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DEL ESTADO**

## **Answers to the questionnaire on principles of public prosecution as regards juvenile justice (Spain)**

1. Public prosecutors have the duty to apply the guidelines given by the General Prosecution Office in order to gain uniformity and security in the interpretation of Law. This also applies to juvenile justice. However, the guidelines use to be general. There are no guidelines on minimum age of criminal responsibility because this is a subject that is already established by Law. There is no responsibility (no even juvenile responsibility) below 14 years old (article 2 Minors Criminal Liability Law 5/2000, from now on LORPM).

The guidelines given by the General Prosecution Office underlines the necessity of giving due respect to the educative orientation of the procedure and of the sanctions and measures adopted.

There are no guidelines to specify a minimum age to imprison a child because this is a subject that is already established by Law. Minors can never enter into the Penitentiary System: Minors who have been convicted under the Juvenile Justice to a sanction involving deprivation of liberty are never held in institutions for adults, but in institutions specially designed for them (article 45 LORPM).

When minors who have been convicted under the Juvenile Justice reach the age of majority, they are normally kept in institutions for juvenile offenders unless their behaviour is incompatible with staying in it. When they reach the age of 21 they are transferred to institutions for adults as a general rule, but it is possible to maintain them in institutions for juvenile offenders, if the socialization process is being positive. The possibilities of transferring to an institution for adults only applies if a sanction of deprivation of liberty in



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close regime has been imposed (is the most serious sanction of deprivation of liberty) (article 14 LORPM).

2. Spanish criminal justice system provides for specialised public prosecutors and for specialised judges for juveniles.

Public prosecutors and judges for juveniles form a specialised entity within the court. They have specific training in Juvenile Law. The principle of specialization in the Juvenile Justice system is stressed by Law. The aim is to reach a Justice for Juveniles different from the ordinary criminal system, oriented towards the best interest of the juvenile.

3. There is only a Public prosecutors body. Prosecutors who are to deal with juveniles are selected from this unified body. Process of selection is based on specialization. Members of Public prosecution who apply and prove specific knowledge in Juvenile Justice are selected to this task. To prove specific knowledge is necessary to have taken part in special training activities, or to have done specific research on the subject, or to have given lectures on the subject etc. There are also continuous training activities especially designed for these prosecutors.

4. Public prosecutors are empowered to end the procedure without sanctions. They are also authorised to end the procedure through mediation or other restorative agreements.

Public prosecutors have an important degree of discretion, but this discretion is limited, even prohibited when the object of the procedure is a serious crime.

For the most serious crimes (such as terrorism, assassination, rape and similar) is compulsory to impose a sanction involving deprivation of liberty. Nevertheless, General



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Prosecutor Guidelines authorise even in these cases, to promote probation to minors of 14 and 15 years old if justified.

5. Public prosecutors have a very important role to ensure legal rights and safeguards of the juveniles, especially when there is a measure of deprivation of liberty. Police has to notify any detention of a juvenile to the Public Prosecutor, who can order the release of the suspect or can decide to promote a pre trial measure before the Court, depending on the circumstances concerning the alleged crime and .the circumstances of the presumed perpetrator.

Pre trial custody has strict temporary limits and Public Prosecutors must control it.

On regards of detention after conviction, Public Prosecutors must carry periodical inspections to detention centres. They also must evaluate the periodical reports elaborated by multidisciplinary teams in order to promote, to reduce, cancel or modify the sanction of deprivation of liberty, if it is on the minor's best interest,

6. Public Prosecutors are sometimes invited to participate in commissions related with juvenile justice, for example, commissions to study and to fight against absenteeism or bullying.

Public Prosecutors sometimes also elaborate and sign protocols with institutions to organize and promote the execution of community sanctions and measures.

7. Public Prosecutors have a major role in the coordination and cooperation of the main actors involved in the investigation process. Public Prosecutors give instructions to the Police to investigate the facts and the people involved (article 6 LORPM). Prosecutors also



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order the forensic surgeon the necessary inquiries in relation with deaths, injuries, possible mental disorders etc.

Public Prosecutors also have a strong link with the Administrative bodies in charge of protection measures for deprived or abandoned children as they are the superior supervisors of Child Protection Services' activities.

Public Prosecutors act before the court promoting pre trial measures, or inquiries that can affect fundamental rights such as the secrecy of communications. They also promote sanctions and civil liability against the alleged perpetrator and other possible responsible. Finally, they control the legality of the decisions of the Juvenile Magistrate, and the legality of the execution of sanctions and measures.

Public Prosecutors also control legality of the activities of the administrative bodies in charge of the execution of sanctions and measures.

8. Public Prosecutors are the superior supervisors of Child Protection Services' activities (article 174 Civil Code). They can promote the adoption of protective measures of children deprived of basic necessities or abandoned, before the Child Protection Services' and, if necessary, before the court.

Public Prosecutors must also act on behalf of a child if he lacks other legal representatives.

The role of Public Prosecutors in relation with juveniles who are victims of offences and who claim for compensation is also very important. They must promote due compensations in the name of the victim, unless the legal representatives of the victim wish to exercise the actions on their own. This also applies to all victims (juveniles or not) and to all criminal procedures (adult or juvenile cases). We have to bear in mind that in the Spanish criminal



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procedure, the object is not only to impose a punishment, a sanction or a measure to the perpetrator but also to determine civil compensations on behalf of the victim.

9. Public Prosecutors can initiate ex officio investigations not only in criminal cases but also in situations where a child can be suffering a situation of deprivation, abandonment, neglect care etc, when it can be necessary to adopt a protective measure.

Public Prosecutors also can promote ex officio legal actions when the honour, image, or privacy of a child has been infringed by mass media (article 4 Law 1/1996 *on legal protection of minors*) and in other cases concerning children fundamental rights violation.