Procedural Rights of Juveniles Suspected or Accused in the European Union

NATIONAL REPORT I SPAIN

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PROCEDURAL RIGHTS OF JUVENILES SUSPECTED OR ACCUSED IN THE EUROPEAN UNION

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The research conducted in Spain was performed by the team composed by Esther Fernández Molina and Pilar Tarancón Gómez, from the University of Castilla-La Mancha, under the coordination of Rights International Spain.
The report was drafted by Esther Fernández Molina. The final review of the report was conducted by Rights International Spain. The organization would like to thank Georgia Dimitropoulou, member of the Advisory Board of the PROJUS project, for her valuable comments and remarks.

The national report was drafted in Spanish and translated into English by an external third party that does not belong to the organization. Therefore, the Spanish version prevails.

Contents

I. Introduction

This report has been developed within the framework of the "Procedural Rights of Juveniles Suspected or Accused in the EU (PRO-JUS)" project. The PRO-JUS project is a regional project implemented in 5 EU Member States (Belgium, France, Hungary, Spain and The Netherlands) under the coordination of the Terre des hommes Regional Office for Central and South East Europe based in Hungary in partnership with Defence for Children International (Belgium), Hors La Rue (France), Rights International (Spain) and Defence for Children International (Netherlands).
The PRO-JUS project aims to examine the situation of foreign children suspected or accused in criminal proceedings since their extra vulnerability may hamper their enjoyment of the rights enshrined in the three procedural directives of the European Parliament and of the Council (EU directives 2010/64[1], 2012/13[2], 2013/48[3]).

Through the implementation of its activities, the project aims to (1) Increase the knowledge-base and capacity of law enforcement and legal practitioners to ensure the rights of foreign children suspected or accused in criminal proceedings are respected, through multi-country research; and (2) Ensure that the three procedural directives are harmoniously implemented in 15 EU Member States for the benefit of all children, including foreign children, through wide dissemination of results and national as well as international advocacy initiatives.

Children face various obstacles in seeking justice and demanding respect for their rights, some of the obstacles being their lack of legal capacity[4] as well as their particular status as children[5]. Their vulnerability is further exacerbated in the course of investigations or criminal proceedings by social and administrative conditions such as holding a foreign citizenship or belonging to a marginalised minority group. The procedural guarantees that need to be triggered for children suspected or accused in criminal proceedings indeed raise additional challenges for national justice systems when the children accused or suspected are of foreign origin.

Although it is difficult to provide an accurate picture of the prevalence of the phenomenon of foreign children suspected or accused in different EU Member States, the estimates[6] suggest that the phenomenon of children in conflict with the law remains important in the majority of EU Member States.

To be competent to stand trial, a criminal defendant must have sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, functional understanding of the proceedings against him/her, as well as the capacity to assist in preparing his/her defence.

Language is the first barrier that may hamper a child suspected or accused to access his/her rights and ensure that he/she is tried fairly and has access to the information on the rights in a language he/she can understand. Moreover, accessing a lawyer that is trained and competent to defend cases involving foreign children is not necessarily an easy process, thereby potentially jeopardizing the exercise of their rights of defence, which must be "practical and effective".

This report deals with Spain, and constitutes one of the 5 national reports developed as part of the PRO-JUS project. The report is the result of research which has combined desk research, analysis and semi-structured interviews with adult stakeholders and children.

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1 Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings

2 Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings

3 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

4 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804b2cf3 - accessed 03.06.2016

5 Golub, S. and Grandjean, A., Promoting equitable access to justice for all children. UNICEF Insights, Issue 1/2014 (2014)

6 In France in 2015, for the city of Paris only, the 'Judicial Protection of Juveniles' indicates that 2,297 cases of children were referred to the prosecutor for minors, among which 1,199 cases affected foreign children for an amount of about 400 different children (Source: Internal document of the Judicial Protection of Juveniles, Service Territorial de Milieu Ouvert Paris Center, 19 April 2016). In Spain, the data obtained in 2015 reveals that 18,134 children aged 14-17 years were arrested or investigated for the commission of a criminal offence, out of which 3,927 were foreigners (Ministry of the Interior, 2015 Statistical Annual Report, p. 297, available here: http://www.interior.gob.es/documents/642317/1204854/Anuario-Estadistico-2015_126150729_VF.pdf/808a7398-2d25-4259-b450-974dc505f2e3). In Hungary in 2015, the total number of juvenile offenders was 7,785 and out of this 195 were foreigners (Source: ENyUBS, 2016. Ministry of Home Affairs. http://bsr.bm.hu). In the Netherlands in 2015, the police interrogated 37,017 minors (Source: National Police Database). In 2014, 1,380 children were placed in judicial juvenile institutions, out of which 19.2% were of foreign descent (Source: Department for Judicial Youth Detention Centres (2015), JJI in getal 2010-2014'. The Hague: Ministry of Security and Justice).

Developed according to a common research methodology that was employed in all of the 5 project countries, the report presents the research findings and identifies noteworthy practices and recommendations. In line with the aims of the research, the report also discusses the factors that affect and hamper the effective enjoyment of the rights enshrined in the 3 EU directives.

The information and findings found in this report and the other national reports will serve as the basis for the development of a regional comparative report that is also envisaged to be developed with the PRO-JUS project.

I.1 Hypothesis and problem statement

According to previous research on children in conflict with the law, children[7] generally lack the knowledge, ability and independence to seek justice and demand respect for their rights. This primary vulnerability is further exacerbated in the course of investigations or criminal proceedings[8] by social and administrative conditions such as holding a foreign citizenship or no citizenship at all.

Children's vulnerability[9] can derive from, among others, their personal characteristics or through circumstances – being traumatized, being a foreigner, level of maturity etc.). The vulnerability of foreign children can be intensified and escalated by impairments, internal (individual, biological) and external (circumstances of the crime/childhood), respectively.

The procedural guarantees that need to be triggered for children suspected or accused in criminal proceedings indeed raise additional challenges for national justice systems when these are of foreign origin. Equally, accused or suspected children might have been a victim of other crimes previously.

In addition children with multiple vulnerabilities, such as foreign children[10] accused or suspected of crimes are facing additional protection challenges. National child protection systems fail to effectively protect them and ensure availability of and accessibility to quality services.

According to previous research[11] there is a gap between: the legal norms and practices; the situation of native children and foreign children; and the practice in urban and rural areas.
Previous situation analyses[12] and the child friendly justice guidelines of the Council of Europe revealed some factors that positively contribute or have adverse consequences on the effective exercise by children of their rights in the course of criminal procedures.

Therefore, the core question of the research reads as follows: Can foreign children, suspected or accused in criminal proceedings, effectively exercise the rights given to them by EU directives 2010/64, 2012/13, 2013/48 – both in theory and in practice?

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7 For the purpose of the Project, a **"child"** shall be understood as any person below the age of 18 (at the moment he/she was arrested or is accused or suspected of committing a criminal offence by a competent authority).

8 **"Criminal proceedings"** are to be understood as the procedure under which a person is suspected or accused of having committed a crime (as defined under national or international law) until the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal. As a consequence, the term when the person serves the sentence (i.e. post-conviction) do not fall under the definition of criminal proceedings. For the purpose of this research, criminal proceedings will only be taken into account from the moment the person is officially entitled to exercise the rights enshrined in the 3 directives, that is to say when the person is aware of the suspicion, the accusation or when the person is deprived of his/her liberty (arrest/pre-trial detention)..

9 **Child vulnerability** is not based on age alone. Child vulnerability is the degree to which a child can avoid or modify the impact of safety threats. It describes how each child's age, physical, intellectual and social development, emotional / behavioural functioning, role in the family and ability to protect him/herself contribute to or decrease the likelihood of serious harm. Child vulnerability should be considered from numerous perspectives, age being only one. The following should be assessed: the child's ability to protect self, the child's age, the child's ability to communicate, the likelihood of serious harm given the child's development, the provocativeness of the child's behaviour or temperament, the child's behavioural needs, the child's emotional needs, the child's physical special needs, the visibility of the child to others/child's access to individuals who can protect, family composition, the child's role in the family, the child's physical appearance/size and robustness, the child's resilience and problem-solving skills, the child's prior victimization, the child's ability to recognize abuse/neglect.

10 A **"foreign person"** is to be understood as 'a person who does not hold the citizenship of the country where he/she is being accused or suspected, or where the criminal proceedings are taking place'. In other words, the foreign person must be a non-national, thereby excluding the holders of double-citizenship

11 Gyurkó, Sz. (ed) - Nemeth, B.: Comparative situation analysis of juvenile justice system in 20 EEC countries in accordance with the four relevant Terre des hommes scopes, Budapest, Tdh. 2016 (not published yet).

12 Ibid.

In addition, two research sub-questions should contribute to answering the core question. They read as follows:
1. What factors positively contribute or have adverse consequences on the effective exercise of the rights in the above mentioned 3 directives by foreign children

2. How can positive factors be built upon and how can those obstacles be overcome?

I.2. Methodology

I.2.1. Desk research

Each researcher was required to carry out extensive desk research of available documents and, in particular, to review national laws, official documents, national statistics and reports. The researchers were asked to try to collect all possible and relevant sources of data from every source available (publications, doctoral theses, academic research, etc. in the exact and related areas).

I.2.2. Semi-structured Interviews with Adult Stakeholders and Children

In addition to desk research, the researchers also employed semi-structured interviews with adult stakeholders and foreign children in their respective countries. The project envisaged for the utilization of semi-structured interviews in order to obtain important first-hand information from the most important stakeholders (exclusively dealing with or playing an important role for foreign children in criminal proceedings) and foreign children suspected or accused in criminal proceedings. The interviews were conducted based on developed questionnaires, with separate ones being developed for use during interviews with the adult stakeholders and foreign children.

Interview questions: At first, an English language questionnaire had been developed and then translated into the other local languages. In order to ensure that the questions and results are comparable, the national adaptations to the questions were required to be kept to a minimum. It was important to ensure that the translated questions followed closely the meaning of the original questions which had been formulated in English.

I.2.3. Ethical issues

The research was guided by a number of ethical principles:

Informed Consent: interviewees have to be fully informed about the project and the way in which their information would be used in order for them to be able to give informed consent. With regard to children this meant that the project would have to be explained in a manner that they could understand and that the interview questions have to be adapted accordingly;

Data protection: data obtained during the research has to be kept confidential and stored securely;

Purposeful use of data: data obtained from the interviews for this research is to be used for this research only. Permission must be obtained for use of interview data for alternative purposes.

I.3. Sample selection and problem statement

In designing the sample, it was initially considered necessary to collect information in some of the cities in which there is a higher foreign population (Madrid, Barcelona and Valencia[13]), and that according to data from the National Statistics Institute have a greater number of foreign children with criminal convictions. Moreover, it was also deemed advisable to collect information from any other city with a smaller population in which the presence of foreigners is not very high and the number of foreign children with convictions is lower (Albacete[14]). In this way it would be possible to obtain information from those places that are more likely to deal with the problem of having to try foreign children for criminal offences, but also from those where, due to the lower foreign presence, resources could be limited in some way. Therefore, the first criterion for selection of the sample was territorial. Then, and in accordance with the two groups of interviewees, the following specific criteria were established.

Selection of the stakeholders: It was decided that there were two groups of professionals who were most involved in the aspects we wanted to investigate: police officers and lawyers. In total, 4 lawyers were interviewed. In the case of the police officers an effort was also made to interview members of the various police forces that exist in Spain. So, we interviewed 3 national police officers (present in the city centres), 1 Guardia Civil (present in the rural areas), 1 member of the regional police (some regions have assumed competences in the area of security and have their own police corps) and 1 member of the local police (with few competences in the area of security but present in all the towns). We also interviewed 2 judges, 3 prosecutors, 3 members of the technical and/or mediation team -dependent on the Juvenile Prosecution Office-, 2 legal interpreters and translators, and 1 head of the office of the Ombudsman. Total interviewed: 21 professionals. In general, the process of recruitment of stakeholders was easy and professionals collaborated without any difficulty. Only in some cases was it necessary to contact the higher authorities to obtain the corresponding authorisation.

Selection of children: The selection of children was more complicated. Initially we established as a selection criterion that the sample preferably include foreign children from non-Spanish speaking countries. However, we estimated that even if they represented a smaller number, it would be also interesting to interview South American children to assess whether they encountered difficulties due to their status as foreigners, despite of knowing the language. In addition, it was felt that it would be desirable that the sample include both unaccompanied children and children residing in the country with their families. Given the low number of refugees in the country, we did not contact anyone; neither were we able to find children who had been the subject of human trafficking[15].

In this way, we designed four recruitment strategies: (i) via lawyers, (ii) via the teams responsible for executing the sanctions in each regional administration, (iii) via accommodation centres for children where unaccompanied children reside and (iv) by directly contacting children directly on the way out of hearings in juvenile courts. These strategies resulted in the following: the bar associations contacted to provide us access to some of these children were unsuccessful, since they failed to recruit any children. Although lawyers had located many children with the profile that was required, none of them wanted to participate in the research. The most successful contact strategy was obtained through the regional teams in charge of enforcing the sanctions (ii). In this way we managed to contact 11 children that were under custody measures in centres in Madrid (Centro Teresa de Calcutta) and Barcelona (Centro Can Llupià). Insofar as children were placed in such centres, their guardianship is responsibility of the public entity that belongs to the Autonomous Region; this implies the need first and foremost to request the authorization of such entity, which in turn and where applicable, also requests the consent of the parents. Thus, the authorization for 4 of them was obtained quickly and easily in the Region of Madrid, while for the other 7 in a centre belonging to the regional government of Catalonia, we had to wait longer and go through a lengthy bureaucratic process, which took more than three months[16].

13 According to data from the National Statistical Institute (INE) and relating to the 2014 Census, the four cities with the highest foreign population are Madrid (17.1 %), Barcelona (15.74%), Alicante (6.16 %) and Valencia (5.37%). Valencia prevailed over Alicante because it is the seat of the Regional Government and therefore is responsible for the administration of the regional services in its province.

14 It is the 30th of 50 provinces, with a foreign population of 0.64%.

15 We contacted one of the leading NGOs (Proyecto Esperanza) which works with women trafficked for the purpose of sexual exploitation and they told us that none of the children that they assisted had gone through criminal proceedings.

16 In Barcelona, the detention centre to which we went is publicly owned and is managed directly by the regional government of Catalonia. In Madrid, the detention centre which was contacted is managed by a non-profit association, GINSO (http://www.ginso.org).

It was especially difficult to locate unaccompanied children. Initially we had access to an accommodation centre in Barcelona, belonging therefore to the Catalan regional government, and we requested authorization to conduct the interviews. The response of the entity was that these children were under the supervision of the Regional Government because they were children at risk but they were not subject to any criminal sanctions. After insisting on the fact that we only wanted to interview those unaccompanied children who had been accused in a criminal proceeding, we were informed that it was impossible because none of their children had been suspected or accused. In short, after many exchanges of communications we found that the entity refused to recognize that some of these children might have been involved in criminal proceedings and therefore it was not possible to have access to them. In view of this refusal, we considered interviewing unaccompanied children who were already of legal age and therefore were not under the tutelage of any administration, but who had gone through criminal proceedings when under age in 2014 or later. A group of young people, over the age of 18 year[17], who met the characteristics to participate in the study were contacted, as they had committed crimes when they were minors (between 15 and 17 years). These young people attended a support service for the emancipation of risk groups, belonging to the regional government of Catalonia[18], who again refused us access to these youths, making it impossible to locate them in a centre run by the regional government, with the same arguments they had used previously. Finally, we obtained access to 4 unaccompanied children who were already of legal age, located through an NGO[19] that provides shelter and gives training to people in a situation of social risk.

Finally, we contacted 3 children on the way out of the juvenile courts in Madrid after having participated in a court hearing as the accused in a criminal proceeding. Although the children were initially prepared to cooperate, in the end none of them appeared at the appointments arranged.

Ultimately, the final sample of children[20] was 15 people, of which 14 were boys and 1, a girl; 10 were North Africans (including the girl), 2 were Romanians, 1 was Colombian and 2 were from the Dominican Republic. This is quite a representative sample of the nationalities that live in Spain (see point II.2.1, below).

17 One was 20 years, two were 19 and one was 18 years old.

18 The Directorate General for Children and Adolescent Services of the regional government of Catalonia has an area for support for children in care and aftercare that offers support to young people between 16 and 21 years of age in 6 areas: housing, job placement, socio-educational monitoring, legal counselling and economic support.

19 Espai d'Inclusió i Formació Casc Antic is a non-profit association with 34 years of experience in the social and community field that focuses on giving refuge, training, dialogue and associative and citizen's participation as the key elements for promoting inclusion of children and adults in the labour market, without any distinction based on age, gender, origin or income.

20 All the children that participated in the interviews received financial compensation of €25, except the 4 children staying at Community of Madrid centre, who were not remunerated at the express request of the Director of the Centre, in order to avoid problems in the daily management of the centre that might arise from choosing some children, who would be compensated, and not others. In the case of the children staying the Barcelona centre, the compensation was offered in the form of a gift card to be used in a sports shop.

II. Description of the context: Spain

II.1 The juvenile justice system: a brief description

The juvenile justice system has been considerably developed in Spain since the arrival of the democracy in 1978. This evolution can be seen in the legislative transition since Organic Act 4/1992, on Procedural Reform of Juvenile Courts (Law 4/1992). Law 4/1992 allowed the implementation of the "responsibility model" in Spain for the first time, a "dual" legal framework that aimed to strike a balance between education and punishment within the juvenile justice system, as advocated by the United Nations Convention on the Rights of the Child (CRC). However, this law was criticized because it was provisional legislation and did not reform the overall operation of the juvenile justice system in an organized manner. The balance was finally struck due to the efforts of those involved in the implementation of the law, in particular, to the work carried out in two lines of action laid down by the law: the "de-judicialisation" and "de-institutionalization" (Rechea Alberola and Fernández Molina, 2003).

In 2000, a new law was finally approved, Organic Act 5/2000, regulating the criminal responsibility of children (Law 5/2000). This law fully and systematically regulates the juvenile justice system in Spain. According to this law, juvenile justice is a different jurisdiction to that of criminal justice for adults, and one which has specific, specialized courts. The competence of the juvenile courts is determined by the age of the offender as well as his/her conduct. In relation to the latter, the system is exclusively a system of criminal liability. Juvenile justice applies only to those persons who commit acts defined as criminal offences in the general Criminal Code, applicable to adults. In this way, there is no intervention with children who are in situations of vulnerability, neglect or abuse, or when they are at social risk.

In relation to age, the law applies to persons between 14 and 18 years of age. Within this age range, Law 5/2000 established two different groups in order to determine the degrees and duration of sanctions[21]: (i) for children aged between 14 and 15 years, and (ii) for children aged between 16 and 17 year. In general, the Law states that sanctions cannot exceed two (2) years. However, for serious cases or where violence and intimidation are used or when the offences have been committed by an organized gang, the sanctions may not exceed (i) three years, in the case of children aged 14 to 15 years, and (ii) six years for children between 16 and 17 years. In addition, if the child is a re-offender the judge must necessarily impose a custody sanction in a closed detention centre. This sanction cannot be changed until a year has elapsed. Finally, in exceptional cases, such as murder, rape or terrorism, the judge must necessarily adopt a cuestody sanction in a closed detention centre that can last for (i) up to 5 years for chidren aged between 14 and 15 years, and (ii) up to 8 years for children between 16 and 17 years; the sanction cannot be changed until after serving half of the sentence. In this way, Law 5/2000 is based on the idea that, the older a person, the greater the responsibility expected, to avoid the absurdity of a situation where overnight, the person goes from having limited to full responsibility.

When an offence is reported to the public prosecutor's office, a preliminary procedure begins in order to assess the allegations. Following that assessment, the prosecutor can do three things: (i) file the case because there are legal reasons justifying the shelving; this is the case basically when the actions are deemed not to constitute a crime, or because the perpetrator has not been identified, or because the perpetrator is a person who is not aged between 14 and 17 years; (ii) to discontinue the proceedings in the interest of the child, in the event of non-serious cases (misdemeanours) and non-violent actions, and when the child is not a repeat offender. In both cases (i) and (ii), no further measures or sanctions would be adopted and the case would be filed without undertaken further steps; and (iii) notify the juvenile court to initiate the corresponding judicial proceedings.

If the latter course of action is chosen, there is a possibility to deviate the case outside the judicial sphere, if the child carries out an activity led by the principles of "Restorative Justice" such as conciliation between the victim and the offender or the reparation of the damage, provided that the case is a misdemeanour and no violence and intimidation were used. If conciliation or reparation is carried out successfully, the Prosecutor may request the judge to file or shelve the case in the interest of the child.

21 Article 7 of Law 5/2000 provides that the judge may adopt the following sanctions: i) Custody sanctions: Custody in a closed centre, in a half-open centre or in an open centre, Therapeutic custody and Weekend Custody; ii) Community sanctions: Probation, Community Service, Socio-educative measures, Community therapeutic treatment, Attendance at a 'Day Centre'; iii) Other sanctions: cautioning, deprivation of a licence to drive a motorcycle or motor vehicle, or the right to have them, or to have a gun and game licence and prohibition to approach or communicate with the victim, or the family members or any such person as determined by the judge.

Similarly, the judge may also order the filing when the offence is not serious and the measures adopted have been sufficient to hold the child responsible for his/her acts, or because the time elapsed since the events took place, thus making any intervention unnecessary.

When the judge decides not to file or shelve the proceedings, the process continues and is at this point that the formal investigation procedure begins. The next phase is the trial, during which a hearing is held. Before adopting a decision, the judge must listen to all parties including the child, parents, prosecutor, lawyer and members of the technical team; an interdisciplinary team that belongs to the juvenile prosecution service, which evaluates the child's psycho-social situation in a report and proposes the sanction that, in its view, is most suitable for the child. With this report, the judge can adopt the decision taking into account the best interest of the child. What is more, the law requires the judge to also consider the age of the child as well as the seriousness of the offence. This is also the point at which the child decides whether or not he/she accepts the facts of which he/she is accused. If the child agrees[22], the hearing would not take place and the judge issues his/her ruling directly. If the child does not accept the charge, the hearing would take place so that the judge can consider all the elements, in order to adopt a decision that can be an acquittal or a conviction, obliging the child to accept an educational sanction.

After the trial, the judge decides to impose a sanction and it is the regions that must enforce such decision. Competent regional governments in the field of childhood and social welfare are responsible for carrying out the educational intervention with children. This means that each region of the country may have a different policy, as well as different resources. This difference in resources and policies would result in major contrasts in the type of responses that are applied, in general, to juvenile offenders (Fernández, 2012).

II.1.2. Procedural guarantees for juveniles suspected or accused

Law 5/2000 made it possible to adapt the Spanish juvenile justice system to the requirements that the CRC establishes in articles 37 and 40; and, in general, to all the regulations enacted by the European institutions[23] and that have shaped or influenced judicial practice. Thus, the system of juvenile justice in Spain, in addition to opting to "de-judicialise" cases, to use the deprivation of liberty as a last resort, also proclaims respect for the legal and procedural guarantees for children accused of committing a criminal offence. In this sense, Law 5/2000 only regulates the substantive and procedural specialities that the Spanish State has laid down to apply to children under legal age, and for all matters not provided for, the provisions of the Criminal Code and the Criminal Procedure Act (hereinafter CPC) for adults are additionally applicable[24]. The maxim is that the child must have the same guarantees as the adults, but also some additional guarantees must be observed in view of the special underage age status of accused children. Thus, Law 5/2000 also regulates some of the rights that the CRC considered essential such as the right to non-discrimination (art. 2), the best interests of the child (art. 3), the right to life and development (art. 6) and the right to be heard (art. 12).

22 Article 32 of Law 5/2000 establishes that when in the appearance before the juvenile judge, the child and his lawyer accept the sanction requested by the prosecutor in his/her written allegations, the judge will issue judgment without further ado. This implies, therefore, explicit recognition by the child of his/her own guilt and responsibility for the acts of which he/she is accused.

23 Recommendation of the Committee of Ministers of the Council of Europe (1987) 20 on social reactions to juvenile delinquency, September 17; Recommendation from the Committee of Ministers of the Council of Europe (2003) 20, on new ways of dealing with juvenile delinquency and the role of juvenile justice of 24 September; Recommendation of the Committee of Ministers of the Council of Europe (2008) 11 on European rules for delinquent youth subject to sanctions or measures, of 5 November, which although not binding, have greatly influenced national legislation.

24 As the State Public Prosecutor's Office indicated in Circular 9/2011 that the supplementary application of the CPC is only exempted in the case of matters that have a sufficient regulation in the juvenile legislation and when the specific provisions of the CPC are incompatible with the underlying principles of juvenile justice (page 21).

II.2 Foreign children in Spain. The situation of suspected or accused children

II.2.1. Foreign children in Spain

According to the information provided by the National Institute of Statistics (INE in Spanish) (see table 1 below), the percentage of foreigners in Spain in 2014 was 10.74% of the population (5,023,487 inhabitants). The autonomous region with more foreign children is Catalonia with 24.34%, followed by Madrid with 16.8%, Valencia with 13.58% and Andalusia with 12.24%. Foreign children living in Spain come mainly from North Africa (15.3% are from Morocco), Eastern Europe (13.9% are from Romania) and Latin America (8.1% are from Ecuador and 6.6% are from Colombia). It is not possible to ascertain the status of all foreign children residing in Spain in exact terms. The reliable and available information refers to Unaccompanied Foreign Children (UFC) as there is a Registry of UFC coordinated by the State Public Prosecutor's Office, which makes it possible to identify all foreign children in Spain in this situation or having such status. According to the report of the State Public Prosecutor in 2015, at 31 December 2014 the UFC Registry contained a total of 3,660 children, representing 0.4% of foreign children registered in Spain in 2014. Of these, 840 are girls and 2,820 are boys. The vast majority of UFC are in Andalucía, Melilla and Catalonia. The largest numbers among them are Moroccan, followed by Syrian and Algerian children. The number of unaccompanied foreign children who have applied for asylum is very low. In 2015, only 25; it is by far the lowest across the EU, a 0.7% compared to 56.6% in Italy or 50.1% in Sweden[25].

The issue of unaccompanied foreign minors is a matter of particular concern for the Spanish State. Despite not being a very numerous group, it does generate a large number of interventions given the situation of risk in which these children find themselves. In order to address the problems generated by this group[26] a Framework Protocol[27] was adopted in 2014 aimed at coordinating the intervention of all the institutions and administrations concerned[28]; from the location of the child or alleged child until his/her identification, determination of his/her age, delivery to the public child protection service and documentation.

The policy on unaccompanied foreign children is aimed at returning the children to their countries of origin, either with their families or to a juvenile accommodation centre in their country, as a lasting solution, provided it is in the best interest of the child[29]. When this is not possible, which is usually the case (Bravo, 2016), the unaccompanied children are taken care of in accommodation centres in Spain which try to deal with the needs of this group of children. These centres have a triple purpose: assistance (healthcare, meeting their physical needs), preventive (information, guidance, emotional support) and important integrated socio-educational care (schooling, professional initiation, socialization, free time) (Goenechea, 2006).

In general, there are important territorial differences regarding the model of care provided in these centres, while in all of them their status as children takes precedence over their status as immigrants (Bravo, 2016). However, the management of the "emergency centres", like those in the Canary Islands or Ceuta and Melilla is more complicated because the facilities are inadequate to meet the children's needs and are neglected[30]. In general, these centres fulfil rather a receiving and holding purpose, where it is easy for conflicts to arise; while in those other centres where a proper network of specialists has been created, the centres are spaces in which the children feel that as time passes they are advancing in their migration project (papers, training) and receive information about their situation and possible expectations (Bravo, 2016).

25 http://ec.europa.eu/eurostat/documents/2995521/7244677/3-02052016-AP-EN.pdf/

26 Decision of 13 October 2014, from the Sub-Secretariat, which publishes the Resolution for the approval of the Framework Protocol on certain actions in relation to unaccompanied foreign children.

27 The aim of this Protocol was to remedy some of the criticism that Spain had received in 2010 by the United Nations Committee on the Rights of the Child in the Concluding Observations to the periodic reports 3 and 4 from Spain (pages 12 and 13) http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/ESP/CO/3-4&Lang=Sp

28 This Protocol has been signed by the ministries of Employment and Social Security, Foreign Affairs and Cooperation, Justice, Interior, Health, Social Services and Equality and by the State Public Prosecutor's Office.

29 Section 5 of the Decision of 13 October 2014 from the Sub-Secretariat.

30 Concluding Observations to Spain, UN Nations Committee on the Rights of the Child (pages 12 and 13).

Some of these unaccompanied foreign minors are invisible to the Administration since they are in a situation of absolute irregularity, having been victims of the mafias devoted to human trafficking, some for the purpose of sexual exploitation, especially in the case of girls. This group of children may be the most vulnerable because they live absolutely marginalized and exposed to abuse by anyone, given their great vulnerability (UNICEF, 2009).
The other large group of foreign children, the most numerous, consists of those who have come to Spain with their families through family reunification. The administrative status of these children is contingent on that of their parents. Thus, if their parents are in an irregular administrative situation, the children cannot obtain residence authorization. On the other hand, if the situation of their parents has been regularized, they must necessarily remain in Spain for a minimum of two years (in irregular administrative situation) in order to aspire to a situation of legal residence in administrative terms (UNICEF, 2009).

II.2.2. Foreign children in criminal proceedings in Spain

Table 1 provides information on the percentage of foreign children who have had some contact with the juvenile justice system for having committed a crime. If we look at the data shown in the table, we can clearly see that there is an over-representation of foreign children in instances of formal social control.

Table 1. Information on the % of foreign children subject to criminal proceedings in Spain

% Foreigners in Spain	10.74 %
% Foreign children aged 14 to 17 in Spain	11.1%
% Foreign children aged 14 to 17 and arrested by police	25.9%
% Foreign children aged 14 to 17 with a sanction	24.33%
% Foreign children aged 14 to 17 in custody in a closed centre	46.99 %

Source: prepared by the authors based on INE data

Indeed, while the percentage of foreign children between the ages of 14 and 17 years, which is the age range within which the juvenile justice system operates, is 11.1%, when speaking of children who are arrested by the police the percentage is more than doubled, 25.9%. If we look at figure 1, we can clearly see the different reasons why the Spanish police have arrested children and the percentage of foreigners that exist per each type of offence.

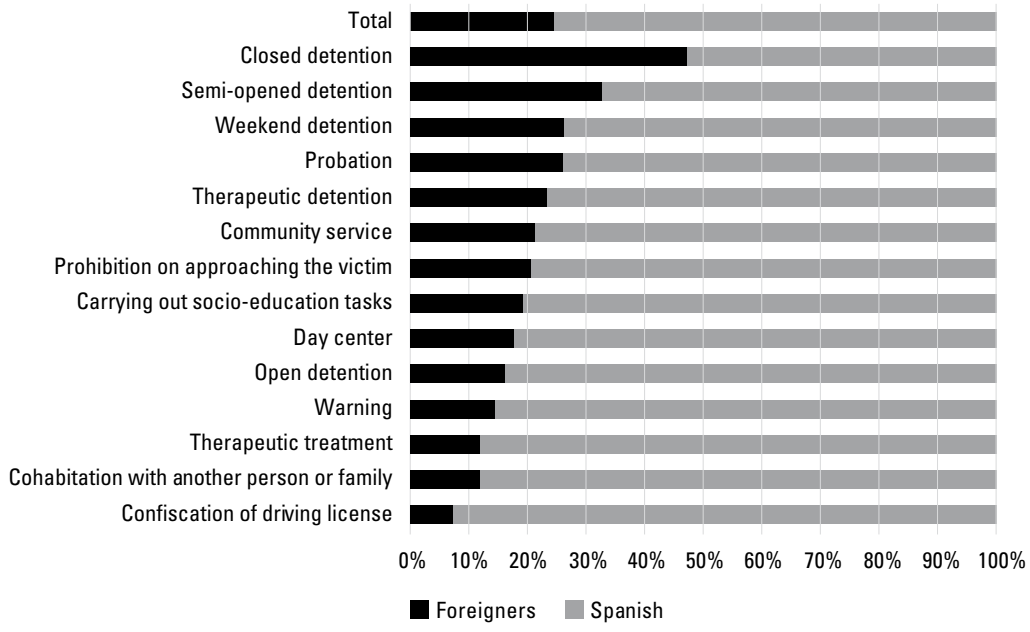

Figure 1. Percentage (%) of foreigners and Spanish, by grounds for detention. Source: prepared by the authors based on data from the Ministry of the Interior.

In general, crimes committed by this group are crimes against property, especially thefts and robberies with violence, where the percentage of foreigners exceeds the total average, while in the case of drug trafficking crimes the percentage of foreigners is lower than the average. According to information provided by the police, the most prevalent nationalities of foreign children arrested are Morocco (6.7%) and Romania (5.6%), followed by Ecuador (1.75%) and Colombia (1.71%).

Finally, it also is worth drawing attention to the results of table 1 indicating that the percentage of foreign children upon whom a sanction was imposed is 24.3%, while the percentage of foreigners in custody in a closed centre is almost twice that. In general, if we look at figure 2, foreign children are sanctioned with deprivation of liberty more often than Spanish children, although the data on the grounds or reasons for the arrests set out in figure 1 cannot explain the need to adopt such onerous measures in relation to the group of foreign children.

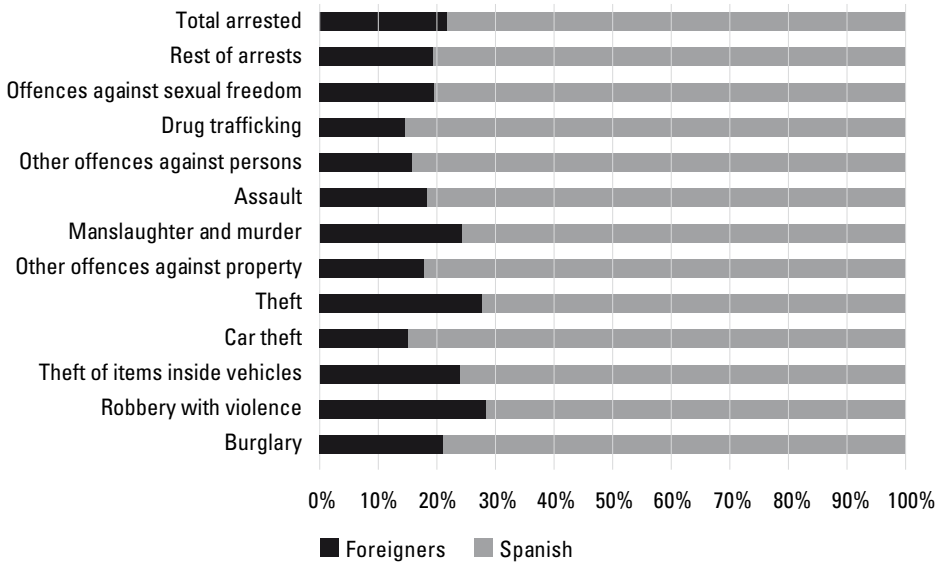

Figure 2. % of foreigners and Spanish, by type of sanction. Source: INE

III. Procedural Directives

III.1 Directive 2010/64/EU of the European Parliament and of the Council, of 20 October 2010 on the right to interpretation and translation in criminal proceedings

III.1.1 Brief summary of the contents of the Directive 2010/64

The directive's main mandate for Member States is that they must ensure that all persons suspected or accused in criminal proceedings, who do not speak or understand the language used in that process, have right to interpretation and translation from the moment the person is informed of its status as a suspected or accused person and until the conclusion of said proceedings. In this sense, the Directive 2010/64 specifies the meaning of the right to interpretation and to translation:

- Right to interpretation (art. 2): Suspects or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings. In addition, the suspect or accused person will make use of the interpreter in all communications with his/her attorney regarding any questioning or statement that takes place during the proceedings or with any request that may arise, including the right to challenge a decision. In the same way, this right to an interpreter must be safeguarded when executing a European Arrest Warrant. The interpretation may be by any means of communication, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings.

- Procedure to determine if the suspect or accused person speaks and understands the language of the proceedings. (art. 2.2). A procedure or mechanism must be established to determine if the suspect or accused person speaks and understands the language of the criminal proceedings and if he/she requires the assistance of an interpreter. Moreover, although it is not explicitly stated what this mechanism or procedure should be, it specifies that the suspect or accused person, among other things, should be able to explain his/her version of events, indicate when he/she disagrees with information, and be able to inform his/her lawyer of any facts which should be invoked in his/her defence. In any case, the suspect or accused person shall have the right to challenge a decision finding that there is no need for interpretation (art. 2.5).

- Right to translation of essential documents (art. 3): Suspects or accused persons who do not speak or understand the language of the criminal proceedings have the right to be provided with a translation of all essential documents within a reasonable period of time[31]. Suspects or accused persons also have the right to challenge a decision finding that there is no need for the translation of documents. Essential documents include any decision depriving a person of his liberty, any charge or indictment, and any judgment. Likewise, proceedings for the execution of a European Arrest Warrant shall ensure this right to an interpreter is safeguarded. As an exception, an oral translation or summary may be provide instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings. Finally, suspects or accused persons must have received prior legal advice or have otherwise obtained full knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily.

- The directive requires that both rights (translation e interpretation) should be free (art. 4) and that the interpreters and translators be required to observe the confidentiality inherent to this type of service (article 5.3).

31 The Directive, in article 3.4, specifies it is not necessary to translate passages of such documents that are not relevant to the suspected or accused person in order to have knowledge of the charges against him.

- The quality of interpretation and translation (arts. 2.8, 3.9 and 5). Interpretation and translation services shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspects or accused persons have knowledge of the case against them and are able to exercise their right of defence; they must have the right to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings (articles 2.5 and 3.5). In addition, States must establish a register of independent and appropriately qualified interpreters and translators (section 5.2) and that such assistance is duly recorded in the relevant register (art. 7).

- Obligation to provide judicial staff who are involved in criminal proceedings (judges, prosecutors, etc.) the necessary training (art. 6): those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings must pay special attention to the peculiarities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication.

- Finally, the necessary measures will be adopted to guarantee these rights in the case of suspects or accused persons in vulnerable situations, especially for those who have physical problems, and whose ability to communicate effectively is impaired. In particular, the directive focuses on the need to cater for to people with hearing or speech impediments (art. 2.3).

III.1.2 Status of transposition in Spain: Legislation on the right to interpretation and translation

Organic Act 5/2015, of 27 April, which amends the Criminal Procedure Act and the Judiciary Act 6/1985, of 1 July (hereinafter, Law 5/2015)[32] is the provision that has been responsible for transposing most of the content of Directive 2010/64, albeit with some delay with respect to that required[33].

Thus, the right to interpretation (article 2 of Directive 2010/64), is regulated virtually in its entirety in the new wording of articles 123.1 and 5, 124. 2 and 3, and 125.1 and 2 of the Criminal Procedure Code (CPC)[34]. Meanwhile, articles 123.1, 3, 4 and 6, 124.2 and 3, 125.2 and 126 of the CPC establish the essential facets of the right to translation in a manner that is very similar to that envisaged in article 3 of the Directive. It even envisages specific provisions for people with hearing or speech impediments (arts. 124.3 and 127 CPC). In addition, the Spanish legislation offers some additional guarantees, as intended in article 123.4, which establishes that, from the moment translation of the documents has been agreed, this will mean a stay of the procedural deadlines. Alternatively, as regulated in article 123.6 CPC, which provides that interpretations in oral form or in sign language can also be documented by audiovisual recording, so as to ensure they can be used in a future claim. As a further guarantee it also stipulates the impossibility of waiving the rights of interpretation during questioning and at trial (article 126).

Nevertheless, despite this there are also some flaws, which may generate problems in the implementation of these rights. For example, Spanish legislation (art. 125.1 CPC) is not explicit on what the procedure is for ascertaining whether the accused person speaks and understands the language of the criminal proceedings. Therefore, it is not clear what are the verification criteria professionals must apply when taking a decision that affects the right to a fair and equitable trial so directly. In addition, in relation to the quality of interpretation and translation services, the legislation does not specify what procedures shall be applied to ensure said quality. However, the CPC does provide for the possibility of filing an appeal in relation to any legal decisions that have denied said right or that have dismissed the complaints of the defence due to the lack of quality of the interpretation or of the translation.

32 http://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-4605

33 Directive 64/2010 established in article 9 that the provisions for compliance should come into force before 27 October 2013. The reform, which adapted Spanish legislation to the content of the European text, entered into force on 27 May 2015, nearly two years later.

34 AS explained in section II.1.2 above, the provisions of the CPC are additionally applicable.

Moreover, even though it envisaged the creation of a registry of legal translators and interpreters (First Additional Provision of Law 5/2015 and the article 231.5 of the Judiciary Act), this has still not been done since it is subject to the entry in force of a bill that will establish its operation and requirements for access. However, such law has not been yet developed, and no deadlines have been given for its drafting; moreover, it is not clear whether it will be a State register or if each autonomous region will organise its own[35]. There is another factor that can hinder the effective application of this right: the new reform stipulates that exceptionally any person with knowledge of a language can act as interpreter or translator, even if not included in said registry, without specifying which "urgent" circumstances will give rise to this empowerment, or who is ultimately to adopt such a decision, or how it is planned to ensure the quality of the interpretation in these exceptional cases. Thus, it is possible to foresee that the absence of the necessary registry (we have no idea when it will be created and how it will operate) and the possibility of using third persons, will mean that it will become standard practice for persons whose qualifications are unproven to act as legal translators and interpreters, which will undoubtedly have a negative impact in the effective exercise of these rights.

In the same way, and although article 123.1 of the CPC establishes that these rights will be free of charge, the First Additional Provision of Law 5/2015 has stipulated that the requirements laid down in the Directive may not imply increased allocations of staff, remuneration, or other staff costs. Therefore, it is not clear how such costs of interpretation and translation will be paid for, and how this fact (First Additional Provision) will end up affecting the exercise of the right of defence of suspects and accused persons. In addition and, given that in Spain there are autonomous regions which have transferred competences in the field of the administration of justice while others have not, these rights may be consolidated in some parts of the Spanish territory to the extent allowed by the necessary economic endowments of their regional budgets; while in others, especially those that depend on the State Administration, may not be able to ensure these provisions because they do not have a budget for doing so.
Also, the Second Additional Provision of Law 5/2015 provides that the Ministry of Justice, the General Council of the Judiciary (CGPJ in Spanish), the State Public Prosecutor and the Autonomous Regions, within the scope of their respective areas of responsibility, must ensure the training of judges, prosecutors and other personnel working for the Justice Authority and who participate in criminal proceedings, paying attention to the particularities of communication with the help of an interpreter. At the moment, the initial training curriculum of the judicial school offers nothing specific in this regard[36].

Finally, in the context of the juvenile justice system, it should be noted that Law 5/2000 makes no reference at any time to the rights of interpretation and translation, which would seem to indicate that all the provisions established in the CPC for adults would apply. However, and given the specificities of the criminal procedure for juveniles, it would be advisable and necessary to reform the criminal legislation regarding children, since any suspected or accused child who does not talk or understand the language must have right to interpretation in some stages of the proceedings which are specific to the juvenile justice system and that, therefore, are not covered in the general legislation for adults. This is the case in the process of conciliation and/or reparation of damages to the victim, provided for in article 19 of Law 5/2000 and further developed in article 5 of Royal Decree 1774/2004[37] which implements the law. This type of procedure involves the performance of a series of actions by means of an out-of-court settlement in which it is considered that the child who does not understand or speak the language of the process must have the assistance of an interpreter, given that, among other things, the child will recognize his/her participation in the events and will give his/her consent to participate in the arrangements that may be appropriate. Otherwise, it would violate the right of the children on trial who do not know the language from benefiting from such specific procedures that, provided in the interests of the child, make it possible to resolve the case without having to reach the trial phase. In the same way, Law 5/2000 should also be amended so that the final conciliation agreement with the victim and/or reparation of damages is considered an essential document that must be translated, since the child must sign it.

35 Before the directive was incorporated into domestic law via the reform of the CPC, the Catalan Government approved Decree Act 8/2014, of 23 December, which established the register of translators and court interpreters to appear before judicial bodies based in Catalonia. However, shortly thereafter, the Subcommittee on regulatory monitoring, prevention and dispute resolution of the Regional Government-State Bilateral Commission, estimated that the Catalan Government had regulated matters for which had no responsibility. Therefore, such register is not operating.

36 On 3 December 2015 the Standing Committee of the Judiciary Council approved the seminar: "The right to translation and interpretation in criminal proceedings following the reform of the CPC in order to adapt it to the EU directive 2010/64" as part of the State Plan of continuous training for 2016.

37 http://www.boe.es/boe/dias/2004/08/30/pdfs/A30127-30149.pdf

Moreover, during the enforcement of the sanction imposed by the youth court judge, the officer who enforces the sanction should develop an individualized program for enforcement of the sanction (art. 10 RD 1774/2004), which details the educational project that the child will have to carry out. It is considered that, along with the sentence, this program of individualization of the sanction must be also deemed an essential document that must be translated, because it clearly defines what exactly the child must do to comply with the sanction imposed by the judge.

III.1.3 Information on the right to interpretation and translation obtained through interviews

III.1.3.1. The right to interpretation: When and how it becomes effective

In general, terms, all the professionals claim the right to the interpretation of foreign children as a basic procedural guarantee. Thus, this right is defined as "necessary from the very moment of arrest" (P12, 14), because the child must be informed of those rights. They also consider it necessary, as it ensures that the child understands the reasons for the arrest, asserts his/her defence in the interview with his/her lawyer, allows educators from the technical team to know the reasons and circumstances that are behind his/her conduct, with a view to proposing the most appropriate sanction or, where appropriate, enabling them to mediate between the parties when a measure of reconciliation is carried out with the victim or reparation of the damage. Above all, it is considered an essential right because it allows children to understand the trial and the nature of what is taking place, as well as the scope of the decisions taken within it.

In addition, some participants clarify that this right is not only necessary for children, but also should be extended to their parents if they have language difficulties, since they must also understand the procedure. Thus, a lawyer acknowledges "I had Moroccan mothers present, and I think that [...] they could not understand anything"(P7, 90). Alternatively, a member of the technical team who said that "you often just end up asking for a translator because it is the mother or father who accompanies that teenager who does not understand" (P13, 24). We must remember that all regulations for children require that parents always be present at all the actions carried out with their children, and that they must sign all documents that their children sign, giving their consent, and that they agree with everything all that their child has signed or consented to.

As a result, and given that all the professionals consider it important, they say that they oversee the observance of this right in their daily practice, calling the interpreter when the child "so requests" and, in any case, if they "see that the child does not understand". In this sense, a prosecutor says:

> *"When we see that they do not understand, of course in a statement, be it here or in a youth court, with regard to a forensic examination, or for the purposes of an appearance involving non-accompanied foreign children, there is always a language interpreter no matter what the language is" (P11, 6).*

However, when asked about the procedure used to assess if the child suspect or defendant understands the language, we do not perceive the existence of clear criteria. In this sense, a judge says, "the assessment whether the child understands the language is a subjective assessment" (P9, 5).

In addition, most of the professionals point at the police forces, since the need for an interpreter should be specified in the police statement, if the child has been arrested or given a statement at the police station. In both cases, if there is a difficulty with the language, it is those police officers who should have warned about such difficulties. However, it seems that this is not always the case.

In this way, prosecutors and members of the technical team point out that there have been cases requiring an interpreter that was not stated in the police report, which makes them assume that they did without it in the previous phases. A mediator of the technical team explains:

> *"There are times that you read all proceedings and then you find a person who does not understand the language, and you wonder: and then how have they done all they've done until now?"(P13, 32)*

Moreover, this is not an isolated case, as a prosecutor also complains of this police behaviour, commenting that, in her opinion:

> *"The police sometimes out of convenience make the mistake of not using interpreters. Whenever I can, even speaking now with the chief inspector of the GRUME with policemen, I insist that it is a mistake and that they should call an interpreter because it is something that guarantees everything in all cases"(P11, 56).*

A judicial interpreter is of the same opinion is, stating that "They almost always call me, but they avoid it if they can, because the interpreter is an annoying element for them" (P20, 58); and lawyers, who indicate that they have on occasion been in the position of having to demand an interpreter at the police station, after seeing that they had not called anyone. One mentions, albeit in relation to a case of adults: "If they half understand, the police do everything the can and even more... to get rid of the problem, get the statement taken and they're done!" (P1, 71). This idea of the interpreter being called only when there is no alternative is corroborated by what some professionals have told us about the use of relatives or guardians of the child to make themselves understood to him, both at the police station and in the courts. In fact, there are some who think is not so bad.

> *"Myself, I would dispense with the interpreter, having the information from the guardian. For me that information is reliable and valid."(P4, 128).*

> *"We even look for people who are not official interpreters. I mean, for those first procedures, sometimes -of course- if it is midnight or at four in the morning and a boy appears stealing a car and says that he does not speak or is a deaf-mute... we just sort it out." (P3, 109 and 113).*

There are, however, those who remind us that this should only be something exceptional.

> *"Here, we cannot think, ever, to use a brother, cousin or uncle to act as an interpreter." Yes, it has happened at some time, it may have occurred as an exception, but the person who did it got a slap on the wrist, that is how I feel about it [...] we have professionals to take care of it..." (P11, 6)*

However, not all the police officers interviewed recognize this bad practice, insisting that, if there is the slightest doubt, they ask for an interpreter, especially considering that "the lawyer will demand it when the statement is being taken" (P16, 54), and it is mandatory so that the juvenile understands the reading his/her rights. Only in the case of an arrest in the street do they recognize that it is not possible to apply this right, because the police officers are not accompanied by an interpreter in that situation. While one of them proposes "a system of simultaneous translation by mobile for the reading of rights and understanding what the detainee is saying" (P10, 102).

In short, as you can see, there are different visions to be found among the various professionals, which are qualified by the opinion of the children interviewed. Indeed, in the interviews, we found that some of them did not need the assistance of interpreter; in particular two boys and a girl who came from Morocco to Spain with their families when they were children have a good command of the language.

One of them stated:

"They told me I could but I never asked for it because already I know to speak and everything. I was offered the interpreter but I did not need it"(M10, 49).

However, we could see also that not all the juveniles who needed an interpreter during their process received one. Two Moroccan children, who during the interview exhibited great difficulty in expressing themselves in Spanish, to the point of needing an interpreter during the same, did not receive the assistance of a professional during the process. One said that he was not offered on because "they knew that I could speak because I had been there several times" (M6, 62), although he insists that he indeed needed assistance in this regard and did not receive it.

The version of another Moroccan child is unclear on this point. He says that he knew that he could ask for an interpreter but that he did not, and that he understood half of what they told him. In general, it is clear that he did not properly understand the information provided to him by the police, the prosecutor, the judge and the lawyer. He found it hard to recount this experience and mentioned some inconsistencies, such as the judge advising him not to call his lawyer, but then clarified that he had one from the moment of his arrest. Ultimately, these inconsistencies demonstrate that, in any event, children found it difficult and did not properly understand the process in which they were involved.

In this regard, we must also highlight the case of a Romanian who tells that when he was arrested by the police and told the officers he knew spoke no Spanish – he was newcomer to Spain-, they did not believe him: "I said to them I did not know to speak their language, but they said that I did, but didn't want to talk" (M4, 30). Therefore, according to his version, they held him in jail for three days without taking a statement, until they finally believed him and called the interpreter, and he could communicate.

III.1.3.2. The interpreter and the quality of the interpretation

Through the professionals interviewed we found evidence that the translation and interpretation service is not mainly provided by court interpreters who work for the administration, but is rather a service provided by private companies that have contracts with the Ministry of Justice, in the case of the courts, and the Ministry of the Interior in the case of the National Police and Civil Guard stations. None of them is able to determine whether or not the professionals who these companies send are sworn interpreters, and if they are duly specialized or trained. The President of the Professional Association of Judicial Translators and Interpreters (APTIJJ in Spanish) has conveyed that there is a lack of control by the Ministries of Interior and Justice when setting the minimum standards regarding the required qualifications. Therefore, each tender bid is based on different requirements.

Generally speaking, the majority of the professionals agree that, when an interpreter is required the service is fast; only those from the town of Albacete complain that there are delays in service, since the interpreters come from Madrid. In the same way judges, prosecutors, lawyers and the police generally provide a positive assessment of the professionals. Thus, they said the following terms: "they are people who do a good job", "they all are very professional nowadays", "it is a great service", appreciating even the note of "objectivity" they added to statements, and as a prosecutor says, "they are people outside of the proceedings who are provide much objectivity" (P11, 6).

However, there is no unanimity on the subject since, for example, one judge says, when she does not understand the language, "I have no way of assessing" (P5, 56), as she sometimes perceived that the interpreter went too far. Likewise, one police officer complained of "a translator who was finally fired because he translated as he saw fit and said whatever he wanted" (P2, 163).

The members of the technical team and, in particular, the mediator interviewed, also expressed a negative view. For them it is a problem if the interpreter mediates in the conversation, since it influences the communication with the child, thus becoming "colder", "nuances are lost", "non-verbal content is not controlled" and "we cannot go in depth".

One puts it thus:

"Everything is a bit colder because I cannot use the same language [...] of course, I can't reach, and I cannot delve into the language... No, no. Then I [have to] ask questions that are like 'colder', more technical, simply collecting information" (P4, 222, 228).

The mediator even goes so far to say that "it conditions the intervention"; so, in short, everything depends on the interpreter who comes. As she herself says:

"Depending on the translator that shows up, you already approach the interview more rapidly or slowly, emphasizing some points more than others" (P13, 10).

Professionals illustrate this negative perspective with some personal experiences. Thus, they tell of interpreters who will overstep the boundaries in their functions and provide a very poor service. Such as that of an interpreter, who was actually a domestic employee and who works in one of the contracted companies to earn an extra income, and "instead of translating, she was more concerned with scolding the children" (P13, 48); or that of a Maghreb translator who also "focused on scolding the children" (P15, 21), and then they subsequently discovered that he was a former prisoner; or that of a lawyer with good command of English who warned that the translation that was being carried out for his client was not of sufficient quality (P7, 108). Similarly, when there are minority languages like Wolof or Urdu, it is difficult to have a specialized interpreter (07, 140). Also, on other occasions, despite the availability of interpreters, the existence of dialects in some areas creates communication problems. It is what happens, for example, with Arabic and the various dialects that exist in some areas of Africa or the Caucasus (P7, 118 and 120).

These experiences are used to check that the translation and interpretation service that the Administration has contracted with language service companies does not work as well as some professionals had initially stated. Court interpreters interviewed have explained many of the problems that arise in detail. According to the professionals, the number of translators and interpreters employed by the Administration is very low; it is insufficient to deal with all the cases in which they are required. For this reason, the State has an agreement with a private company to provide translation and interpretation services when necessary. The problem is that the way in which these companies manage things undermines the service offered.

"The service is mostly awarded by tendering and this often means that the lowest bidder wins the contract". (P17, 4)

"The State pays, or can pay, up to 35 Euros per hour. Up to 35 Euros hour as far as we know; the problem is that the company pays up to 8 [Euros/hour] (P17, 47)... The vast majority of qualified professionals reject them because they need to make a living (P17, 6)... Lots of money is being lost because the companies providing this service are pocketing more than 60% of what the Administration is paying per hour of service, and price per word"(P17, 6).

Indeed, as a result of the research, we found that the rates paid by these companies are so low that not specialist professional with a degree experience would ever want to work for them. The result is that "qualified professionals co-exist with nightclub bouncers; waiters at Chinese restaurants... with anyone who claims they can do it" (P17, 24). The APTIJJ affirms:

"The problem is that nobody would ever countenance a lawyer who is not a professional, right? The lawyer must be registered professional. Nobody would ever think that the lawyer is just as a man who likes to watch courtroom dramas...no, and the judge also must be a professional, right? The coroner, the coroner

is not a student of medicine, is he? He is another specialist in the field. But with interpreters, this seems to be the only case where non-professional people are allowed to participate... why? That is our struggle (P17, 61).

The juveniles interviewed have reinforced this idea that, occasionally, there are cases of bad practice. Thus, two Moroccan children said that during their statements they perceived that the interpreter was not translating their words exactly. One of them says that he noticed that in the responses of the prosecutor:

"He changed some things... you ask him one question and he answers a different one [...] An interpreter 'in the middle' can say whatever he wants... you know?" (M13, 124)

Coinciding with these perceptions, in relation to the work of the interpreter at the time of the trial, one child even said:

"Okay, enough... if you know how to speak then talk to the judge yourself... But if you can't, pray to God to keep your mouth closed" (M15, 54).

In addition, the Romanian juveniles interviewed told some anecdotes that support what some professionals argued regarding interpreters sometimes overstepping or do not appearing to be very professional. Thus, one of them says that when the lawyer advised the child to settle, the interpreter repeated it several times to the child, recommending that he think twice about it, which led him to seriously doubt his lawyer's defence. He finally did what the interpreter said, after asking the lawyer to clarify the terms of such settlement. Meanwhile, another Romanian child explained that the first interpreter he had, seeing him so nervous and small, began to cry and found it difficult to calm herself and communicate in view of the situation. He added that "she tried to give me advice as if she were my mother" (M5, 80). However, what is most striking is that although some professionals demonstrate the lack of professionalism that occurs occasionally in the courts, there is not a culture that demands quality. No one sues because of a poorly performed service of interpretation or translation. In the first place because, as mentioned previously, is difficult to evaluate it, when you do not speak the language (P5, 56).

"... how does the judge, the prosecutor or the lawyer know whether that things are being done properly or not, if they have no knowledge of the language?" You can't, if you don't speak the language, you're blind"(P17, 57).

In addition, when deficiencies are noted, the complaints are not formalized via an avenue that can have a genuine impact. Thus, the appeal established in article 125.2 of the CPC should be the tool that lawyers use to complain. As one lawyer indicates "the means for bringing a legal challenge due to a violation of fundamental rights [...] are more than sufficient if properly applied"(P1, 731). Thus, if they have not been used it is because lawyers often do not consider that a poor quality interpretation has been so significant as to impair the right to a fair trial. For this reason, the standard is to apply article 124. 3 of the CPC, filing a complaint and requesting another interpreter:

".. .then I had to stop and say, listen, we'll reschedule and I have to ask for another interpreter, I cannot do an interview like this" (P13, 48).

In the same way, the fact that companies receive admonitions regarding some of their employees does not seem to have major consequences:

"... This person does not work because there were several complaints from a particular judge who he lied to, i.e., in some statements that he was taking from the detainees, the interpreter did not speak clearly into the microphone and, moreover, he had asked the detainees for money, telling them 'if you pay me, I'll say whatever you want' .

One of them reported him and of course, a report was to the company. Now you will say... the report was sent and the man was fired?... No! The report was sent and the man continued to work because I saw him several times after that...." (P20, 22).

In this regard, is considered that the legislation that just been passed, may have made this malpractice a thing of the past. The problem is that the reform of the CPC has not said anything about it.

> *"The directive was godsend for us because we said 'at last someone is talking about quality' because, until now, it seemed that what the Ministry wanted was that it might be complied with, right? This is what the law says and, of course, I cannot you're your statement if you don't have interpreter; so I will comply with the law and provide you with an interpreter, that is if interpreter does his job properly..." (P17. 61)*

Some professionals interviewed expressed the idea that the interpreter is called merely in order to comply with a legal requirement without having high hopes as to what his presence will contribute. One said:

> *".. he has to trust because he doesn't know if it is being done property or not, and if does know, he keeps quite because... Yes, the main problem here is that we are talking about defendants, people being investigated, prosecuted. The problem comes from the fact that he does not care, no, they are crooks as it were, that is, they are criminals" (P17, 57).*

> *"If we were talking about major companies or senior executives or... people that are important in society... right? The victims, the victims always draw more attention right? Because they generate more empathy and well, of course you're going to offer a victim an interpreter, and a quality interpreter at that, right? That seems to touch you more personally. But when we're talking about...about... the baddies, as it were, that doesn't seem to move you as much" (P17, 59).*

However, what children have reported leaves no doubt as to the importance they attach to having the assistance of an interpreter. For them, the presence of the interpreter, initially, was a relief to them, giving them confidence and peace of mind:

> *"When the interpreter comes, you know? Everything gets sorted out. When I'm alone they ask questions but I don't know what to say, or how to explain" (M13, 62).*

Moreover, some feel that it helped them a lot:

> *"They are very good, very good, anything that the judge said that I did not understand, he explained to me directly and anything I wanted to say, I mean, in some things, words that I didn't know how to say, I said them to him in Arabic and he told me in Spanish, he worked very well with me" (M7, 110).*

In addition, through the interviews we observed that, especially for those juveniles who were recounting their first experience of arrest or accusation, they found it to be a very tense and nervous process, fundamentally, because they had no idea what could happen to them, or if justice in Spain could be as severe as that of their country.

III.1.3.3. The right to translation

Those participating underline that it is an essential element that guarantees the right of defence, saying that the key documents that require translation are: the letter of rights in full, and the essential parts of the police report, the report of the technical team, the written plea and the judgment, specifically, those paragraphs which contain the accusation, the type of offence of which the child is accused, the sanction requested and the court decision. Now, although they emphasize the need for this right along with the right to interpretation, they recognize that it is a service, which is not yet operational. None of them has seen one of these documents translated, except for the letter of rights. And certainly not in all cases or in all languages, as some lawyers said to us. In particular, one says:

> *"The Mossos d'esquadra have copies of the rights to be read in different languages... There is one in Arabic, French, English, I think in Romanian... There are none in Wolof, or Urdu languages which are also languages quite widely spoken in Barcelona" (P7, 136 and 140).*

On the other hand, those who needed translations say that they had no idea where to go. In short, the most often repeated idea is that "right now, de facto, nothing is translated" (P13, 146). Some of the interviewed professionals say that there is no translation for economic reasons, and due to the absence of material resources to do so. The President of the APTIJJ points out that the interpreters who work in the administration of Justice, "will suffer an increase in workload" (P17, 70) with the transposition of the Directive, so "if translations have to be provided within a reasonable timeframe, more hands will be needed" (P17, 191). In a similar sense, others interviewed expressed:

> *"If that is actually applied, it is going entail monumental delays (laughs)" (P1, 250).*

> *"If you look at the reform, 4/2015, the legislator says that everything is zero budget, and therefore..." (P12, 110). "Translation is necessary, and this is where we are going to encounter serious problems for providing material resources" (P9, 5).*
> *However, other professionals allude to the lack of training of the lawyers as an argument to explain why this right is hardly ever exercised:*

> *"No, I think that is going to be done more in the courts, as courts do not skimp in that regard, but of course, if you do not get any training....how are you going to ask for it?... Yes, you could ask for it, and the court has to grant it, and if it is ex officio or legal aid then the Government has to pay for everything, the translators ' (P6, 137, 139).*

> *"I am telling you, it is not going to be fulfilled; I did not know that, I wasn't aware of that [modification]" (P1, 250).*

In any case, is surprising to observe that practically all the professionals speak of this right in the future tense, without perceiving it as something that occurs in day-to-day practice.

III.1.4 Factors that contribute to or hinder the enforcement of the right to interpretation or translation

The interviewed professionals recognize that the interpreter is not always present when he/she is needed, and children testify to intolerable absences. In general, there is no consensus in determining when a person (whether adult or child) needs the assistance of an interpreter and often the possibility of communication, however minimal, with the foreign child is sufficient to obviate or overlook the right to interpretation.

In this sense, is considered that the lack of specific training in the matter of juveniles for all professionals involved in the system implies that, on many occasions, the conditions necessary for the application of this right in practical terms are not present. Thus, for example, this is the case when none of the professional bodies involved in the system have agreed on how to establish a clear procedure and objective criteria to determine when there is a need for an interpreter. In addition, this is something particularly striking because, for example, both the collective of judges and that of prosecutors of Spanish juveniles usually meet annually, to agree on common lines of action in the areas where legislation is insufficient or generates confusion (Fernandez, 2008). Professionals tend to agree on issues that seem important. Therefore hard to understand why no specific procedure establishing clear criteria has been developed, helping to adopt the decision on whether or not a foreign child should be assisted by an interpreter. As a result, it ultimately ends up being a subjective decision, which is going to be highly conditioned by the circumstances of the case and the characteristics of the child and professionals who interact with him/her. In addition, it is the case all too often that the fact that the child can communicate minimally in Spanish is sufficient to allow the procedure to go ahead without the help of a professional. In this sense, the President of the APTIJJ says:

> *"...I would recommend always to a foreigner to request an interpreter of his mother tongue, because he is going to explain, [...]. This has happened to me [...] meeting with a Senegalese national [...] and he says no, no, don't need an interpreter, [the lawyer says] I explain to him, acquiescence, acquiescence means is that you have to declare that you are guilty. [...], we go into the courtroom and when the judge asks, do you acknowledge the facts? No, no, no, I have not done that. Then the lawyer says 'yes you must say yes, no?' Of course, why does this happen? Because things have not been explained properly to him. Then of course, if only for that [...]. If you know the language, you can explain what happened and you can understand the questions, but you are certainly going to miss the legal issues. Then if you have an interpreter who explains,... much better" (P17, 98).*

In addition, the testimonies of children have corroborated this need; since, as reported, they are lost during the process, and when an interpreter is present the anxiety and confusion decreases.

However, the greatest difficulty that prevents the full enjoyment of this right is the lack of professionalism observed in the collective of interpreters. The professionals provided by private companies –which have been awarded the contract with the Ministry of Justice and Interior- do not have the necessary qualifications or quality, and because of this, the translation service is greatly devalued. Moreover, the lack of a culture of complaint means that, even in the most dramatic cases, another professional is simply requested. However, the company receives no instructions to adopt any measures regarding that specific worker, even if it has been confirmed that they do not have the necessary competence to provide the service. In the same way, lawyers, who should appeal if they detect a defect during the interpretation, consider that such deficiencies are not important enough to warrant challenging the proceedings.

Finally, it should be noted that the right to translation is not observed. Interpreters inform young people orally, but they are not given the documents with a translation of the essential sections. In addition, the lack of training of professionals means that many do not know that this right exists and even when they are aware of it they doubt it will be implemented, because given the current resources that would mean a major delay in the proceedings.

III.2 Directive 2012/13/EU of the European Parliament and of the Council, of 22 May 2012, on the right to information in criminal proceedings

III.2.1 Brief summary of the contents of the Directive 2012/13

Directive 2012/13 provides that the competent authorities must inform suspects or accused persons of their rights and of the accusations made against them. Such persons must receive all the necessary information that is essential to be able to prepare their defence and safeguard the fairness of the proceedings. In particular, the Directive establishes the following:

- Right to information of the suspects or accused persons (arts. 3 and 6): suspects or accused persons must receive, orally or by written, as promptly as possible (before the first official interrogation at the latest), information on the criminal act of which they are accused in such detail as is necessary to safeguard the effective exercise of the rights of the defence. They must at least be given description of the facts including, if known, the place and time. In addition, they should be informed of the participation of the suspected or accused person in the perpetration of the criminal act, as well as the possible criminal act perpetrated. Likewise, they will be given information on the following procedural rights: access to a lawyer, receive free legal assistance and the conditions for obtaining it, to be informed of the accusation, the right to interpretation and translation and to remain silent. This information should be provided in simple, accessible language that meets the particular needs of the person (for example, in cases of vulnerability) and up-to-date manner, in such a way that the person is aware of all the changes that occur during the proceedings.

- Right to information of the suspects or accused persons who are arrested or detained (art. 4): In this case, the person must promptly be given a letter of rights, in writing and in a language he/she understands and in appropriate terms, and may retain such declaration of rights during detention. Besides the procedural rights mentioned above (art. 3), this declaration must include additional information on the following rights: the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed (art. 6.2), the access to the materials of the case (art. 4.2. a), the right to have consular authorities and one person informed in the case of foreigners (art. 4.2. b) , the right to urgent medical assistance (art. 4.2. c), the maximum number hours and days suspects or accused persons may be deprived of liberty prior being brought before the judicial authority (art. 4.2. d); and, the possibility of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release (article 4.3).

- Right of access to the materials (art. 7): Where a person is arrested, documents related to the specific case, which are essential to effectively challenge the lawfulness of the arrest or detention, must be made available as promptly as possible to arrested persons or to their lawyers. In addition, access to all advance material evidence should be given, including documents, and, where appropriate, photographs, recordings, etc., which allow the effective exercise of right of defence. This access should be free but may exceptionally be denied (by a court) when it involves a serious threat to the life or rights of any person or where necessary to defend the public interest, such as when there is a risk of damaging the investigation or when it might compromise national security. In any case, the right to challenge this refusal to access to materials must be guaranteed.

- Persons who are arrested for the purpose of the execution of a European arrest warrant shall be informed in writing of their procedural rights (art. 5). They must receive a letter of rights drafted in simple, accessible language as soon as possible.

- It likewise establishes that those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings should ensure adequate training with respect to the objectives of the directive (art. 9).

III.2.2 Status of transposition in Spain: Regulations in force on the right to information

The right to information, regulated in article 3 of Directive 2012/13 was initially regulated by Law 5/2015. However, this law underwent minor amendments (insubstantial in terms of the right to information) with the subsequent organic act 13/2015, of 5 October, amending the Criminal Procedure Code in order to enhance procedural guarantees and regulate technological research measures[38] (hereinafter, Law 13/2015) which entered into force on 1 November 2015[39]. In particular, the new wording of article 118 of the CPC provides for the right to information for every person (whether detained or not) who is accused of a punishable offence. The right to receive information arises from the moment in which the person to whom the punishable offence is attributed is notified of the existence of the proceedings or when arrested (or subject to any other precautionary measure) or when the decision to prosecute him/her has been taken. This information will be provided orally (for persons not detained), and in writing (via delivery of the letter of rights) for persons deprived of liberty, in an understandable and accessible language.

The art. 118 of the CPC establishes the right to receive information with sufficient detail on the acts of which the person is accused, as well as any relevant changes in the object of the investigation and the acts in question. Similarly, article 520.2 of the CPC establishes that any person detained or imprisoned must be informed of the acts attributed to him and the reasons for the deprivation of liberty. This transposition is imperfect because the CPC speaks at all times of attributable "acts", not specifying criminal offences (as article 6.2 of the Directive does) and does not take the provision of art. 6.3 of the Directive into account, which speaks of "detailed information […] on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person".

The new wording of article 520 of the CPC (in particular, paragraphs 2, 3 and 4) includes the right to information provided for any person who is arrested and, therefore, deprived of liberty. Article 520.2 expressly stipulates that detainees will be given the information on their rights in writing and immediately (both on the acts that are attributed to them and the reasons for their deprivation of liberty, as well as the rights they have). However, it should be noted that in this regulation, there is no proposal of a model record or declaration of rights of the detainee, like the Directive does.[40] Likewise, the right to receive information promptly on the criminal offence of which the person is accused at the first hearing before the judge and in the accusation laid down in article 6 of the Directive, are envisaged in the articles 775 and 650 of the CPC. In the same way, the right of the accused person to receive information about any changes that occur during the procedure, is set out in articles 118.1.a) and 775.2 of the CPC. Finally, while article 520.2 says that the accused person must be informed of the maximum legal term of detention until he/she is brought before a judicial authority, and of the procedure for challenging the legality of his/her arrest, the CPC does not expressly include the rights to a review of the arrest or to request provisional release.

In relation to provisions specifically contained regarding juveniles in article 3.2 of the Directive, articles 118 and 520.2. bis) of the CPC establish that the information will be adapted to the age, degree of maturity, disability and any other personal circumstance that could give rise to a limitation of the ability to understand the scope of the information provided. Similarly, article 520.4 of the CPC provides that if the detained person is a child, he will be handed over to the juvenile prosecutor's office, those holding parental authority, tutelage or de facto guardianship[41] of the child will be notified of the fact and place of custody, as soon as it is established that the person is a child. In addition, if the detained child is foreign, the fact of detention shall be notified ex officio to the Consul of their country. This new provision is inconsistent with the provisions of article 17 of Law 5/2000 which provides for the ex officio notification only when the child does not reside in Spain, whereas if he/she is a resident, he/she has the right to decide whether or not to the consular authorities should be informed.

38 https://www.boe.es/boe/dias/2015/10/06/pdfs/BOE-A-2015-10725.pdf

39 Law 5/2015, even though was designed to transpose the 2010 and 2012 Directives already analyzed in this report, also seized the chance to make some changes more properly affecting theDirective on access to a lawyer, which subsequently, and as we shall see later, was tackled by the reform of Law 13/2015. Therefore, the amendments included in Law 13/2015 regarding the planned drafting of the Law 5/2015 articles regulating the right to information (118, 509, 520 and 527) have affected form rather than substance.

40 Although legislatively, neither nowadays nor in the past has there been a model of information of the detainee's rights, the Ministry of the Interior had adopted one in 1999, within the "Guía de criterios, para la práctica de diligencias realizadas por la Policía Judicial" [Criteria for investigative work by the Judicial Police]. However, today this model is obsolete so it will be necessary to propose a new one, adapted to European legislation.

41 Article 520. 4 of the CPC states that in case of conflicts of interest with those who exercise the parental authority, tutelage or de facto guardianship of the child, a judicial defender will be appointed, who will be informed of the fact and place of detention.

In any case, Spanish legislation does not take into account what the Directive provides for, which is exclusively the information of the right of the detainee to communicate with the consular authority, that is, the possibility of exercising such right. At no point does Directive 2012/13 contemplate ex officio notification in the case of juvenile detainees.

On the other hand, and in relation to the right to information of the other rights, this was already envisaged in articles 17 and 22 of the special legislation for children. In particular, article 17.1 of Law 5/2000 stipulates that authorities and officials involved in the arrest of a child, must perform it in the least harmful way possible. In addition, they are required to inform the juvenile in a clear and understandable language, immediately, of the charges against him/her, of the reasons for his/her detention and of his/her the rights, especially those recognized in article 520 of the CPC, as well as ensure they are respected.

In this case of the juvenile detainees, unlike the directive or the CPC for adults, the special legislation for children does not contemplate such information on rights being given in writing. However, although Law 5/2000 says nothing about this issue and, as set out in the Protocol for police actions with juveniles[42], the police must inform the suspected or accused juvenile (whether detained or not) of his/her rights immediately and in an understandable manner and in document form[43]. For this, they must prepare what is referred to as 'Act of information on rights of detained juveniles'. Therefore, despite legal silence on the matter, which should be corrected in a future reform of Law 5/2000, children in Spain are informed of their rights in writing. Another question is if the document, which informs children of their rights, remains in their possession throughout detention, and if it really is understandable, i.e. if it takes into account the peculiarities of comprehension by children.

About the access to materials: article 118.1 b) refers to the right to "examine the proceedings". Meanwhile, art. 520.2. d) of the CPC includes the right of persons deprived of liberty, to access "the elements of the proceedings that are essential to challenge the legality of the detention or deprivation of liberty". The vagueness of the concept of "essential elements", although in line with the terms of the Directive, may lead to interpretative problems regarding its actual scope. Firstly, we do not understand the contradiction or difference between art. 118.1 b) (affecting detainees and non-detainees) which speaks only of proceedings, and 520.2. d) for detainees, which only allows access to "essential elements" of said proceedings. On the other hand, such vagueness may lead to a disagreement among authorities about the essentiality or otherwise of documents likely to be accessed (especially in the case of detainees who remain under police custody).

The right to examine the proceedings, under article 118.1. b) will be "sufficiently in advance to safeguard the right of defence and in any case, before a statement is taken". However, as also provided for in Directive 2012/13, on exceptional occasions this right can be restricted (article 7.4). This possibility of restriction is transposed expressly in the CPC by amendment of article 527.1.d) by which, if ordering solitary confinement, the arrested person or his/her lawyer may be deprived -if justified by the circumstances of the case- of access to the proceedings, except for the essential elements to challenge the legality of the detention, to which they will always have access.
Meanwhile, the new wording of article 302 of the CPC regulates the conditions in which such access to certain materials may be denied when proceedings are declared totally or partially secret, when necessary to prevent a serious risk to the life, liberty or physical integrity of another person, or to prevent a situation that could seriously compromise the results of investigations or proceedings.

Finally, it should also be pointed out that the new reform does not indicate at any time that the access to these materials will be free and there is no specific provision on the possibility to challenge denial of access the materials, although it could be understood that the usual procedures may be exercised at any time.
Neither is there any provision in the reform of the CPC about the training that judges, prosecutors and police and judicial staff involved in criminal proceedings must receive about the right to information and access to the materials (article 9 of the Directive).

42 This Protocol was approved in Instruction 11/2007, of 12 September, of the Secretary of State of Security of the Ministry of the Interior.

43 As detailed in the 'Criteria for investigative work by the Judicial Police', prepared by the Ministry of the Interior.

III.2.3 Information on the right to interpretation and translation obtained through interviews

III.2.3.1. The information procedure on the right to be informed in police procedures

Police and lawyers interviewed explained the process for information on rights, in the Spanish youth justice system. They are all aware that it is a critical point in the process, a basic procedural guarantee that no one can overlook, "the reading of rights is the first stage" (P8, 227). Thus, the procedure is as follows. The police officer reads the rights to the child. When it is a foreign child, who does not speak the language, an interpreter is expected to read them in a language that the child understands: "Rights are orally read at the time of the arrest and then [...] when the translator comes, they are again read in their language" (P2, 39). In general, while giving such information, police say that they try to explain it in a way that children can understand it. The head of the juvenile service of the 'Mossos d'Esquadra' police of Barcelona explains it as follows:

> *"Yes, we inform orally...orally on their rights, but we always explain, and this has to be the case, that as he or she is a child, we cannot indulge in verbiage...no, we must tell them and explain to them, right because sometimes children have more problems in understanding" (P16, 38).*

In general, there is a clear awareness that information on rights for children must be different:

> *"The act on the criminal responsibility of children says you have to explain everything so that they understand it (...) and the police officer explains 520, but explained with in language (...) that a child or a teenager can understand" (P1, 107).*

However, for any lawyer this act of information is performed many times on a routine basis, and the question is to what extent this information is useful for the child:

> *"...the policemen when they read them, they just reel them off, right?" They have the sheet, you have right not to declare yourself guilty, to not declare against yourself, and so on... and the list has been rattled off in a moment (...) and then the child looks at you and (...) then you ask him if he has understood what was said to him 'did you understand that?' No, (…) look officer, I am going to state them myself calmly, explaining them, (…) so that later on this person (...) cannot, that is, if he/she wants to invoke a right he/she will not be able to later say that he was not aware of it or didn't know about it (P18,15).*

Meanwhile, the police claim that not just their responsibility to get them to understand their rights, it should really be a job for their lawyers:

> *"If you read him/her the rights in his/her language, you complying with the law [...], however...are they comprehensible?" Well, if you are doing it in their language, but of course, does that guarantee that he/she really understands the rights? […]. In our defence, we can say that he/she has a prior interview with the lawyer. It is also the mission of the lawyer to explain [...], it is the lawyer, it is his/her job to explain the rights, supposedly in a comprehensible manner, that is why there is a prior interview" (P8.225).*

We can see this is not an easy task, even more so when the person is a foreigner; here they recognise that it is much more complicated:

"... we're talking about children, I mean, even if they could speak our language perfectly, it is difficult to understand the criminal process, the criminal process for children may be easier to understand, but also is difficult to understand. Then, from this perspective, it stands to reason that the more cultural, language and other difficulties you add, the more difficult the process will be" (P10, 90).

As such, we observed contrasting views among professionals. While some believe that children understand the information provided and argue:

"In general, they understand it, but well... they are sharp as a tack" (P2, 59).

"They do indeed understand." Perhaps they do not fully understand what the rights are about, because of course they don't understand it, but they know how to apply them in their favour" (P3, 383).

"If it is the first time, perhaps they don't understand it that well, but generic comprehension of what they can expect and their guarantees ...yes they understand that" (P16, 58).

Other professionals have serious doubts in this regard and consider that the greatest difficulty is, precisely, ensuring that children understand what the rights mean and what being involved in judicial proceedings implies:

".. . you know they normally don't understand about law (...) for example, [...] you have right to speak with your lawyer and then he/she says 'ah I don't know', and, look, think [...] the lawyer is who is going to defend you, who is going to help and before I start to ask you what happened, you can talk to him/her (...) and this is when he/she understands, right? Therefore, it is usually there. The...issue of not declaring and not speaking, and then you say if you don't want to, don't answer, these are easy to explain, but this is where they have the greatest doubts, even if you explain it to them, they don't know what to do" (P16, 58).

"... I think that in general there is a difficulty, but... I think it has to do with the maturity of the child,... from the general understanding of where he/she is, and what is happening, what is happening. Moreover, I generally see this with almost all of the children whether they are from here or foreign. Despite the juvenile jurisdiction is supposed to have a bit more... closeness, right? ... informality etc...is still too formal and I think that they are not aware that are in judicial proceedings, with an investigation, right? in the prosecutor's office where you have... the lawyer, where there are... some witnesses, there will be different types of evidence, no? In addition, I think that also there is a lack of awareness of the facts,... of the unlawfulness of the actions and this is... recurrent"(P7, 186).

In this sense, some professionals see the act of informing the child of his/her rights in writing as a routine act, which does not really contribute anything. Thus, the lawyers when they explain how children are informed of their rights indicate:

"They read them, they read them then in the presence of the lawyer, we sign the record and... That's it!" (P18, 13). "It is verbal and... and then they sign that they have understood the rights" (P7, 58).

It is not very clear if this complies with the provisions of the reform of the CPC indicating that detainee must have the declaration of rights in writing in his/her possession during the detention period. Thus, two lawyers with ample experience in the children's jurisdiction indicate that they have not witnessed the delivery of such a document:

"I do not remember any child ever receiving a copy of the letter of their rights at a police station, I mean, before there was a reading of rights, it is now mandatory that this letter be actually given to the child. I have not seen any child, coming out of the interview with the lawyer, with the sheet of their rights in case he/she needs to consult anything" (P18, 11).

".. . I have never seen a child being given a letter of rights like that..." (P1, 109).

However, two police officers indicate that they do indeed provide them:

"We read them their rights orally at the time of the arrest and then they're given a document which specifies clearly what their rights are. "and then [...] when the translator comes, they are read again in their language" (P2, 39).
"What is obviously translated are their rights" (P16, 182).

In the same sense, the office of the Ombudsman has recently visited several police stations (national, local and Guardia Civil) to examine this issue. They confirmed that "in all police stations and command posts, and headquarters and posts of the civil guard, there are a few standard forms with information on the 520rights, fully adapted to the new known rights" (P21 12). However, in his inspection have noticed that there is disparity of criteria regarding whether or not the detainee must have the document with information on rights in his/her possession:

"...We have different criteria [...] in many deprivation of liberty locations, [...] some believe that having it in his/her possession, not that he/she has it directly, it is kept it in the bag which cannot be opened for storing their belongings, [...], and then in other places they indeed do provide the rights information sheet. […] On the interpretation of why is given or not, and why the detainee does not have it with him/her in the cell during the deprivation of liberty, in some places they say it because of the danger that a sheet of paper may represent. [...] A sheet of paper is a cutting tool. [...] The wording of the article says...have it in their possession, what happens is that they say, well it is in their possession, because it is with their belongings, no one is going to remove it, it is there, but it is taken from them for safety reasons. And then [...] if they say, hey I want to have a quick look at it [...], we have no problem allowing them to read it, but we have to get it back" (P21, 12, 13 and 14).

Basically, and despite the provision in the new wording of the CPC, it is patent that the information of rights is mainly performed orally; although there is a document containing all the child's rights, which in some places is given to him/her, and the child must always sign it.

However, there are several objections to the same worth highlighting. The first is language, although the letter of children's rights is translated into most common languages, "the majority of the minority languages are omitted. It is very difficult to reach everyone"(P8, 365). There are even those who state that having these documents in various languages is fine, but the question is "if children can read, that is the second part" (P10, 64). In relation to this, a second difficulty emerges, the accessibility of the legal texts that raise difficulties for any citizen and, especially, for the most vulnerable. Thus, a police officer who works in a town where almost half of the inhabitants are foreigners, Fuenlabrada, says:

> *"...For an adult is difficult already to understand legal language, well, you can imagine, it is a translation of the articles of 520 of the criminal procedure act, I mean... it is not something explained with words that are understandable to a child, which perhaps should be what we should have, or even work in a different way, like making pictograms, which is a universal language, right? (P10, 68)*

In this sense, the Civil Guard interviewed said an initiative called the "easy reading project" is being developed across the board throughout the administration and intends to "adapt all administrative procedures to a more everyday language" (P8, 215).

That is why the professionals in charge of informing children of their rights skip the formality of written communication, since they believe that what is really important is to explain to the detained child what his/her rights and what are not. In this sense, the member of the Civil Guard interviewed says:

> *"...the prior interview with the lawyer is far more important [guarantee] than any brochure that you may want to prepare" (P8, 407).*

III.2.3.2. How the information is provided during the proceedings

Other professionals involved in the process, once the child has been charged and the proceedings are initiated, explain that they comply with the right to information. They also try to talk to the children, in general, and to foreigners in particular, in simple language taking into account that "we must try to translate what you want to say in a more understandable way than with a person aged 40" (P11, 24).

Whereas, at the same time, the help of the interpreter is mandatory to ensure that they understand:

> *"The way to do it is to bring the child, then when he/she comes in, you explain what are you going to do and that the interpreter then translates for him/her... Then you go on to explain one by one all the rights and the interpreter translates it. If they need some kind of explanation, it is given in a language [...]that he/she can understand, but in the case of foreigners and who do not understand the language, even more so"(P14, 10).*

Similarly, members of the technical team declare that they take their time to explain the measure, adapting their language to children, seeking to create an atmosphere of trust. One of them says that he tries to avoid speaking to them on a surname basis "because that creates distance" (P4, 450). He again reiterates that it is necessary to speak to them in a language they understand, because justice deals in very abstract concepts:

> *"Is necessary to ensure, well, initially to speak in a language that he/she understands at least minimally." Of course, some translators are needed but then there is the whole cognitive, cultural, component understanding that this is a process; listen, there are kids who find it very difficult to follow us, I mean, to*

see the logical sequences of very simple things [...] Just try to imagine all of these things which are abstract concepts, referring to values, social rules"(P15, 119).

These professionals of the juvenile prosecutor's office also agree with the argument that, in general, children understand their rights and the process. Some are specific in their answers:

"Yes, yes, they do understand them" (P4, 202; P12, 64; (P14, 12).

A prosecutor explains it from the perspective that they are more mature than they seem:

"Yes, more than what we believe. Children understand, in many cases, unfortunately, they are people who have had a complicated and hard life. So they are much more mature than we can imagine"(P11, 26).

In addition, speaking of non-accompanied children, a mediator says that:

"Non-accompanied children know everything, they all do, they communicate among themselves, I think that they could teach us a thing or two" (P13, 78).

Thus, the majority believe that except for the judgment, which may be more complex, they understand the rest, especially, because all these professionals strive to make sure this is the case.

III.2.3.3. The view of the juveniles on their rights in the criminal justice procedure

Juveniles confirm the comments of professionals with regard to the reading or the delivery of the letter of rights, as almost all of them recall having been read such rights, and/or having signed a document, and in different phases of the process:

"Then you go to the prosecutor and it is the same again, they tell you your rights, whether you want to declare or not, they say the rights are the same, whether you declare or not, and if you want to declare they ask you questions; but if not, that's it, you don't declare and then it's whatever the judge tells you" (M10, 55).

However, some children say that they were not read their rights. Specifically, one says that they sent him to jail "without having read his rights" (M6, 28). And another said that he didn't recall having been informed of his rights, although he acknowledges that he did not anyways understand what was said, because he is one of children that, as described before, was not assisted by an interpreter.

In fact, when you goes into this topic in greater depth, a compendium of concepts that children have regarding these issues comes to light. Some, especially those who have been in several cases, indeed show that they know and understand the rights:

"Yes, that I can have a paid lawyer, legal aid, that I can call my parents or ... You know?" Any of those. They tell you that when we are at the station, not when you are arrested" (M9, 34).

Nevertheless, others doubt or do not understand very well what these rights are or mean:

"Right to explain myself... isn't it? Right to speak, right to be cared for (silence) enough rights, I have many, many,... Right to not be hit, right to... I don't know....to be understood"(56 M2).

"I do not understand what they are" (M5, 50).

"The rights...that about children" (M8, 98).

"I don't know...they say 'your signature here', they say 'Ok sign here please' and that's it, they put the paper before you and ask you to sign...and you have to sign" (M9, 44).

"You have right to not declare until your lawyer is present, I do not know what else...listen, my rights I don't know what I was told, or something like that" (M12, 32).

A more worrying aspect is the perception that they have when you ask them if they not only understand them, but whether they are respected in the particular process. They admit that they had a lawyer and an interpreter, and they were allowed to call their families and appreciate these details. However, it should be noted that, in general terms, they think that not all their rights were respected since they did not really feel listened to or supported. In this sense, it seems that the right to be heard set out in international standards, and which is now to be reinforced by supranational[44] institutions, is not being observed, or at least not in a way that children can see.

At least four children said that they have been arrested for crimes they did not commit, as the following one explains, who, in turn, complains that the police did not want to listen to him or look for more evidence:

"The Police, I mean, all they do is talk about you, what you've done and without knowing anything, they accuse you without knowing anything, without evidence or anything, and from there all the judge does is sign [...] and without having any evidence or anything. I mean, it's not the fault of the judge, but of the police" (M8, 88).

The police is the body that receives the worst comments. There are complaints about having been in the cells for too long, not being given enough food, and even about having been beaten:

"I have had many arrests, yes, some policemen hit you, and some others....you know? They take you they give you a few slaps, leave you in the cell; others don't do that and directly take you before the judge, ...you know? 'To the prosecutor's office - they say, and that's it, so we can sort it out straight away...you know? And sometimes they smash you" (M9, 28).

On the other hand, there are two children who say that the person they fear most is the Prosecutor, because "asked a lot, requested a lot of measures" (M6, 86), and did not listen to what they have to say on the matter. One says that he was so afraid that could not listen to anything:

"That when he was talking, I was so afraid that I was thinking about my own things like they are going to do something to me and then I don't know what, I did not hear what the prosecutor said" (M7, 116).

44 The Guidelines on Child Friendly Justice developed by the Council of Europe in the 2010 insist above all the importance of the child participating in his/her own process and that the child is aware of how his/her opinion has been taken into account in the decision-making. In addition, this right has been included in article 16 of Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

Speaking also of the emotions that these formalities provoke, another child said that that professionals should be more empathetic:

> *"They have to learn to understand people, to have empathy because there are some that don't; if they have empathy they put themselves in the shoes of the other person and say wow, poor child, he must be afraid right now, they don't know what you are going to say or what you are going to do, and a little empathy at least" (M12 108).*

On the other hand, several complaining about the judges, who do not pay attention to them either: "sometimes you tell the judge your version and they don't listen to you, you know?" (M6, 162) They also complain that the trial very fast:

> *"The trials I have seen in films are very long, and so on [...]. The first time I went to trial was nothing, in and out, I had no idea it was like that at all. I thought it would take longer and it didn't. So Miss, this is the accusation, do you agree? Yes or no? If you say no, then they say goodbye and see them again on the day of judgement. If you say yes then that's it, you take what's coming, you cannot talk, or explain, you can do nothing" (M11, 112).*

On these issues, a girl says that it is sometimes difficult to understand verbal and written language used by the professionals, as they "speak a language that, phew... there are many very educated words" (M11, 71). Another affirms that:

> *"I did not understand anything at all until I found myself in the closed facility" (M14, 22).*

To sum up this point, it seems that, contrary to what professionals say, children, or at least those who participated in this study, do not understand the criminal proceedings in which they are involved. In the same way, neither do they consider that the treatment of the police to be exquisite, or that detention in the cells is particularly careful, contrary to what the profession from the Ombudsman's office finds:

> *".. .What we have observed is that treatment of children is exquisite, children are not usually sent to the cells, when a juvenile offender is arrested, at police stations, at civil guard barracks, command posts and the like, they have special teams for children, the police Grume, and the civil guard's children's unit" (P21, 16).*

III.2.3.4. The right of access to materials

In relation to access to materials, we found that the greatest difficulty is in relation to the need for lawyers to have access to the police report before the statement is made. Before the European rules were published, there was a conflict between lawyers and police officers, as this lawyer recalls:

> *"...part of the confrontation, especially at police stations, between lawyers and police officers comes because, in fact, we encountered a lot of obstacles this past year and the previous one, I mean, we argued for the application of the right to translation, the right to see the police report, that is, the new rights or strengthened rights approved at European level (...) and here we had huge problems"(P18, 11).*

> *"I remember as an anecdote that when two Directives should have already, I mean, they already were mandatory because should have been incorporated into our system, but when talking with police, they told you to forget it, that the day it appeared, that they could read it in black and white Criminal Procedure Act, then we would see if it could be arranged. "I mean, something like 'I don't care what you say'...." (P18, 9). "Since the Criminal Procedure Act entered in force with its variations of the EU Directive, we asked for it. If we don't get the police report, we file a complaint, and then I, with my clients, as a rule, if they do not give us the police report we refuse to make a statement"(P6, 35).*

Another lawyer made a similar point, stating that in the past "he could speak with the police, with the investigating judge, and say 'okay, give me an outline', and yes gave me plenty of details [...]" Yes, that was one thing, something they gave you as a gift" (P7, 258, 260). Now, on the other hand, that right of access is recognised, although for the police it is not "access to copy, simply to see" (P7, 263). However, it is considered very positive because we have moved on from situations in which the police were in a preferential position in the investigation of the case:

> *"Up to now, what the police have done whatever they wanted in the police report. I am not saying that it is good or bad, but they were the ones who have handled the situation; they have made a report based on what they wanted. When you ask them for the police report and see the steps they have taken, you can request other evidence, you can ask other kinds of questions and you can act, not only when the statement is being taken in which you are like an unwelcome guest, in which they try to lead the matter according to what they want [...]. If they don't want to give it to you, you go to your client and will tell him to refuse to declare and we'll see the judge, because in the court they give you everything... whatever you want: 'here you go, read it and make copies'. But the police do not and that is something the police resent a lot, a lot." (P6, 37).*

In general, Directive 2012/13 has been very welcome, and not just in terms of access to the police report. One lawyer explains the advantages of having access to the documentation that the prosecutor has (i.e., the police report, the report of the technical team, documentary material of the investigation, the written allegations of the prosecutor, etc.) in order to prepare the case, as follows:

> *"Yes. There is a change, small perhaps, but it seems important to me, as at the prosecutor's office we did not have access, the lawyers were not permitted to copy the case records, you called, and they said, you sit there and you copy what you want, then they gave you the papers, and you made notes, creating a structure or an outline of what mattered to you (P7" 244). I thought it was an unnecessary annoyance, when in all the, I mean it is just the opposite in the investigation of adults; you could almost take the documents home... I found this absurd in juvenile proceedings which were meant to be far less rigid, and that in theory should be... such an absurd stance on the part of the prosecutor's office, and it was a problem in the sense of that if I had not taken notes or something was unclear, I had to go back to the prosecutor's office and that was time consuming or you were not always available… and that has changed, now in the prosecutor's office you can ask for copies" (P7, 252).*

In addition this lawyer made an interesting reflection on possible access that he must have to the materials, but not just the lawyer, who is in charge of the defence, but the child also. Therefore, he tells us what he does regarding all the case records (police report, report of the technical team, judgment, enforcement decision... etc.):

> *"When I finish with the records, there is court decision or the same has been enforced.... I hand over all documents. I don't keep anything [...] it belongs to you, do what you want, throw it away if you want, keep it... Now I just scan it and I save the file on the computer [...] and if during the process he wants me to give it to him, I would give it to him before also, I would give him a copy" (P7, 164, 166, 168).*

III.2.4 Factors that contribute or hinder the enforcement of the right to information and access to materials

As occurred with the rights provided for by Directive 2010/64 (translation and interpretation), in relation to the right to information, there is a clear awareness among the professionals that we have a basic procedural guarantee that must be upheld. Indeed, from their testimonies as well as those of the children we can observe it is so. The testimonies of the children interviewed show that, when they were arrested or accused, they were informed of their rights orally. In reality, and although it is sometimes performed in a routine manner, professionals usually explain such rights, rather than just informing about them. The problem is that, despite the effort of professionals, not all children are fully aware of the actual scope of their rights, what exercising the guarantees to which, according to what they have been told, they are entitled, ultimately implies. In this regard, the professionals seem to lack the tools they need to properly communicate with children since, despite having devoted time to explaining, the juveniles do not fully understand the message intended for them. Therefore, it would be necessary that these professionals were trained in a more comprehensive way, so that they can acquire the skills they really need in their daily work[45].

On the other hand, it has been confirmed that although children know their rights, they do not perceive trial as being fair, rather something they are simply allowed to take part in. Children have manifested that it is important that they are listened to and feel that their opinion is taken into account when decisions are made. Thus, as reported in recent research, the right of participation is an essential right in the context of juvenile justice with very important implications in terms of reinforcing the legitimacy of the system and the cooperation of juveniles with it (Rap, 2013).

Finally, and in connection with the act of information on rights that takes place in writing, there are important difficulties that prevent that this act making sense. It is only available in the most common languages, so there are children who may not enjoy this right. In addition, in the event that this document is available, it does not seem to be very useful as it is full of legal jargon that causes text to be quite inaccessible, especially for children.

45 Directive 2016/800 on procedural safeguards for children suspected or accused in criminal proceedings has recently stressed the need for professionals to receive training in communication skills in a language adapted to the child (article 20.1).

III.3 Directive 2013/48/EU of the European Parliament and of the Council, of 22 October 2013, on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

III.3.1 Brief summary of the contents of Directive 2013/48

Directive 2013/48 establishes that any suspect or accused person is entitled to access to a lawyer without undue delay, so that he/she can exercise his/her rights of defence in practice and in an effective manner. In addition, suspects or accused persons deprived of their liberty have the right, without undue delay, to have at least one third party informed of their deprivation of liberty. It may be a family member or employer, designated by them, and they are entitled to communicate with them; in case of foreigners, they are entitled to have the Consulate informed and to communicate with it.

In this way, the Directive 2013/48 implements what is a basic right to ensure a fair trial such as the right to access to a lawyer from the moment the person is informed that he/she is a suspect or is accused of an offence, and up to the conclusion of the process (art. 2.1), whether deprived of liberty or otherwise. In particular, the Directive 2013/48 establishes the following:

- Right to a lawyer (art.3): suspects and accused persons are entitled to access to a lawyer without undue delay (i) before questioning, (ii) in the event of an investigative or other evidence-gathering act, (iii) after the deprivation of liberty or (iv) prior to appearing before a court. This right implies also the ability to talk or communicate in private, even before questioning, and that the lawyer is present and can intervene effectively, at least during questioning, during identity parades, confrontations and reconstructions of the scene of a crime (art. 3.3); as well as ensure that all communication is confidential (art. 4). They may waive access a lawyer, provided minimum safeguards are ensured, such as the provision of clear and sufficient information in simple and understandable language about the content of the right concerned and the possible consequences of waiving it, that the waiver is voluntary and unequivocal, and that such waiver may be revoked (art. 9). In exceptional circumstances, Member States may temporarily derogate from the right to access to a lawyer without undue delay after the deprivation of liberty (at the pre-trial stage) when in the case of geographical remoteness. Moreover, Member States may derogate from the application of the rights provided for in article 3.3 when there is a severe danger to the life of a person where necessary to prevent substantial jeopardy to criminal proceedings (art. 3.6). In any case, minimum conditions to such temporary limitations should apply (art. 8), namely, that they be proportionate and necessary, strictly limited in time, not based exclusively on the seriousness of the alleged offence and not prejudice the overall fairness of the proceedings.

- Right to have a third person informed of the deprivation of liberty (art. 5): any suspects or accused persons deprived of liberty have the right to have at least one person, such as a relative or an employer, nominated by them, informed of their deprivation of liberty without undue delay if they so wish. If the suspect or accused person is a child, the holder of parental responsibility of the child is informed as soon as possible of the deprivation of liberty and of the reasons pertaining thereto, unless it would be contrary to the best interests of the child, in which case another appropriate adult shall be informed. Exceptionally this right also may be restricted (art. 5.3), must if one of a series of conditions exists (art. 8). In this case if the suspect or accused person is a child, an authority responsible for the protection or welfare of children must informed without undue delay.

- Right of the suspect or accused person to communicate with a third party (art. 6): Any suspects or accused persons deprived of liberty have the right to communicate without undue delay, with at least one third person nominated by them, such as a relative. In addition, this right may be limited in exceptional circumstances (art. 6.2). In any case, the limitation is subject to the same general conditions as other restrictions (art. 8).

- Right to inform and communicate with the consular authorities (art. 7): Any suspects or accused persons who are non-nationals and are deprived of liberty have the right to have the consular authorities of their State of nationality informed of the deprivation of liberty without undue delay and to communicate with those authorities, if they so wish. where suspects or accused persons have two or more nationalities, they may choose which consular authorities, if any, are to be informed of the deprivation of liberty and with whom they wish to communicate.

- Right of access to a lawyer in European arrest warrant proceedings (art. 10): any person requested under a European arrest warrant (hereinafter EAW) has the right of access to a lawyer in the executing Member State without undue delay and as soon as arrest takes place. This access implies the right to communicate and meet with the lawyer. Moreover, it includes the right for the lawyer to be present and participate in the taking of a statement by the executing judicial authority and communication will be confidential. The detainee under an EAW warrant is entitled have a third party informed and to communicate with such third party, as well as with the consular authority. In addition, a person arrested under an EAW warrant has the right to appoint a lawyer in the issuing State, in order to receive legal assistance in that country, and whose role will be to provide information and advice to the lawyer of the executing State so that the person sought may exercise his/her rights effectively.

- In any case, suspects or accused persons in criminal proceedings and people claimed in the context of procedures relating to EAWs must have effective means of remedy in cases where the rights conferred on them by this Directive have been infringed (art. 12).

- The Directive states that special attention must be paid to rights in the case of vulnerable suspects and vulnerable accused persons (art. 13[46]).

III.3.2 Status of transposition in Spain: regulations on the right to a lawyer and to communicate with a third party and consular authorities

The right to legal assistance regulated in the article 3 of Directive 2013/48 has been included in the new wording of articles 118.1, 2, 3 and 4 and 520.2c), 5, 6, 7 and 8 of the CPC after the reform implemented by LO 13/2015.

However, inexplicably, art. 118.2, on the right to communicate and have a private interview with the lawyer before making a statement to the police, the prosecutor or the judge, mentions "that the lawyer must be *"present for all statements"* but does not specify expressly the right to *"intervene and act in effective manner"*, as the Directive does. His/her intervention is presumed, because otherwise it would violate the right of defence, but it seems logical that the literal wording of the Directive should have been included[47].

In the same way, the exceptions to this right are provided for. However there are some deficiencies concerning the provisions of the Directive, in the new wording of articles 509 and 527 (for cases of solitary confinement and exceptional circumstances), 520.8, (which is not an exception proper but a waiver vis-à-vis traffic offences), 520 ter (for detainees at marine sites[48]) of the CPC.

46 That such vulnerability be duly considered and that these people receive assistance in a manner appropriate to the exercise of their rights (whereas 51). For example, and in the case of a waiver, circumstances such as age, physical or mental condition are important and should be taken into account (recital 39).

47 In any case, section 520.6 of the CPC (legal assistance for detainees) indeed speaks of 'intervention' in the proceedings. Moreover, it says that upon conclusion of the investigation, the lawyer may request that a statement be taken or additional measures such the recording of incidents occurring during the same in the case records.

48 Rather than an exception, it is more a conditioning factor for compatibility with the human and material resources existing on board the ship or aircraft that performs the detention.

Article 527 establishes that in the case of article 509 (solitary confinement) the detainee or prisoner shall be deprived of the rights mentioned. This deprivation will be done by a court decision explaining *"the reasons that justify the adoption of each exception to the general regime"* and when (i) there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person or (ii) where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings. However, some general conditions set out in article 8 of Directive 2013/48 to apply such exceptions are omitted, such as the need for them to be proportional, not prejudice the overall fairness of the proceedings and not be based exclusively on the type or the seriousness of the alleged offence. The latter one acquires particular relevance as exceptions, via solitary confinement, have only been applied in Spain to offences relating to terrorism and/or committed in an organized manner (article 384 bis).

In addition, it is worth noting that article 509.4 of the CPC expressly states that the deprivation of liberty in solitary confinement is forbidden for children under 16 years of age. However, in the case of children aged 16 to 18 who are arrested, article 5.4 of the Directive stipulates that where children's rights are temporarily restricted, a responsible authority must be informed. This provision is not included in the CPC, and a reform of the act in this regard would be desirable.

With regard to the special considerations to be observed, regarding the right of access to a lawyer for vulnerable people, the articles 17.1 and 2 and the article 22.1 of the special legislation for children contemplate this right for the collective of the children above the age of criminal responsibility.

Article 22.1 of Law 5/2000 establishes that from the very moment of the start of the proceedings, the child will be entitled to designate a lawyer to defend him/her, or to have a legal aid lawyer appointed and hold a private interview with him/her, even before making a statement. However, the fact of expressly stating that the right takes effect from the moment proceedings are initiated, has led to a doubt as to whether the child is entitled to a lawyer when the judicial reform proceedings referred to in article 16.3 of Law 5/2000 are opened or when preliminary investigations by the juvenile prosecutor's office are initiated. The State Public Prosecutor, in response to Enquiry 4/2005 responded to this question stating that it was necessary to introduce interpret article 22 broadly and understand that the child is entitled to a lawyer, not only from the start of the proceedings, but even before, when the first steps are taken at police and prosecutor level[49].

Similarly the new reform of the CPC by Law 13/2015 also provides for adaptation of the provisions of articles 6 and 7 of the Directive guaranteeing the right to inform a third party of the deprivation of liberty and to communicate with him/her. In this way, articles 520.2. e) and 520.4 of the CPC provide for the right for the deprivation of liberty to be notified. New article 520.2. f), which guarantees the right to communicate with a third party, but in restrictive terms (only by telephone and communication in the presence of a police officer or person designated by the judge or the prosecutor) and 520.2. g) guaranteeing the right have the consular authorities informed and to communicate with them. The limitations laid down regarding the right of information and communication with third parties are regulated in the articles 509 and 527 of the CPC (in cases of solitary confinement).

In relation to children above the age of criminal responsibility, article 17.1 of Law 5/2000 establishes the obligation for the authorities or officials who arrest a child to immediately notify the legal representatives of the child of the fact of the arrest and the place of custody. Therefore, although legal representatives are always informed, legislation does not allow for the child to have another person informed of his/her situation, far less to be entitled to communicate with said person. Therefore a reform of Law 5/2000 would be advisable in this regard, in order to adapt it to the provisions of the European Directive. This article does envisage the possibility of communication with the consular authorities.

49 See section II.1 The juvenile justice system: a brief description

III.3.3 Information on the right to a lawyer, and to communicate with a third party and the consular authorities obtained through interviews

III.3.3.1. Right to legal representation during the detention

Through what the interviewed professionals have said, we have been able to learn more about how lawyers for juvenile offenders work, in general, and with regard to foreign children, in particular. Some of the provisions that are contained in the directive were already planned in Law 5/2000, such as, for example, the right to have a private interview before making a statement. This right was included in a reform of the act that occurred in 2006, thanks to the incessant demands of the professionals. One of the lawyers interviewed recalls that this had been an historical claim of the profession:

> *"The interview booked with the detainee, [...] in Valencia we found it very hard to organise, but in the end we managed it. In fact, the private interview prior to making a statement is included in one of the amendments of organic law 5/2000" (P18, 11).*

Therefore today all lawyers exercise the right to a private interview and, as one of them remembers, if it is "necessary with an interpreter, then with an interpreter" (P7, 70). This way, it is seen as something natural and positive. As another professional describes, it represents having achieved full compliance with a basic procedural safeguard with implications for practice:

> *"If it is complied with, this leads to the next question, the percentage of people who avail of their right to not make a statement begun to skyrocket. Which is good [...] I think that in the 21st century, the police shouldn't be interrogating, it is a job for the judge" (P1, 174).*

In general, children enjoy legal assistance from the moment of their arrest even though, as established, on a day-to-day basis situations arise that impair enjoyment of this right. Thus, for example, some cases have been reported which led to the lawyer being inexplicably delayed on occasion. A prosecutor described a practice, in her view, as "not conducive to respecting safeguards" in the town where she works:

> *".. I have to say that some time ago we detected a practice that was not conducive to respecting safeguards, being conducted by the law society with the connivance, in this case, of the juvenile police division. A child was stopped at one in the morning, for example, read his/her rights by the police in the street, a situation in which it is of course impossible to have interpreter; as a police officer you have to say 'you are arrested for this or that...', and the only mechanisms you have are contingent on the urgency at the time of the arrest. The detainee is taken to the police station, in this case to the juvenile division [...], and well, the police officer called the lawyer and said, here's a detainee, and the lawyer asked if the parents or the legal guardian were present? No? Ah, then we will not go... And they had come to this agreement, I do not know where they got it from, and it meant that the lawyer would not come until the legal guardian was present and, of course, the legal guardian could be a lady fed up with the child, and had decided that not she wasn't going to show up all day, and may well not appear that day or even within the 12 hours of detention"(P11 (, 72).*

Unfortunately this practice does not seem to be the exception. A lawyer from a different locality explains how, specifically in the case of foreign juvenile detainees, they postpone their presence until the interpreter comes:

> *"... What is usually done for pragmatic purposes, for the convenience of the administration, [...]" "convenience for them and when the law society tells you, go there at 9 in the morning, it is because already the Mossos have told to school that the interpreter will be there at 9 in the morning too" (P7, 64) "So they make the calculation; if they calculate that the interpreter will arrive at 10am, they will summon me for 10am" (P7, 66).*

This accommodation of schedules so that professionals work reasonable hours can explain the testimonies provided by some children who, especially when arrested during the night, spend the night at the police station (M1, 146).

III.3.3.2. Right to legal representation during the trial

Although access to a lawyer is fundamental during detention, the lawyer must be present during the entire proceedings. Thus, he/she needs to start preparing the defence of his/her client from the moment the proceedings begin. In this regard, there is evidence in research carried out in Spain indicating that lawyers prepare their defence by referring to documentation, not by meeting with their clients (Fernandez, 2013, Abos, 2013). It is standard practice for children to learn their lawyer's strategy of defence the same morning of the hearing (Baez and Fernandez Bermejo, 2016). A lawyer recognizes this as follows: "Before going into the trial, you understand, because you get there a little early, you speak with him and prepare the trial" (P1, 361).

This is questionable for the rest of professionals and they expressed the following:

> *"There are many lawyers who really have very little information from the child. They either have not interviewed them before, or have not contacted them and they just contact them here two minutes before entering" (P4, 460).*

> *"Sometimes there are some who give the impress that, well...it has not been the most thorough study on some issues, we get that impression very clearly sometimes, on other occasions... of course that depends a little on the case, it depends on the lawyer" (P5, 70).*

This common malpractice is also almost unavoidable when it comes to foreign children who do not know the language, because the presence of the interpreter is only provided for in the official premises. Some lawyers recognise this; for example, one stated:

> *"If that child, as is sometimes the case, speaks Belarusian or speaks Urdu, or is Pakistani, or speaks Swahili, we find that if I want to interview the child, I cannot. I mean, I can I do it in my office, ok, but the translator will not come to my private office even if I am working on a legal aid basis...." (P18, 15). The agreement they have with the regional government of Valencia is that they only go to official premises, that is, to police stations, the prosecutor's office and the courts....and the day of the trial, to the trial. Nevertheless, if I need to talk to that boy, so he can tell me things [...] I cannot go everyday to the court and talk to the translation department so that they provide a translator. Because those translators, of which there are not many, are specially intended to translate on the day of trial. Then if... of course...if I tell them to come to my private office they laugh their heads off, or... if for example I want to present an appeal and I need more information on the child, I cannot obtain such further information because I cannot have a clear and understandable conversation with him" (P18, 17).*

III.3.3.3. The performance of the lawyers

We can see from the information obtained how professionals value the performance of lawyers and the view that lawyers themselves have of their work and of their expertise in the field of juvenile justice.

Firstly, the high percentage of guilty pleas occurring in this jurisdiction is assessed. In this sense, children interviewed insinuate that they are under pressure to plead guilty:

> *"...they come and tell you 'look, is this charge, this is the situation, and see if you plead guilty, they'll reduce the time, I think that you should plead guilty and so on... he starts to try to convince you, saying that you have to plead guilty, and that's it" (M10, 103).*

> *"He said plead guilty and I did. I listen to my lawyer and plead guilty" (M15, 80).*

Even if they do not understand very well what is going on, children plead guilty because his lawyer has suggested so:

> *"There are things that they say in the way they say things... [the lawyers, prosecutors, judges] that I do not know, I do not understand. For example, I do not understand [...] at the last trial they gave me seven months community service, which was all I understood, because I did not understand anything else. Seven months, if you plead guilty, that's it. So you plead guilty and that's it" (M12, 116).*

However, a lawyer says children themselves are those who want to plead guilty, because they openly recognize their participation in the events. However, he says that if they do not want to, they must not force them, because juveniles must see during the proceedings that they also have the right to defend themselves:

> *"Most of them accept, some will not, and then you must respect their decision, and defend them. You tell them this in advance, that the trial is lost but there is nothing for it [...] I will go in and defend you and some of them say yes" (P1, 399).*

The right to defend oneself should not be confused with what is the usual practice of the criminal jurisdiction of adults: always fighting for an acquittal. One lawyer made an interesting point:

> *"What happens... those of us who work in criminal justice (...) we don't often work with children [...] there are colleagues who work in criminal justice who think that a juvenile trial is exactly the same as an adult trial, and they are very wrong, in my point of view" (P1, 413).*

In short, this reflection points to the necessary specialisation that lawyers involved in this jurisdiction should have. Thus, in relation to assistance to foreign children, one lawyer has this to say:

> *"I think that it is important, regarding access to a lawyer for foreign children, that lawyers have, apart from knowledge on the law of criminal responsibility, a familiarity with immigration law, permits, authorizations. [...] in the training, the training that qualifies one for this specialized area of juvenile justice, some kind of unit or topic relating to the area of immigration [...] there are cases in which [...] there is an immigration component that you need to address and for many lawyers it sounds like double Dutch (P7, 288, 290).*

However, there is usually a good opinion among all professionals involved regarding the training the lawyers and the importance of specialisation.

> *"Well, the criminal liability of children act, stats that there should preferably be a specialised group for*

children [...] Of course, the jurisdiction is very different, not just any criminal lawyer will do because they have to change their mindset?" (P14, 56)

"Considering that to intervene in juvenile criminal justice, they must be qualified and have done a course on specialization for which the law societies are responsible, not us or the department of Justice. Then we have lawyers who understand very well what our procedures are, and they help and collaborate a lot with their clients, in this case, with adolescents and their families and make it easy for them to understand all this gibberish, all the hassle" (P13, 156).

In addition, when we talk about the specialization, the dilemma of which legal assistance is better arises: the one offered by the legal aid lawyer or that of the private counsel paid by the young client. In general, all professionals interviewed were clear that legal aid lawyers were best, because they consider them to be better trained. They told us the following:

"Lawyers in general... do their work well, they are lawyers that are ninety per cent legal aid lawyers and I'll tell you one thing, let's see, there is an urban legend about this topic. The private lawyer will spin more of a yarn, why? Very simple, you pay the private lawyer three thousand euros to assist you, and the lawyer concentrates on the positive things [...] and says 'no, no, you must release him'. But the ex-officio lawyer does not even think about asking for that. [...] They do their job, talk to the children and, well, participate and ask the questions they consider appropriate, and then speak with the parents" (P2) 113).

"...evidently everyone has the right to appoint the lawyer of their choice. And if someone wants to assign a lawyer who is not a specialist in children, I take an official record, and I say to them that in principle it is better to have a lawyer who specializes in juvenile justice, but if you insist. [...] But you can tell what lawyers are involved in juvenile justice because, of course, the vision is very different [...] because those who are not specialists do not respect it, they challenge everything... and that not is good for the child, what good is a lawyer who gets you off scot-free?" (P14, 56, 58).
"The juvenile lawyer must look for whatever is best for you [the child]. 'Did you do this? Then, this court decision is for the best. In my opinion, this is the attitude of a true juvenile justice lawyer." (P4, 482).

However, children tend to have the opposite viewpoint:

"No, the truth is that the lawyers do not always do all they can, you know? (M6, 122). It is better to pay for a private lawyer; I know because up to 30 boys of the Centre have told me, thirty..."(M4, 96).

For a start, juveniles consider that legal aid lawyers are not neutral "the legal aid one is bound to be on the side of the judges [...] because the State pays them, you know? Who knows what side they are on? (M6, 138, 144). In addition, they believe that they have less time to prepare the case and that the sanction finally applied by the judge, in case of private lawyers, is less harsh "they give you less time" (M6, 134).

Adolescents consider that, as they are not paying their legal aid lawyers, they do not devote the same interest "because you are not paying him, man, that is what I would do, to tell you the truth, if I were a lawyer and they weren't paying me, I'm not going give it everything, I'm not going to meet up with you or anything, I'll show up the day of the trial and that's it, I'll defend you. Nevertheless, if you're a lawyer who is paying me [sic. we understand that what the child meant was "charging me" -and not "paying me"-] then I'll meet with you or whatever, one day or several days" (M11, 78).

However, they believe that private lawyers act differently. Thus, they say, "I'm paying, and if they don't do their job ...then I'm not going to pay them [...] so he works, and moves a little" (M10, 91). They perceive another attitude, "at least he does something, asks questions, asks about me, looks at what there is to see if he can me get out" (M10, 97). Generally speaking, children consider the attitude of legal aid lawyers to be very passive:

"Yes, they always tell me to do the same thing, not to declare and off we go. They never spoke when we were in the trial or with the prosecutor, no trial, statement, when taking a statement the lawyer should speak and say things, well he doesn't say anything, he stays silent, silent and waiting, when the prosecutor says he has finished, yes, yes we're finished, sign and goodbye" (M10, 77).

"Because they are inactive, they are inactive... they do nothing, I mean... I don't know how explain it to you because, see, the other lawyer, the paid one.... you know what? He talks to you and says 'do this, do that...' the other one does not, the other one doesn't talk to you and say 'do this or do that' and just asks if you agree to plead guilty and says 'if you plead guilty this is what you will get and maybe they will reduce the sanction'..., and if you say no then there will be the trial with the complainants ...and that's it" (M9) 78).

In their opinion, the private lawyers are much more involved. Thus, some children who have had private lawyers, recounted positive experiences:

"My paid lawyer when he enters does not keep quiet and begins to speak; he does not keep quiet up and looks for evidence to get me out" (M10, 113).

"The lawyer –a paid one - has helped me in many things, if not for the lawyer I would have got, would have been sentenced to more than a year and five months, I could have got up to two years or more, that is thanks to the lawyer and all the help she gave us" (M7, 80).

III.3.3.4. Right to inform and communicate with a third party or a consular authority

In relation to the right to inform and communicate with a third party, we noted that in compliance with Law 5/2000, parents or legal guardians are informed immediately. In this sense, the testimonies of children have varied depending on whether they are unaccompanied or have a family. The first group is very conscious of their status "here we do not have, do not have parents, or family"(M15, 145). For this reason, they do not contact anyone during their detention. If they are placed in an accommodation centre, the centre is asked to take care of them and is notified of their detention "my legal guardian from the DGAIA[50] came for me, they took me to the Centre and that's it..." (M11, 30). Meanwhile, if the children reside in Spain with their families, their parents are contacted or informed immediately. This is what children have told us:

"They do ask you that (...) do you have the phone number of a relative?" (M2, 74).

"They gave me the option of calling my mother when I arrived." (M13, 164) "Yes, 10 minutes" (M13, 166).

"My mother really came instantly because when she called me... you know? She told me that she was coming, and came instantly" (M6, 70).

50 Direcció General d'atenció a l'infància i l'adolescència de la Generalitat de Catalunya.

However, apart from communication with the legal guardian, children state that they have not communicated with anyone else. In fact, Law 5/2000 does not provide for communication with a third party. A prosecutor reflects on this right, contained now in the reform of the CPC, "they have the right to a phone call that is difficult to manage, because of course the law says that have right to call to whoever they want ...to talk about what? Because if I want to tell my accomplice to get rid of the drugs somewhere, I pick up the phone and say "just throw away you know what...', should I let him say that? Or how does this work?" (P11, 179). Because of this, he points out the following difficulties:

> *"They have that right, but we do not know how to put it into practice [...] it must be with our presence or in the presence of an official, but they do not say in what language the conversation must be in [...] A private call cannot be allowed. And it cannot be allowed because you don't know what they are talking about"(P11, 180, 182).*

In the new reform of the CPC on the other hand, the consular authority is informed of the arrest ex officio. Thus, a prosecutor explains how the prosecutor's office informs the consular authority of the detention and normally children do not exercise their right to communicate "we notify them, but children never make use of the option of calling the consul, in all this time there was just one consul who called us to see how a detainee was, just one, in which he had taken an interest" (P11 90). Another prosecutor in a different town explains a similar situation: "I think that I have found, and if you consider how many years I have been doing this....there were two or three times they asked us to notify the Consulate, because -of course- they are thinking 'why do I want Morocco recording that I have been arrested in Spain'. Because if I return to Morocco [...] the authorities know that I am committing crimes here, so the less they know and the more secret it is, the better"(P14, 16).

Moreover, the point is that some professionals think that this right can cause problems for juveniles. The Civil Guard interviewee indicates "we know that there are countries [...], where the fact of reporting that a juvenile has participated in an offence (be it minor or serious), a person that has participated in an offence and if this person returns to his country, it could cause problems for him/her" (P8, 429, 435, 445). In this regard, a lawyer, an expert in immigration issues, said that communication with the consulate, depending on the administrative situation of the juvenile, could be detrimental. Thus, for example, in relation to children who want to apply for asylum, they have to be properly informed, because exercising this right may be contrary to their interests:

> *"on the subject [...] of asylum, I have had conflicts because of the consulate issue, because we inform them of this right, but of course, [...] have that tell them 'no, no, you cannot talk to consuls. You are requesting asylum, by nature, by definition... so forget it, if the consul comes here to take your details, they can kick you out, especially if the consuls is from the country to which, precisely, you don't want to belong. So it is true that there is an issue here: you inform them of the right because rights must be safeguarded, but as they are children, I believe that [the do not have] this ability to plan for the consequences. Unless your lawyer is on the ball, there can be a violation of the right" (P7, 274).*

Thus, is hard to understand why the reform of the CPC has envisaged the obligation, in the case of foreign juveniles detained, to notify the detention ex officio; as we have seen, this notification is not always in the best interests of the child, especially, in the case of foreign children who are especially vulnerable as they are children who are seeking asylum or refugees.

III.3.4 Factors that contribute to or hamper exercise of the right of access to a lawyer, and to communicate with a third party and the consular authorities

After the interviews we carried out, we can conclude that access to a lawyer during the detention of children is a guarantee that is applied in many cases, while we observed that on occasion there can be significant delays. Thus, we observed in some places that due to complicit actions of police officers and lawyers, the private interview with the lawyer and the taking of a statement is postponed until the arrival of the legal guardians. And, in the case of foreign children who are arrested at night, is delayed until the arrival of the interpreter who works office hours. Thus, we have confirmed the existence of undue delays which are always inadmissible in criminal proceedings, but even less tolerable when dealing with children deprived of liberty. In this sense, the international legislation on children is clear in considering that deprivation of liberty will be for the shortest time possible and, at the moment detention takes place, access to a lawyer must be provided promptly (article 37 CDN)[51].

Despite the shortcomings observed above, the problems that occur regarding access by the foreign children to a lawyer during the trial are also a concern, since, insofar as the assistance of interpreter is only envisaged at official locations (police stations, prosecutor's office or court), the lawyers cannot prepare the case with their help. The result is a legal practice that on occasion does not seem very competent and that over-relies on guilty pleas; resorting to them, even when the child is not entirely sure. Children are not very satisfied with the performance of their lawyers; they perceive a very passive attitude, denoting a lack of interest in their clients. Paternalistic visions are mixed with actions that belie a lack of specialisation in juvenile matters and, in general, few seem to understand what the role of the professional actually is. In addition, a lack of specialization in this collective of professionals has been highlighted.

Finally, and in relation to the right to communicate with a third party, professionals have been critical in this regard since are some disadvantages in putting it into practice. They consider that, in practice, the exercise of this right may hinder the progress of the investigation of the offence. On the other hand, the communication with the Consulate also seems liable to generate difficulties, in this case, for the children themselves. Neither professionals nor juveniles consider it particularly appropriate convenient to communicate with the consular authorities.

51 These practices would also violate the provisions of Whereas no. 45 of Directive 800/2016 which recognizes that children deprived of liberty are in a situation of special vulnerability. For this reason, special efforts are needed to prevent the deprivation of liberty and, in particular, the detention of children in any of the stages of the proceedings before the final decision of a court that determines if the child in question has committed the criminal offence, given the potential risks to their physical, social and mental development, and because the deprivation of liberty could hinder their social reintegration. Member States could establish practical provisions, as guidelines or instructions for police officers, on the application of that requirement in the situations of police custody. In any case, this requirement is understood without prejudice to the possibility for police officers or other law enforcement officials to arrest a child in situations in which at first glance it is deemed necessary, for example, in flagrante delicto or immediately after the commission of a criminal offence.

IV. Findings and identification of good practices

This research has made it clear that the perceptions held by professionals on the practical application of rights enshrined in Directives 2010/64, 2012/13 and 2013/48 do not match the views of the children. It is therefore worth delving into how these rights are exercised taking into account the views of both.

IV.1. On the right to interpretation and translation

This research has revealed there are deficiencies in the system that prevent the right to interpretation from being fully exercised by children suspected and accused in criminal proceedings. In addition, since parents and/or legal guardians of children have a crucial role in the criminal proceeding, it would be necessary to provide them with interpretation services since, in many cases, they have even more difficulties to understand the language than their children.

On the other hand, the exercise of the right to interpretation is put at risk because there are no rules governing the registry of translators and interpreters, including what the requirements or qualifications should be to guarantee the quality of service. The lack of appropriate resources is forcing the State to hire private companies to provide the interpretation service and the workers of these companies, who are not always qualified, perform some terrible interventions that make it impossible for suspected or accused children to have a fair trial. On the other hand, the lawyers rarely file appeals when the interpretation is of poor quality. There is no clear perception of when a service is of bad quality and unless great difficulty is observed, a review of the proceedings is not considered.
In addition, we have seen that there are no clear criteria clarifying when the interpreter should be present. The absence of this procedure implies that interpreters are absent on many occasions when actually his/her presence would have been necessary. Thus, the fact that children have a basic knowledge of the language (albeit far from sufficient to properly exercise their right of defence), serves to rule out the presence of the interpreter. However, in order to participate fully in proceedings and to understand what the substance is, linguistic skills are required that go beyond a superficial knowledge of the language.

In the same way, and in relation to the right to translation, the lack of resources means that the provisions of Directive 2010/64, which require the most important passages of essential procedural documents to be translated, is inconceivable at this point in time.

IV.2. On the right to information and access to materials

As we could verify in Spain, the information of rights to accused or detained children is mainly in oral form. In general, we could see that professionals have difficulties developing a discourse that children can understand. Thus, the use of complex structures and the use of legal jargon, for children, is very difficult to understand. While professionals have a clear conscience regarding the fact that the information must be appropriate for the age of the child, in reality they do not construct a discourse on their rights, that children can understand, enabling them to grasp their meaning. Their testimonies show that children are able to identify their rights, especially, those who have more experience, but all denote difficulties in understanding what their true scope is and the nature of the proceedings in which they are involved. This difficulty is accentuated when facing children that have difficulties with language.

Regarding information on these rights in writing, we observed that during detention, there are some forms in police stations providing written information on the applicable rights. However, we could see that in practice not all police stations provided this document for children so that they have it with them at all times and consult it when

appropriate. In addition, these documents are not always available in the mother tongue of the children and, again, the wording and the complexity of the words used generate problems for understanding.

Moreover, despite the fact that the legislation provides for an information rights phase, if this information is not made accessible to children, this procedure is useless. Children interviewed confess that they do not understand exactly what such rights mean and what their true scope is. Consider also that their rights not are always respected, especially, the right to be heard, which generates significant dissatisfaction, as they feel that their opinion is not taken into account in the proceedings and that everything that occurs there is somehow aloof.

Finally, the access to materials for lawyers to prepare the defence of the case has improved, although it is pointed out that such access, nowadays, is only to see and consult, but does not allow for full copies to be made. In addition, and in relation to this right, we ascertained that a good practice would be to deliver all the information on the case to the child once the case documentation has been finalised, as well as providing access to the information desired throughout the proceedings.

IV.3. On the right to access to a lawyer, to communicate with a third party and the consular authorities

We noted that sometimes the exercise of the right to access to a lawyer is unduly delayed, with the start of the lawyer's activity being contingent on the arrival of the legal guardian. Delays also occur in the case of foreign children arrested at night, since the private interview with the lawyer and taking of a statement are postponed until the arrival of an interpreter, who is only available during office hours.

However, the biggest problem is observed in relation to the right to access to a lawyer during the trial. At this point, foreign children who have difficulties with the language, and given the impossibility of interpreter appearing anywhere other than official premises, cannot communicate with their lawyers to prepare the defence of the case. Therefore, in this case, the status of foreigner becomes a condition that violates a basic procedural guarantee and therefore limits the right to a fair trial.

On the other hand, we observed a deficit of expertise in the group of lawyers who have difficulty identifying what their true role is in these proceedings. Thus, overly protectionist, paternalistic attitudes coexist with practices pertaining to the ordinary system for adults, which means lawyers forget that their clients are underage. The end result is that children consider that their lawyers, particularly those working on a legal aid basis, have a passive attitude, which contributes to creating even more distance between the accused youth and the juvenile justice system.

Finally, we were able to verify that juvenile detainees are exercising their right to communicate with their legal guardians. However, the additional guarantee offered by the latest reform to inform and/or contact third parties other than their guardians is not complied with. Moreover, there are doubts as to whether such right can be counter-productive for the progress of the investigation. In the same way, we observed that, in some exceptional situations, the right to communicate with a consular authority could be damaging for the foreign juvenile.

V. Recommendations

Addressed to the Law Enforcement Authorities

1. Establish a protocol, which clearly defines the criteria for rating the linguistic competence of the detained or accused child, including their level of reading comprehension and possible disabilities and determine, accordingly, when the requirement for an interpreter, or other resources, is necessary.

2. Include the participation of the interpreter in the police report systematically.

3. Ensure that the letter of rights is given and explained –bearing in mind the level of reading comprehension- to arrested children in a language they understand and that they have it at all times for reference, as well as ensuring that children have a copy of the record or document they sign.

4. Design and approve a protocol relating to detention of children to allow lawyer to be present immediately after the arrest, putting an end to the practice of not calling lawyers until the interpreter arrives, and ensure lawyers have access to the police report before the juvenile suspect makes a statement.

5. Promote courses for specialization in procedural rights of children, placing special emphasis on communication[52], the right of defence[53], immigration law[54], child friendly justice[55] and the content of the rights of the directives, which are addressed in this report.

Addressed to the General Council of the Judiciary

1. Establish a protocol, which clearly defines the criteria for rating the linguistic competence of the detained or accused child, including their level of reading comprehension and possible disabilities and determine, accordingly, when the requirement for an interpreter, or other resources, is necessary.

2. Promote courses for specialization in procedural rights of children, placing special emphasis on communication, the right of defence, immigration law, child friendly justice and the content of the rights of the directives, which are addressed in this report.

Addressed to the office od the public prosecutors for juveniles

1. Establish a protocol, which clearly defines the criteria for rating the linguistic competence of the detained or accused child, including their level of reading comprehension and possible disabilities and determine, accordingly, when the requirement for an interpreter, or other resources, is necessary.

2. Allocate physical spaces within the juvenile prosecutor's offices so lawyers can interview their clients in private in order to prepare the defence of the case and, if necessary, with the assistance of an interpreter.

3. Promote courses for specialization in procedural rights of children, placing special emphasis on communication, the right of defence, immigration law, child friendly justice and the content of the rights of the directives, which are addressed in this report.

52 Which allows language to be adapted so that communication between professionals and children is fluid and the child can grasp the nature of the proceedings in which he/she is involved.

53 The exercise of the right of defence and its peculiarities in this process must be the main objective of the training of the professionals involved.

54 It would be desirable that the professionals involved in juvenile proceedings have some basic notions of the main rights and basic procedures in the field of immigration. Especially in the cities with the highest incidence of foreigners.

55 It would be advisable that professionals be duly trained in the guidelines established by the Council of Europe, given that we have observed some aspects, such as the need to adapt the language and actions to the degree of understanding of the children, or to promote the right to participation and the right to be heard, which are still very deficient.

Addressed to the bar associations and/or lawyers

1. Establish an on-call service of legal aid lawyers ensuring immediate access to a lawyer in the case of detained children, as well as to put an end to practices that unduly delay legal assistance for children.

2. Promote courses for specialization in procedural rights of children, placing special emphasis on communication, the right of defence, immigration law, child friendly justice and the content of the rights of the directives, which are addressed in this report. These courses should also address the scope of the right to translation and interpretation, encouraging the filing of appeals when the interpretation or translation is considered to have been of poor quality.

3. Prepare the defence in an effective and practical way, ensuring that children are listened to, putting an end to the practice of meeting the child just before the hearing or entering the trial. Ensure the principle of the presumption of innocence prevails, and in consequence, do not push for guilty pleas when children are initially reluctant to comply.

Addressed to the Central Government

1. Provide financial resources and increase staff to ensure the exercise of the right to quality interpretation and translation. The Justice and Interior Departments need to hire specialized professionals to attend the taking of statements and hearings occurring during proceedings as interpreters and to translate the important parts of essential documents.

2. In the event that there is insufficient funding to fulfil the previous recommendation, reinforce the control and supervision of the translation and interpretation service offered by companies that have contracts with the administration. The bidding specifications should be more precise and should require that all professionals who act as interpreters or translators have the necessary specialization and qualifications to ensure the quality of the service.

3. Ensure, in any case, that all professionals that provide services of translation or interpretation in juvenile proceedings are duly trained in the procedural rights of children, as well as in their legal obligations. Special emphasis should be placed on the obligation for interpretations and/or translations to be as faithful as possible and that no abuses are committed.

4. Establish an effective monitoring framework and complaint mechanisms when translation and/or interpretation services do not meet the legally required quality standards, making it possible, where appropriate, to dismiss those interpreters or translators who receive repeated complaints.

5. Establish on-call interpretation services that guarantee assistance for children detained at any time of the day or night.

6. Provide the necessary material resources to assert the right of access to materials, making it possible for a copy of the materials to be duly supplied.

7. Facilitate interpretation services not only in police stations and prosecutor's offices and courts, but also in those places where the lawyers interview children so that the right of defence is effective and practical.

Addressed to the legislator

1. Define by means of a law that applies to the nation as a whole what the standards of quality in a translation and interpretation service are, in accordance with the directive, as well as the requirements needed to work as an interpreter-translator at courts.

2. Approve the act provided for in the First Final provision of Law 5/2015 and article 231.5 of Judiciary Act, to create a register of judicial interpreters and translators, and regulate its operation and access requirements.

3. Promote a reform of Law 5/2000 to ensure access to procedural rights recognized by the EU directives which are addressed in this report, in particular:

   3.1 Assistance of an interpreter for the parents of the arrested and accused children when they do not understand the language (articles 17.2, 22.2. 35.1, 48.2, 50.2, 57.2m, 64.3).

   3.2 Consider the conciliation agreement with the victim and/or reparation of the damage as well as the individual educational programme as essential documents that should be translated (article 19).

   3.3 That the child be informed in sufficient detail of the facts of which he/she accused, details and phases of the procedure and of any relevant change in the object of the investigation and the facts in question. Also, there should be some provision in relation to the need for all information to be provided in clear and simple language, that the child can understand (articles 17 and 22).

   3.4 Provide to the juvenile detainee with a document with information on his/her rights, so that he/she can keep it in his/her possession at all times, and which is written in a manner in keeping with the level of the child's reading comprehension, without little formal education, with the act itself supplying a specific model, as the Directive does for adults (article 17). In the preparation of this document, visual elements such as pictograms that can aid understanding should be used for children who may not even understand Spanish. The legislator could draw inspiration from the easy-to-read guide on access to justice in easy for people with intellectual disabilities prepared by the Federación de Asociaciones Plena Inclusión and the Wolters-Kluwer Foundation

   3.5 The document to which the point refers must be translated into the most common languages spoken by foreigners residing in Spain (article 17).

   3.6 The consideration of the police report as well as the technical team report as an essential document to which the lawyer must have due access in order to prepare the defence of the case properly (articles 17 and 27)..

   3.7 The possibility for the juvenile detainee to inform someone other than his/her legal representatives of the detention, as well as to communicate with a third party who may be a person other than his/her legal representatives, communication with the Consulate if the child detained is a foreigner must be regulated as a right of the child and not as an administrative procedure to be carried out on an ex officio basis (article 17).

   3.8 The possibility for the juvenile detainee to inform someone other than his/her legal representatives of the detention, as well as to communicate with a third party who may be a person other than his/her legal representatives, communication with the Consulate if the child detained is a foreigner must be regulated as a right of the child and not as an administrative procedure to be carried out on an ex officio basis (article 17).

   3.9 Include in article 22 the right of the child to have a lawyer not only from the opening of the proceedings, but from the first actions before the police and the prosecutor's office.

4. Promote the reform of the CPC in order to duly implement all aspects of the directives dealt with in this report, introducing the following aspects:

   4.1 Ensure the presence of an interpreter throughout the entire proceedings so that the lawyer and the client can meet to prepare the defence of the case. This possibility should be extended throughout the process, including the appeal phase and, even during enforcement of the sanction (article 123).

   4.2 Properly regulate cases of urgency justifying the appointment of interpreters or translators, establishing what those cases of urgency would be and the way in which the quality of the interpretation or translation would be ensured (article 124.1).

4.3 In the article 520.2, replace the term "facts", which does not make it possible to specify a criminal offence or take into account the provisions of art. 6.3 of Directive 2012/13, which indicates that the person must receive detailed information on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of the participation of the accused person.

4.4 A model letter of rights similar to the one contained in the directive (article 520.2) should be included.

4.5 Article 118.2, should include, as the directive points out "that the lawyer must be present at all statements and has the right to intervene and act effectively to exercise the right of defence".

4.6 Expressly include the rights to obtain a review of the detention and to request bail (article 520.2).

4.7 Explicitly provide for the possibility to challenge the refusal by judges or law enforcement agencies to provide access to the materials.

4.8 Insert the general conditions of article 8 of Directive 2013/48 for solitary confinement into article 527, that is, the need for it to be proportionate, which not prejudice the overall fairness of the proceedings and not be based exclusively on the type or the seriousness of the alleged offence. It should also be stipulated that when solitary confinement is ordered for a person aged 16 to 18, a responsible authority must be informed.

4.9 Communication with the Consulate if the foreign person detained is a child must be regulated as a right and not as an administrative formality to be carried out in any case and on an ex officio basis (article 520.4).

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