in the course of this study. The Basque community recently closed the Office for the Defence of Children (*Defensor del Menor de Euskadi*) created in 2009. Similarly, in the autonomous community of Madrid an Office for the Defence of Children (*Defensor del Menor de la Comunidad de Madrid*) was instituted in 1996¹⁶², but was closed in June 2012, largely for a lack of budget due to the impact of the current economic crisis in Spain¹⁶³.

Another possible gap has been identified in the lack of sufficient coordination and collaboration between the different administrations that in this case concerns mainly the different ombudsmen, observatories and specialised agencies in the territory. This potential gap could be bridged through greater cooperation between the central and autonomic administrations, which is expected to be proposed by the Conference of Social Affairs (*Conferencia Sectorial de Asuntos Sociales*), and the recently instituted inter-autonomous commission of general directors. However, sources for this study indicated that the decisions adopted by these institutions may be only implemented on a voluntary basis, since all parties have a different legal origin. Moreover, the lack of coordination among professionals working in cases involving children is another gap identified.

Some sources consulted in the course of the drafting of this report expressed concerns that in large rural areas resources and personnel may not be as available as in metropolitan areas.

These concerns were also reproduced with regard to the level of legal protection for children victims/witnesses, frequently considered as less effective than that of offenders. Along with this 'unparallel development of laws', some sources also maintained that judicial proceedings will generally take place in a similar fashion and within comparable premises as those for adults, and generally without encountering a judicial system sufficiently specialised and tailored to the needs of children. These sources indicated that children in the position of suspect/offender may have substantially more legal guarantees than the children in the position of victim or witness, most likely due to the accused's fair trial rights. The

¹⁶² [Law 5/1996 of 8 July](#) on the Ombudsman for Children in Madrid (*Ley del Defensor del Menor en la Comunidad de Madrid*);

[Office for the Defense of Children.](#)

¹⁶³ [Law Suppressing the Defensor del Menor](#) of the Assembly of Madrid of 11 July 2011 BOAM 67.

consultations carried out in this study have indicated that additional shortcomings may be identified with regard to children who are victims or witnesses of criminal acts. These sources affirmed that protection measures for children in such roles may rely on the judge's discretion due to the lack of statutory measures in this respect.

Sources to this study have also suggested that the measures adopted on a judicial level do not always meet the necessary correspondence with the educational measures, or with a sufficient period of time for an adequate therapy/reinsertion programme. Some sources have indicated additional concern on a suspected policy promoting macro-detention centres for children that in their view may hinder the final objective of reinsertion. Sources have also indicated concerns over the application of the legal regime to children who are unaccompanied.

Likewise, sources and research reveal serious concerns about the cases involving mass media attention, and the way in which laws and protection measures are applied to them. Finally, the security forces consulted stated that a number of internal rules and protocols exist for dealing with situations of children accused of criminal offences, or those who are victims or witnesses thereof. However, these internal rules and protocols are not available to the general public, and could not constitute a source of the present study.

Conclusions

The international legal standards for the protection of children affirmed in the Spanish Constitution are in the majority of cases applicable to involvement of children in criminal proceedings. Despite the challenges, law and practice are largely focused on achieving the child's best interests, and this is greatly facilitated by a flexible approach of public action, tailored to the personal conditions, age and needs of the child.

However, it may be concluded from the research and consultations that child offenders enjoy a more comprehensive legal and institutional framework than child victims/witnesses. A suggestion for improvement would be to extend existing provisions related to child offenders to child victims/witnesses and to provide specialised professionals to deal with cases involving children victims and witnesses. Likewise a comprehensive programme for remedies in all roles may contribute to an improvement of the respective situations after judicial proceedings. Finally, it may also be concluded that there is a need for comprehensive institutional collaboration among central and autonomous level that may be facilitated by the empowerment of appropriate bodies. Moreover and due to the number of professional (police, judges and social professionals such as psychologist or social workers) involved in criminal proceedings involving children, there is a need to foster institutionalised cooperation among different professionals involved.

Annex – Legislation reviewed during the writing of this report

- Law 1/2008 of 8 February on Family Mediation
- Law 8/2006 of 5 December on Reform of the LCRC
- Organic Law 5/2000 of 12 January Regulating the Criminal Responsibility of Children LCRC
- Law 1/2000 of 7 January on Civil procedure
- Organic Law 1/1996 of 15 January for the Legal Protection of the Child LPC
- Law 35/1995 of 11 December on aid and assistance to victims of violent crimes or violations of sexual freedom
- Organic Law 10/1995 of 23 November
- Law 19/1994 of 23 December on the protection of witnesses and expert in criminal proceedings
- Law 6/1985 of 2 July on the Judiciary
- Law 1/1982 of 5 May on the protection of honor, personal privacy, family life and image
- Law 50/1981 of 13 January on the Statutes of the Department of Public Prosecution