



**J.O.D.A.
Juvenile Offenders Detention
Alternative in Europe**

JUST/2013/JPEN/AG/4573

National Report

Spain



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NATIONAL REPORT



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I. INTRODUCTION.

Current legislation in Spain regarding juvenile justice primarily consists of the Organic Law 5/2000 of 12 January on the Criminal Responsibility of Minors¹, developed by the Regulation approved by Royal Decree 1774/2004 of 30 July. Said legislation applies to *persons over the age of fourteen and under the age of eighteen who have committed acts classified as crimes or offences in the Spanish Criminal Code and relevant special criminal laws.*

Since coming into force, the LORPM has been subject to several amendments aimed at toughening judicial measures for the most serious criminal acts (L.O 7/2000, of 22 December; L.O 9/2000 of 22 December; L.O 15/2003, of 25 November; L.O 8/2006, of 4 December). In addition, since responsibility for implementing these measures is borne by the Autonomous Communities, the latter also perform a regulatory role in terms of the creation, organisation and management of resources necessary to carry out these measures.

The model created by this law has been labelled the judicial or responsibility model, and the **general principles** that govern it can be summarised as follows:

- The **best interest** of the minor over any other.
- **Respect for the free development** of the minor's personality.
- **Information on their rights** at all times and any assistance necessary to exercise these rights.
- The use of **educational programmes** that encourage responsibility and respect for rights and liberties.
- **Appropriate intervention** depending on the age, personality and personal and social circumstances of the minors in question.
- Priority given to **interventions within the family or social environment** of the minor provided that this is not harmful to the minor's interest.
- **Encouraging the collaboration** of parents, tutors or legal representatives while

¹ Ley Orgánica 5/2000, de 12 de enero, de Responsabilidad Penal de los Menores'- hereafter LORPM.



the measures are being implemented.

- The **interdisciplinary nature** of decision-making with respect to decisions that affect or may affect the minor.
- **Confidentiality** with regard to the private lives of minors and their families, as well as the interventions carried out.
- **Coordination of interventions** and collaboration between the different bodies working with minors.

As seen from the above, the principles underlying the LORPM take into account international regulations relating to minors in general and offenders in particular. By way of example, "*Respect for the free development of the minor's personality*" appears in articles 18 and 19 of the Universal Declaration of Human Rights, adopted and proclaimed on 10 December 1948 by the General Assembly of the United Nations, and "*The best interest of the minor over any other*" figures in the Convention on the Rights of the Child, adopted and proclaimed on 20 November 1989 by the General Assembly of the United Nations.

As well as taking into account international regulations, the principles behind the LORPM provide individual-based, multidisciplinary and systematic interventions that prioritise the interests of the minor above any other. The latter also determines the type of measure that will be most beneficial to the minor to ensure his or her reintegration and psychosocial recovery.



II. LEGAL FRAMEWORK. ALTERNATIVES TO DEPRIVATION OF LIBERTY.

In order to ensure that interventions are individual-based and to adapt measures according to the best interests of the minor based on his or her psychosocial traits, in article 7, the LORPM sets out a wide range of measures that could be applied to young offenders.

These measures can be divided into two groups:

Measures involving deprivation of liberty (custodial measures), such as: detention in a closed establishment, detention in a semi-open establishment, detention in an open establishment, therapeutic detention, weekend stay.

Non-custodial measures:

- **In-patient treatment.** Persons under this measure have to attend the designed centre with the required frequency by the doctors who are looking after them and follow the fixed guidelines for the appropriate treatment of the anomaly or physic disorder, drug and alcohol abuse, or alterations in perception.
- **Attendance at a day centre.** Persons under this measure will live in their usual home and will attend a centre which is fully integrated into the community, where they participate in supportive, educative, training, work or leisure activities.
- **Probation.** In this measure, the activity of the person and his or her school, training centre or workplace attendance record, as the case may be, must be followed up, ensuring to help them overcome the factors that caused the committed offence.

In this way, this measure enforces, where appropriate, an adhesion to the social-educative guidelines indicated by the Public Entity or by the professional in charge of the person's follow up, according to the intervention programme prepared for this purpose and approved by the Judge of Minors. The person under this measure is also obliged to uphold the interviews established in the programme with the professional in charge and to comply, where appropriate, with the behavioural rules imposed by the Judge.



- **Prohibition on approaching or contacting the victim, or any other person determined by the judge.** *This measure will prevent the minor from approaching such persons, wherever they are; their home, their teaching centre, their workplace and any other place they might frequent.*
- **Living together with another person, family or educational group.** *The minor subject to this measure should live, during the period of time established by the judge, with another person, with a family different from their own or with an educational group, appropriately selected to guide them in their socialisation process.*
- **Community services.** *The person under this measure, which can not be imposed without his or her approval, has to carry out the indicated unpaid activities, which are either of social interest or benefit people in difficult situations.*
- **Socio-educational tasks.** *The person under this measure has to carry out, without imprisonment or probation, specific activities with an educative content, orientated to facilitate their social competence development.*
- **Reprimand.** *This measure consists in reprimanding the person, carried out by the Judge of Minors and is aimed at making him or her understand the gravity of the incident committed and the consequences that such acts have had, or could have had, urging them not to commit such acts in the future.*
- **Driving licence withdrawal/suspension for motorbikes and motor vehicles, or the right to obtain them, or administrative licenses for hunting or use of any weapons.** *This measure may be imposed as an accessory when the crime or offense was committed using a motorbike or a motor vehicle, or a weapon, respectively.*
- **Absolute disqualification.** *The disqualification measure involves the final deprivation of all honours, jobs and public positions, even if this concerns elected office, as well as the inability to obtain the same or any other honours, public positions or employment, or to be elected for public office, for the duration of the measure.*



III. EVOLUTION OF YOUTH CRIME.

Although at times the general public perception is that youth crime has increased over recent years, mainly due to the level of alarm that such crime generates and the manner in which the media makes use of the most serious incidents, Spain does not have an efficient and up-to-date system for gathering statistics and data relating to young offenders that is capable of providing us with any reliable information concerning such a rise.

The fact that responsibility for implementing the measures imposed by juvenile court judges lies with the Autonomous Communities, the difficulties in gaining access to certain data and the delays with which this data is published all make it extremely complicated to have any real knowledge of the volume of youth crime. The only quantitative data available, albeit with delay, is provided by the General Council of the Judiciary (*Consejo General del Poder Judicial*)², the Attorney General (*Fiscalía General del Estado*)³, the Ministry of the Interior⁴, the National Institute of Statistics (*Instituto Nacional de Estadística*)⁵ and the Childhood Observatory (*Observatorio de la Infancia*), an agency affiliated with the Ministry of Health, Social Services and Equality⁶.

The problem is that these reports and/or statistics have significant limitations given that they use different indicators as references (detentions made, preliminary proceedings initiated, measures imposed etc.). Moreover, despite referring to the volume of youth crime recorded, they fail to mention the “unreported” cases that typify the youth crime phenomenon, where many of the offences committed by minors are not brought to the attention of the authorities as no complaint is filed.

Ultimately, in order to correctly estimate the volume of youth crime, attention should be given both to official statistics and to other elements that analyse the “unreported”

² Collects information on the activities of juvenile courts (mainly relating to resolutions and measures imposed).

³ Provides a summary of the Attorney General’s activity during the previous year, with a specific section on juvenile courts.

⁴ Publishes an annual report on crime, although does not contain any specific data on juvenile crime.

⁵ Criminal and socio-demographic study on minors convicted by final judgement, examining personal information (sex, age and nationality), data relating to the criminal offence and data on the measure adopted.

⁶ Prepares a report on measures imposed on young offenders (*Estadística Básica de medidas impuestas a los menores infractores*), providing information on the implementation of measures by the Autonomous Communities.

⁷ Montero T. (2011). La evolución de la delincuencia en España (1^a parte). *La Ley Penal*, Sección Criminología, 78.



rate of crime (Montero, 2011)⁷:

- Official statistics (police, courts, detention facilities).
- Self-report studies, surveys in which participants are asked whether they have ever, or within a specified period of time, committed any type of crime, or whether they have engaged in any kind of delinquent behaviour.
- Victim surveys, in which participants are asked whether they have been victims of specified types of crime during a given period of time.

Nevertheless, and bearing in mind the above, the latest information published by the office of the Attorney General in its most recent report is presented below:

- With regard to the evolution of crime, the report concludes that since 2008 there has been a gradual decrease in the number of cases opened (29.428 in 2013).
- In terms of judicial measures imposed, the most frequently applied non-custodial measures were probation (applied on 10.085 occasions), followed by community services (4.697 occasions), reprimand (751 occasions) and living together with another person, family or educational group (483 occasions).
- With regard to measures involving deprivation of liberty, detention in a closed establishment was imposed on 754 occasions, in a semi-open establishment on 3.079 occasions, in an open establishment on 231 occasions and therapeutic detention on 523 occasions. Weekend stay measures were applied on 1.256 occasions.
- Finally, through application of out-of-court means, through reconciliation or reparations (art. 19 LORPM), or following consideration by the Technical Team that it would be beneficial to do so (art. 27.4), 6.687 cases were closed in 2013, i.e. 22.72% of the total.

IV. BEST PRACTICES.

The practices presented below have been selected in accordance with the report by the Interagency Panel on Juvenile Justice of the United Nations Office on Drugs and Crime, entitled: "Criteria for the Design and Evaluation of Juvenile Justice Reform Programmes."

Best practice I: "Los Pinos" Educational Home.

Description:

"Los Pinos" educational home is owned by Fundación Diagrama and in agreement with the Department of Health and Social Services of the Autonomous Community of the Region of Murcia. It is located in Molina de Segura, in the province of Murcia.

The establishment has the capacity to attend to 12 minors of both sexes between the ages of 14 and 17⁸ who have been ordered to live together with educational groups, as a provisional measure or by final judgement, by juvenile courts, in accordance with the LORPM.

Living together with an educational group has been considered by the Attorney General as one of the most appropriate judicial measures for minors who have been violent towards their parents. On this basis, all measures implemented in "Los Pinos" educational home are consequences of cases of violence towards parents, making it possible to design a specific intervention procedure for this type of crime that includes both the minor and their family, and which encourages accountability and social reintegration of the minor.

Programme relevance:

The Educational Project has been developed under international and national standards concerning both the Rights of the Child and juvenile delinquency. In addition, the objectives have been set according to the needs of the beneficiaries, and there is a causal link between these objectives and the activities designed and selected to achieve them.

⁸ Ages related to the commission of crime in accordance with Article 1 of the LORPM.

Thus the principal objectives are orientated towards the minor's assuming of responsibility and his or her re-education and reintegration, given that this constitutes the application of a judicial measure, as well as the elimination of violence in the family setting, with this type of crime being the most prevalent among minors subject to the judicial measure.

The objectives set in each case are tailored to the individuals in question and tend to the psychosocial traits of the minor and of their family. They are formulated following a structured, comprehensive and multidisciplinary assessment focused on identifying the criminogenic needs of the minor. In each case the most appropriate activities are planned to achieve these objectives.

All of the information - results of the individual assessment, objectives and activities - is gathered into a report, which is reviewed every three months with the aim of adapting the intervention to achieve the anticipated results.

Efficiency and Effectiveness of the Programme:

In order to assess to what extent the Home achieves the objectives and results set out in the Educational Project, the Home uses a Quality Management System in accordance with Regulation UNE-EN ISO 9001:2008 and works towards maintaining this system through the continual improvement of the processes and procedures of its principal activities.

In this respect, Fundación Diagrama, the managing organisation, continually enhances the Quality Management System with the aim of achieving a maximum level of transparency regarding internal management and meeting, to the greatest possible extent, the requirements of the groups under assistance and their families, public administrations, staff members and the communities in which it operates.

The comprehensive management of the Home is divided into several basic essential processes:

- Compliance with regulations, regarding judicial measure implementation in accordance with the international and national regulations underlying the Home's Educational Project.
- Educative intervention, focused on respect and the free development of the minor, and on facilitating his or her re-education and subsequent social reintegration.

- Service management, ensuring the quality of all services provided in the Home.
- Satisfaction of beneficiaries, meeting the demands of minors, families and the public entity in question.
- Internal management, designed to optimise planning and resources.
- Communication, aiming to publicise the work carried out from the Home.

To achieve these processes, each one has a set of general objectives, which are in turn divided into specific objectives. For each specific objective there is a series of quantifiable indicators, and for each indicator an achievement criterion or desired direct impact.

Objectives, indicators and achievement criteria are evaluated every three months and reviewed annually, and may be subject to amendment depending on various factors such as: a change in objectives based on change in the psychosocial traits of the beneficiaries, change in objectives due to the coming into force of a new regulation relating to juvenile justice, etc.

Consequences:

As mentioned, all significant impacts resulting from the management of the Home are quantified through indicators that assess the achievement of objectives. In this respect, it should be noted that both positive and potential negative consequences are examined so as to adapt actions and find constructive solutions to mitigate possible negative effects.

Sustainability:

Given that this constitutes an open-detention judicial measure, whereby the minor continues to carry out most activities within his or her social environment as well as a comprehensive intervention involving both the minor and their family, there is a high probability that the benefits of the programme will continue once the judicial measure has ended.

Furthermore, the fact that this type of measure allows the minor to make weekend visits back home makes it easier to continuously assess the achievement of objectives before the end of the judicial measure.



Transferability:

The practice is transferable within a national context (given that it is defined in the Spanish juvenile justice system). On this basis, the implementation of this measure of living together in an educational group for cases of violence by minors towards parents has been transferred by the managing organisation (Fundación Diagrama) to other Autonomous Communities.



V. CONCLUSIONS.

The conclusions that follow hereafter, as well as being based on a review conducted on types of non-custodial measures that could be imposed at national level and their implementation, have taken into account the contributions of a group of experts. This group is composed of legal, academic, administrative and social professionals involved in the field of juvenile justice.

The principal conclusions based on all of the above are the following:

- Society's general lack of awareness regarding the juvenile justice system and the excessive focus by the media on violent crimes committed by minors has resulted in tougher legislation.

There is a false belief that criminal legislation for minors is excessively soft and that it should be strengthened by increasing liberty deprivation sanctions. The media tends to simplify messages and magnify more serious criminal behaviour... resulting in the public demanding harsher criminal legislation for minors.

*Antonio María Salinas Iñigo.
Jurist. Fundación Diagrama.*

Crime policy has been influenced to a certain extent by the most serious crimes committed by minors and/or those crimes that have been most covered in the media. The explanatory memorandum of the Organic Law 8/2006, which amended the original text of the LORPM resulting in a tougher disciplinary response, should be examined in this respect.

*Juan José Periago Morant.
Jurist. Fundación Diagrama.*



- In accordance with European and international recommendations relating to juvenile justice, non-custodial measures are the most frequently used in the Spanish juvenile justice system, with emphasis placed on probation measures.

In the majority of cases of crimes committed by minors, non custodial measures are imposed, as it is considered to be more beneficial to the interest of the minor for the educational and reintegration process to take place in his or her own family, social and educational environment.

*Ángela Sarazá Jimena.
Prosecutor of Minors. Sevilla Prosecutor´s Office.*

- Closed detention measures are applied restrictively, with semi-open detention measures the most frequently imposed, enabling the minor, although still under a judicial measure, to remain in contact with society through one or more of the training, educational, work experience or leisure activities included in their Individual-Based Programme for Measure Implementation.

The LORPM only provides for the imperative application of custodial measures, namely detention in a closed establishment, in the exceptional cases stipulated in art. 10.2. These constitute the crimes set out in Criminal Code articles 138 (homicide); 139 (murder); 179 (rape); 180 (aggression and aggravated sexual abuse); 571 to 580 (terrorism); or crimes punishable by fifteen or more years of prison. Only in such instances is it obligatory to impose a closed detention measure, with different durations depending on whether the minor is older or younger than sixteen.

*Francisco Manuel García Ingelmo.
Prosecutor assigned to the Prosecutor of Minors Court. State Prosecutor´s office.*



- Out-of-court solutions (reconciliation, reparations, out-of-court educational activities) are widely accepted and used.

...an ideal response that allows the young offender to understand the reality and consequences of the act committed, and at the same time enables the victim to take part in the reparative process, minimising the negative effects of the more than likely victimisation that is experienced by all wronged parties during a trial.

*Isabel Vázquez Berdugo.
Prosecutor of Minors. Seville Prosecutor's Office.*

- The principal strengths of non-custodial measures compared to those that involve deprivation of liberty include avoiding the breaking up of families, society's involvement in the minor's reintegration process, lower cost, etc...

The most notable weaknesses are the fact that applying the judicial measure in a setting that may be conducive to crime could encourage continued criminal behaviour, and the perception held by certain sectors of society of impunity regarding the minor's actions.

This type of measure ensures that the minor avoids the distressing experience of deprivation of liberty and offers an educative, punitive response of the same magnitude, and responds to the aim of social reintegration as set out in the LORPM.

*Juan José Periago Morant.
Jurist. Fundación Diagrama.*

...if the minor's family and social environment has clearly been a determining factor in his or her criminal behaviour, remaining in this environment could be harmful...

*Antonio María Salinas Iñigo.
Jurist. Fundación Diagrama.*



- Among the changes that would be necessary to more frequently implement alternative measures to deprivation of liberty, an increase in human and material resources is particularly important.

... the real problem and hindrance over the last few years, as reflected in the latest Attorney General office (FGE) reports and the supporting reports of the various provincial prosecutors' offices, lies in the economic crisis and the reduction of resources by public entities for carrying out the different measures.

In terms of non custodial measures, significant examples of this would be the reduction in the number of professionals involved in implementing probation measures, leading to extremely high, and unacceptable ratios of minors to professionals in certain cases. These restraints also trigger, for example, reductions in the courses offered to provide the necessary content to the probation or socio-educational activity measures, and prolongations in carrying out non custodial measures (and detention measures in certain Autonomous Communities).

Francisco Manuel García Ingelmo.

Prosecutor assigned to the Prosecutor of Minors Court. State Prosecutor's Office.