

NET FOR U PROJECT SPAIN.

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1. INTRODUCTION

The phenomenon of child migration begins in Spain in the mid-90s, and it has increased significantly in recent years. In the first stage, most of these minors were street children in their countries of origin, but this profile has evolved and currently a high percentage of them lived with their families before emigrating. There are no exact **figures** on the number of unaccompanied minors entering the country. The reasons are different, but we can mainly highlight two:

- On the one hand, there are several sources of information.
- And secondly, a significant number of children are not localized, due in part to the high mobility that present within the national territory.

However, we can speak of estimated data, according to information provided by the Autonomous Communities (regions). In March 2009 there were at least 5,158 unaccompanied foreign minors in Spain. A very high percentage of the number of children voluntarily leaves the protection system, looking for better or different opportunities.

As for the **origin**, they are mostly from the Maghreb countries (especially Morocco) and the Sahel (Senegal, Mali, Guinea-Bissau, Guinea, Ghana, Cameroon, Gambia, Mauritania) that primarily reach the Canary Islands.

The methods for entering Spain have evolved in recent years. The preferred **method** is to travel hidden in the basement of one of the vehicles (trucks, buses) that cross on ferries the Strait of Gibraltar, linking Morocco and Spain. Other minors enter Spain by car or plane, accompanied by a family member or someone who the family trust in, of which they separate once the purpose has been reached. Since 2003, these children began to use the structures of the mafia groups that control the illegal migration flow between Morocco and Spain, making the journey in small fishing boats called "patera", upon payment of a sum of money.

Regarding **motivation**, there have not been major changes, these children still state that they "want to work and earn money to live in Spain and help their families financially".

a. Definition of UAMs (unaccompanied migrant minors) within the country.

As defined by the Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03), it *"concerns third-country nationals below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively in the care of such a person"*.

In Spain, Royal Decree 557/2011, of 20 April, approving the Regulation of Organic Law 4/2000, about the rights and freedoms of foreigners in Spain and their social integration, after the amendments by Organic Law 2/2009, states on its Article 189 the definition of unaccompanied migrant minor, indicating that it is the *"foreigner under eighteen who reach Spanish territory without being accompanied by an adult, responsible for him/her, stated either by law or according to customs, seeing a remarkable risk of lack of protection, whether such person has not been effectively taken care of the child, as well as any foreign minor in Spain in that situation"*.

b. Historical overview.

As mentioned, the migration of unaccompanied minors in Spain begins to be relevant in the late-90s. In 1996 was approved a regulation implementing Organic Law about foreigners. That is when it was introduced the first rule about foreign children in neglect, which means that Spain had legislation on foreign minors when the number of them was not relevant.

The number of unaccompanied minors in our country has increased parallel to the presence of foreigners in general. These figures increased considerably at the beginning of this century. Spain is currently among the European countries that have received a higher number of unaccompanied migrant minors in recent years.

As noted above, during the first years, the majority of minors origin was Moroccan, but in recent years there is a gradual trend towards heterogeneous origins. Along with an increase in Romanian children, also arrivals mainly from Senegal have increased.

Moreover, the first migrant minors that arrived came from broken families. However, more recent studies indicate that today they often come from stable family environments, despite suffering serious economic difficulties.

We emphasize that the purpose of migration of most of these children is still to generate economic resources in order to help their families.

Finally, we highlight another important change related to gender, as, since 2001 begun to emerge unaccompanied foreign girls, mostly Nigerians, Romanian and Moroccan. But it is not until 2006 when it begun to have specific data on them. The original contexts and situations that push them to migrate is quite different to the boys. In most cases they escape from serious family conflicts, they are pregnant and/or have been repudiated, they are teenage mothers or girls with sense of adventure or desire for traveling.

2. DESCRIPTION OF THE TARGET GROUP.

According to the Ministry of Labour and Immigration, below the top 10 sources of income of unaccompanied migrant minors in Spain in 2007.

| Origin country | Number | % |
|----------------|-------------|-------------|
| Morocco | 3665 | 67.8 |
| Rumania | 371 | 6.9 |
| Senegal | 300 | 5.5 |
| Algeria | 158 | 2.9 |
| Mali | 154 | 2.8 |
| Gambia | 111 | 2.1 |
| Ghana | 100 | 1.8 |
| Guinea Conakry | 84 | 1.6 |
| Mauritania | 42 | 0.8 |
| Ivory Coast | 34 | 0.6 |
| TOTAL | 5943 | 92.8 |

According to data published in 2009 in a report of the European Migration Network, whose National Contact Point is composed of experts from four ministries (Ministry of Labour and Migrations, Ministry of Interior, Ministry of Foreign Affairs and Cooperation and the Ministry of Justice), and coordinated by the Permanent Immigration Observatory, the general profile of unaccompanied minors hosted in Spain is as follows:

- **Gender.** Most of them are boys, because, even though migration affects both sexes, there are hardly any cases of unaccompanied foreign girls received in Spain, although this reality is changing.
- **Age.** Their average age is fifteen years old. The majority age group is in the sixteen and seventeen, but in recent years there has been an increase in the number of children who are in the age range from thirteen to fourteen years old, finding increasingly younger children, such as those who do not reach the age of ten.

- **Nationality.** Most claim to come from African countries: from Maghreb and Sahel areas.
- **Family of origin.** About 70% of these children come from families with limited financial resources, dividing the remaining 30% among cases of children who come from families with economical resources or street children.
- **Academic and professional training in the country of origin.** These children often drop prematurely their studies to find a job that allow the families to fill economic gaps. Despite these experiences, they have a lack of proper training to join with guarantee the Spanish labor market.
- **Motivations and migration expectations.** Economic is the main motivation of these minors. Once they enter Spain, their migratory expectations can not be met as they have no personal documents identifying them, or work permit, in many cases they have not even reached the minimum working age and they use to have a lack of proper training. To these must be added the difficulties of the current labor market with high unemployment rates. A high percentage of these children say *they did not know what they were going to find in Spain and that they would not have come, but once they are here they do not want to return to their home country, they want to stay and wait for a chance.*
- **Lack of resources and lack of host language skills.** These children are deprived of family and material resources needed to address the situation in Spain, so it increases the risk of organized crime networks. On the other hand, with rare exceptions, these children do not know the host language and its nuances, hindering communication.
- **Lack of documentation.** Most children enter Spain without documentation identifying them, in many cases for fear of being repatriated once located his family, as manifested. While it is true that not being documented delays repatriation processes, it is also true that also delays its administrative regularization process in Spain, thus hindering their integration in the host society.
- **Child development.** Although due to cultural issues they have a greater degree of maturity of what corresponds to their age, these children often show

fear of the future and anxiety by emotional, social and family uprooting suffered during their migratory journey.

- **Lack deeply root in shelter homes and protection centres.** One of their characteristics is a high mobility all over the country looking for a shelter home that meets their migratory expectations, causing short periods of stay in the centers. In recent years it has been detected a progressive increase of the residence time of minors in the centres, as they have been adapting their specific needs to the child protection services.

3. LEGAL FRAMEWORK.

We can highlight two types of rules regarding this target group, on the one hand immigration in general, and, on the other hand, protection of minors.

In turn, due to the division of powers between the State and the Autonomous Communities (regions), governed by Articles 148 and 149 of the Constitution, in Spain there are two types of regulations on protection of children: state regulation and autonomic regulation.

a. Immigration law.

- Organic Law 4/2000, of January the 11th, about rights and freedoms of foreigners in Spain and their social integration, modified by Organic Law 8/2000, of December the 22nd, and amended by Organic Law 14/2003 of November the 20th. Of particular relevance is Article 35, which governs the legal status of foreign children in situation of neglect, establishing the obligation to serve and document them.
- Royal Decree 865/2001, of July the 20th, approving the Regulation of recognition of stateless status (applicable in the event that the minor cannot be documented).
- Circular of the General Prosecutor of the State 3/2001, of December the 21st, on the performance of the prosecution in immigration matters.
- Royal Decree 2393/2004, of December the 30th, approving the Regulations of Organic Law 4/2000, of January the 11th, on the rights and freedoms of foreigners in Spain and their social integration.
- Circular 2/2006, of July the 27th, about several aspects of the regime of foreigners in Spain.
- Royal Decree 240/2007 of February the 16th, about the entry, free movement and residence in Spain of citizens of the Member States of the European Union and other States party to the Agreement on the European Economic Area (When the minor documentation proves he/she comes from a European Union state or has relatives in the Union).

- Organic Law 2/2009, of December the 11th, amending Organic Law 4/2000, of January the 11th on the rights and freedoms of foreigners in Spain and their social integration.
- Royal Decree 557/2011, of April the 20th, approving the Regulation of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, after its reform by Organic Law 2/2009. Chapter III relates to unaccompanied foreign minors.
- Correction of errors in Royal Decree 557/2011, of April the 20th, about approval of the Regulation of Organic Law 4/2000 about the rights and freedoms of foreigners in Spain and their social integration, after the amendments by Law 2/2009.
- Public Consultation 1/2009, of November the 10th, about several issues relating to the records of determining the age of unaccompanied minors.

b. Minors protection regulations.

- Spanish Constitution of 1978. In the Constitution, childhood is present in Title I dedicated to the fundamental rights and duties. Thus, Article 39, fourth section, provides that children shall enjoy the protection provided for in international agreements which safeguard their rights.
- Law 21/1987, of November the 11th, amending the Civil Code and the Civil Procedure Act in respect of Adoption (BOE no. 275 of November the 17th, 1987).
- Organic Law 1/1996, of January the 15th, about the Legal Protection of Minors, partially amending the Civil Code and the Civil Procedure Act (BOE no. 15, of January the 17th, 1996).
- Spanish Civil Code.

4. GENERAL SERVICES AND RESOURCES.

a. Legal representation.

The administrative declaration of neglect of an unaccompanied migrant minor by the competent regional protection services, has the automatic effect of establishing administrative guardianship assumed by the same public body.

During the time that elapses until the declaration of abandonment occurs and becomes effective the guardianship, the regional protection services should proceed to give to children the immediate care needed.

In cases involving his/her personal status and in those in which the child protected does not share the performance (or omissions) of the guardianship body, they may request the judicial authority to represent and defend the interests of children in court proceedings aimed at determining which is the solution that best suits their interests.

b. Social protection.

o Identification and protection of minors.

Usually, unaccompanied minors arriving in Spanish territory are illegal, with no chance to know their identity and age. When this happens, as set out in the legislation: *"In the cases in which state security bodies and forces locate (or obtain knowledge) an illegal foreigner whose age under 18 cannot be established with certainty, he/she will be given the relevant child protection and care, informing immediately the public prosecutor, who has to determine the age, for which, as a matter of priority, the appropriate health institutions will collaborate carrying out with the proper age assessment"*.

Once confirmed the minority, the regional protection services take responsibility of the unaccompanied minors. They entry immediately into a host centre, considering that their situation corresponds to the definition of neglect established in the Civil Code. This "automatic access" to the measures of protection must subsequently be endorsed by an administrative decision, stating that the child is in the aforementioned situation of helplessness.

Article 215 of the Regulation of Organic Law 4/2000, about the rights and freedoms of foreigners in Spain and their social integration, states: *"In the Directorate General of*

the Police and Security Forces there will be a children's registry of unaccompanied minors with identification purposes only, which will be coordinated by the General Prosecutor, for the fulfillment of the competences attributed to the prosecution under Article 35 of the Organic Law 4/2000, within the scope of its guarantee function and protection of the interests of the child'.

- **Protection after age 18.**

In Spain there have been developed some health care programmes for young people, former minors under guardianship, but we cannot say that there is a generalized system of transition for adult life. As regularization possibilities, children who reach adulthood documented with a residence permit, will have three months to renew at the expiration of the same. Whereas minority circumstance that gave rise to the permit is not maintained, these children will have to transform this document into a residence and work authorization.

Meanwhile, those who are 18 being undocumented, may request, at the initiative of the supervisory body, a residence permit for exceptional circumstances to be awarded based on a number of discretionary assessment criteria (basically the participation in training and integration activities).

- c. Housing and basic needs.**

The competence for the guardianship of unaccompanied foreign minors corresponds to the protection services for children in the different regions in Spain in which the minor is located. Each region has developed its own residential care procedure to assist these children, therefore, practices and resources are very different from one region to another.

In some cases they have created specific centres for unaccompanied minors for both initial reception and long-stay phases. In other cases specific resources for the first reception are promoted, and then progressively integration is sought.

- d. Education and professional training.**

Immigration law guarantees access to basic, free and compulsory education for all foreign children. In some cases, given that their main objective is to work, they often show little interest in formal training. In others, their curricular gaps generate difficulties in adapting to the educational process that correspond to their age.

e. Healthcare.

Immigration legislation ensures full access to health care for all foreign minors on equal terms with the Spanish people.

f. Voluntary return.

The Ministry of Employment and Social Security, through the General Secretariat for Immigration and Emigration, Directorate General of Migration, funds programmes of voluntary return for foreigners, financed in part by the European Return Fund.

There are different Voluntary Return programmes. The requirements to participate are (not explicitly mentioned to the situation of unaccompanied foreign minors):

- Being in a precarious economic or social vulnerable situation.
- Having no economic resources to return by their own means.
- Having remained in Spain, at least six months.
- Submitting a statement of willingness and commitment not to return to Spain in a period of three years.
- Giving up official documents that link with Spain (residence permit, health card, registration, etc).
- Being not in any of the prohibited cases of leaving Spain under the Immigration Act.

Specifically, the *Voluntary Social Care Return Program* is aimed at third countries immigrants who are in particularly vulnerable situations, tested through the Social Services of their area of residence, or specialized NGOs. The program provides the following services:

- Information and general guidance.
- Information on the status of the country of origin.
- Individual and family support in the return journey.
- Psychological support, if necessary.
- Return ticket to home country.
- Financial support for the reintegration in the country of origin.
- If necessary, payment of travel costs from their place of residence in our country to the nearest international airport.
- Accompanying expenses on the trip if necessary.
- Unforeseen expenses of drugs.

g. Family reunification.

The legislation establishes the prevalence of the principle of family reunification as the first desirable solution to be adopted when an unaccompanied minor is localized. But in practice, the percentage of children who are repatriated is very low. This is due to several factors. First, it is not clear which body is competent to carry out with the necessary research to locate the family of the child. There is a lack of appropriate means and staff necessary for it. In addition, the countries of origin, especially Morocco, do not offer the necessary cooperation to develop these tasks.

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