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## **The role of the police within the Spanish juvenile justice system: the results of legal reform in Catalonia**

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### **Introduction**

In the last twenty years, major reforms in the political, economic and social fields have taken place in Spain. Among these changes, the criminal justice system and its agencies have been through a process of modernisation and democratisation. One of the more recent reforms affected the juvenile system and was introduced by a new law in 2000.

The police are a law enforcement agency within the criminal justice system. They hold a key position in this system as they can be considered the main entrance to it. In Spain a specific justice system for juveniles was created at the beginning of the 20th century. If we follow the historical evolution of the Spanish juvenile justice system we can observe changes in the model legislation and ages for application of juvenile law that go from the *guardianship model* – a paternalistic model similar to the American social welfare model – to *treatment ideology* – a mixed model based on individual responsibility, as in the crime control model – that have shaped police intervention with juveniles (see the chapter by de la Cuesta in this volume for additional information on the new Spanish model).

The guardianship model (*modelo tutelary*) was introduced in Spain by the Law of Bases in 1918, which opened the door to the progressive creation of Children's Courts following the model of the Cook County juvenile court (Chicago, 1899). Thirty years later, in 1948, the Law of 1918 was replaced by the Law of Juvenile Courts. The juvenile courts sought to protect those under 16, whether victims or offenders, from the improper exercise by their parents or guardians of the right to custody and education. It was a very "paternalistic" and "male based" conception. For instance, the main prerequisites for membership of this court were being male, over 25 years of age and with irreproachable morals and an unblemished lifestyle.

After a long dictatorship, democracy was re-established in 1976 and the lack of procedural guarantees in the Law of 1948 conflicted with key articles in the Spanish Constitution of 1978. During the 1980s there was in general minimum intervention by the juvenile justice system against juvenile delinquency as the law was in conflict with some of the principles of democracy. In addition to this, the need to introduce international treaties and agreements in law created a need to promulgate a new law regarding justice for juveniles; this took place in 1992 (Act 4/1992). This law constituted an urgent and provisional reform prompted by the declaration of unconstitutionality of the Law of 1948. The year 1995 saw the change of lawful age to 18 years, which was introduced by the new Penal Code, bringing it into line with the civil age of majority. Following this approval, a new law on justice for juveniles became all the more necessary.

The promulgation of Act 5/2000 on minors' penal responsibility was a swift movement towards *treatment ideology*<sup>1</sup> as it puts judicial intervention regarding juveniles somewhere between a formal sanction and a "materially educational intervention". It emphasises the recognition of the

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<sup>1</sup> The 2000 reform follows the juvenile justice model promulgated by international law such as the United Nations Rules, the Council of Europe Recommendations, the Convention on the Rights of the Child and the European Charter on Children's Right.

special vulnerability and educational demands of the offending juvenile and his/her legal responsibility for his/her acts. The law mandates that children under 14 years will not be criminally responsible for their actions and they cannot go through the criminal justice system. In exceptional instances, the law can be applied to young people of 18-20 years of age<sup>2</sup> (i.e. “young adults”). Treating young adults as juveniles seems to take into account structural changes in western societies where the beginning of adulthood has been moved to run in parallel with the increasing practice of delaying entry to the employment market.

The way the police intervene with juveniles has gone through an important transformation in the last decades, especially since the democratisation of the State.

### **Changes in Law and changes in practice**

Act 5/2000 introduced a variation in the age of criminal responsibility for juveniles, from 12-16 to 14-17<sup>3</sup>. This means that children up to the age of 13 are exempt from the juvenile justice system and criminal intervention is limited according to what biology and psychology define as childhood and adolescence. As a result, police intervention with juveniles under 14 years who commit a crime must be oriented towards child protection and must be done in connection with the juvenile welfare system and under the supervision and direction of the juvenile prosecutor's office.

Concerning the police, the new legislation on juveniles is a shift towards better protection of juvenile rights and legal safeguards in police performance. In this sense the reform introduces an exhaustive list of formal considerations relating to the detention of juveniles<sup>4</sup>. It must be emphasised that the 2000 law limits the time of detention by the police to 24 hours<sup>5</sup> and also diminishes police discretion by establishing external bodies to lead police interventions: a judicial body – the prosecutor, and an administrative one – the juvenile welfare board. Furthermore, the law implies the official recognition and adoption in law of practices that were already in force, such as the existence of specialised police units for juveniles.

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<sup>2</sup> Provided Young people fulfil the conditions presented in Art. 4 of the law: having committed a less serious crime or penal misdemeanour without violence or intimidation to the persons, or putting them in serious danger; not having been condemned by a final sentence for crimes committed after reaching 18 years of age; and that the special circumstances and the degree of maturity of the accused make it advisable, all those being considerations assessed by the Technical Advice Team.

<sup>3</sup> The 2000 reform fixes the minimum age for applying the juvenile justice system at 14 years; this has also been done in Italy, Sweden and Germany. The maximum age is 17.

<sup>4</sup> Art. 17 of Law 5/2000: the detention of juveniles must be exceptional and must always be put into practice in such a way that it should cause the minimum detriment to the juvenile; juveniles must be informed of their constitutional and legal rights in words that they can understand and that should allow them to understand also the events they are being charged for, and the reasons for their detentions; the police must immediately notify the prosecutor and the juveniles' representatives of the arrest, and also the appropriate legal personnel, as the case may be; a lawyer must assist the juveniles at all times; they must be questioned before their parents and a defence lawyer; and in their absence, before a prosecutor other than one in charge of the proceedings; juveniles must be retained in adequate facilities and separate from those used for adults of penal age; they must also receive any physical, medical, psychological and social assistance and all the care and protection their age requires according to their sex and individual characteristics; and finally, within a maximum period of 24 hours juveniles must regain their freedom, and must be handed over to their parents, guardians or relatives or must regain their freedom, and must be handed over to their parents, guardians or relatives or put under the Public Prosecutor, as the case may be.

Whenever the crime committed gives rise to liability to a prison sentence of over three years, juveniles must be put under the custody of the prosecution; if the presumed sentence is shorter, juveniles will be freed after giving evidence under the guardianship of those responsible for it. The prosecutor has 48 hours from the time of the arrest to decide on their freedom or request from a judge the precautionary measures they see fit to apply to the juvenile's situation.

<sup>5</sup> All juvenile detentions must be immediately communicated to the juvenile prosecutor by telephone and fax. During detention juveniles should be kept separate from adults and also be transported separately. Normally the police statement should also be sent within 24 hours to the juvenile prosecutor's office. In those cases where both adults and juveniles are considered perpetrators of a crime, a copy of the police statement must be sent to the juvenile prosecutor within 24 hours.

Act 5/2000 emphasises the protection of the basic legal safeguards and basic rights of juveniles; for instance, juveniles can request the *habeas corpus* procedure<sup>6</sup>, which will be initiated by the chief of police. The competent preliminary investigation judge in the place where detention has taken place will intervene. When the police detain a juvenile they are clearly instructed to avoid “using tough language, physical violence and exhibiting weapons”<sup>7</sup>. Furthermore, the police are only to use special protective security measures, such as handcuffs, on juveniles between 16 and 18 in serious crimes (i.e. violent crimes, sexual crimes or terrorism)<sup>8</sup>.

Regulations on juvenile arrest and detention are provided by the new law, including the issue of place of detention. The law states that juveniles must be detained in adequate and separate from those used for adults. The experience of the Catalan Police proves that improving and adapting facilities leads to less violence during the detention of juveniles. The juvenile prosecutor’s office in Catalonia had made repeated requests to adapt detention facilities for juveniles since December 2001, when the 2000 reform came into force. However, the adaptations were not completed until July 2003.

When juveniles were kept in the old-style cells, violent episodes arose continuously such as self-inflicted injuries or furniture destruction. The new facilities consist of two big rooms with natural lighting and capacity for 30 juveniles each. The rooms have TV, video and special furniture designed to resist vandalism. Juveniles’ attitudes towards the police have changed radically since the new facilities were put into use. For instance, taking interviews and testimonies is much easier and there is less self-injury.

## **Juvenile Police Units**

Law mandates that specialised police units for juveniles should be the main actors within the police segment of the juvenile justice system at the different levels of political power. It must be mentioned that in Spain there are three levels of government – state, regional and local – and as a consequence different police services with different tasks coexist, each service corresponding to one of the following levels: (1) At the state level there are two services: the National Police Force and the Civil Guard. (2) At the regional level there are three regional police service, in Catalonia (Mossos d’Esquadra), in the Basque Country (Ertzaintza) and in Navarra. In Catalonia and the Basque country these regional police services are intended to replace the state police forces. (3) At the local level in municipalities with more than 5.000 inhabitants there are local police services, better known as *municipal police* or *guardia urbana*.

Both state and regional police services in Spain have special units for dealing with juveniles; these units form part of the judicial police. The 2000 reform specifies for the first time in Spanish law that the juvenile police units will be the main police body to implement juveniles’ law. However, it should be noted that these units had been set up long before the 2000 reform.

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<sup>6</sup> The juvenile’s parents or legal representative, the prosecutor, the juvenile’s lawyer and the ombudsman can also request *habeas corpus*.

<sup>7</sup> Following the 2000 law reform the State General Prosecutor’s Office dictated Recommendation 1/2000 for Police Services [*Circular 1/2000 de la Fiscalía General del Estado sobre criterios de aplicación de la Ley Orgánica Reguladora de la Responsabilidad Penal del Menor*] containing instructions for implementing the new law on juvenile justice. In section 9 instructions are given for police intervention during the detention of juveniles.

<sup>8</sup> Section 12 of General Prosecutor Recommendation 1/2000 for police services.

In Spain during the 1980s constitutional safeguards and European standards on criminal justice were gradually introduced, and the legal treatment for juveniles set apart a child protection system and a separate criminal justice system for children (those under 18 years of age). However, the police are the only criminal justice agency in which staff still deal with both juvenile justice and child protection tasks<sup>9</sup>. The 2000 reform maintains this situation.

*Child protection* tasks are aimed at all juveniles under 18 and the police develop them in collaboration with the juvenile welfare system. They target children and juveniles who are unprotected or at specific risk, and victims of "a crime likely to affect their normal development as individuals". Intervention of the police with juveniles under 14 who have committed a crime is protective only and only civil legislation on child protection can be used. In these cases police services may intervene only for the purposes of civil identification of determination of age, and they cannot use techniques and measures that are used to fight crime in relation to older juveniles or adults. They should apply child protection regulations, inform the prosecutor, follow his/her instructions and hand the juveniles over to their parents, guardians or relatives or to the juvenile welfare system.

*Juvenile justice tasks* are aimed at juveniles between 14 and 17. The police act as a part of the juvenile justice system which targets juveniles below the legal age of responsibility who have violated the law in such a way that, had they been of age, they would have been considered perpetrators of an offence or crime. Regarding juvenile justice procedures, police intervention according to Act 5/2000 must be fitting for juveniles who have committed acts considered misdemeanours in the Penal Code. It should be emphasised that juvenile criminal law is not applicable to children under 14 years of age regardless of the crime committed, nor to youngsters over 18 years who are processed in the adult criminal justice system.

Police enforcement of immigration law also applies to juveniles. When dealing with foreign juveniles, juvenile police units perform controls and administrative restrictions as part of their tasks.

At the state level the most important juvenile police unit is the group under the National Police Force. In the late 1970s and as a result of the emergence of juvenile delinquency within urban settings (crimes against property, vehicle theft, climate of insecurity, violence), *Juvenile Delinquency Groups* were created within the National Police Force (NPF), aimed at focusing on the offending juvenile. The emergence of juvenile delinquency coincided with the appearance of drugs, major demographic, growth and unemployment among the second generation of immigrants who had settled on the outskirts of the larger cities during the industrialisation process of the 1970s. From the mid-1980s onwards, this more reactive orientation was complemented by the implementation of police departments specialising in juveniles and youth-related problems with a strong emphasis on preventive strategies. This demand for specialisation on the part of the police was specified in Royal Degree 769/87 for Regulation of the Judicial Police, constituting the *Groups for Minors of the NPF* (GRUME) in 1987, with headquarters in three big cities: Barcelona, Madrid and Seville.

GRUME forms a part of the Judicial Police Provincial Brigades, and their field of action focuses on three main objectives:

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<sup>9</sup> For instance, the Catalan police force's juvenile unit self-reports that 30% of their work relates to protection while 70% relates to juvenile justice interventions.

- (1) To protect children and juveniles who are victims, in collaboration with the juvenile welfare system. Their duties include: detention of children and juveniles in situations of abandonment or danger; the prevention and investigation of crimes involving children and juveniles as victims; assisting children and juveniles who have been victims of misdemeanours, and so on.
- (2) To combat criminality of youth in the juvenile justice system. Their duties include: informing parents regarding slight breaches of the law by juveniles; collaboration with juvenile courts and institutions providing attention to juveniles; the prevention and investigation of crimes involving children and juveniles as perpetrators, etc.
- (3) To help children and juveniles in risk situations. Their duties include: control of school absenteeism; participation in discussions, conferences and informative activities at schools; the search for and location of children and juveniles who have run away from home, etc.

At the regional level there is a juvenile unit in the Catalonia police force: the *Minors Brigade*. It was created in June 1986 together with a *Minors Police Headquarters*. It began to deal with questions relating to the victimisation of children and juveniles and also with criminal lawsuits brought against them. Since the beginning, a social educator has been part of its staff.

As a consequence of an organisational change after the 2000 reform, the *Minors Police Headquarters* was disbanded and instead a *Minors Service Office* (MSO) was created in December 2001. The MSO is a police unit solely for children and juveniles, on duty 24 hours a day, covering the entire region of Catalonia<sup>10</sup>. Three operational groups were established: two working from the public prosecutor's office for juveniles and one from the police headquarters building. Their duties are similar to those performed by the Juveniles Unit of the NPF. They include, on the one hand, the investigation of complaints and reports which require subsequent inquiries. On the other hand, the MSO undertakes all other investigations ordered by the public prosecutor's office for juveniles and the courts as well as steps in pursuance of court orders and administrative requests, detentions, appearances, summons, locations, confiscations, etc.

## **Relations with the prosecutor and other agencies**

The rapport between the police and the prosecutor is very close and since the reform it has become even closer. Act 5/2000 recommends to the Ministry of the Interior, at both the national and regional level, that the staff of the juvenile units of the Judicial Police Brigades be assigned to the juvenile sections of the prosecutor's office. This has already been done, for instance, in the Catalan regional police where there are two groups assigned to the prosecutor's office dealing mainly with investigations following complaints or judicial orders. Under the 2000 reform, juvenile prosecutors lead the police investigations. However, after the detention and release of a juvenile offender investigations can be followed by the police with or without the request of the prosecutor or the judge<sup>11</sup>.

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<sup>10</sup> The Minors Service Office covers the whole region of Catalonia, which has a population of 6,5 million. The average number of juveniles the Minors Service Office receives is close to 15 juveniles per day, with an average of four declarations being taken for each juvenile (perpetrators, victims and witnesses).

<sup>11</sup> Section 28 of the "Provisional Rules on police intervention with juveniles" [*Normas provisionales sobre tratamiento policial de menores*] of the National Police Service, January 2001.

Co-ordination between prosecutors and police services is better at the local level than at the regional level. The 2000 reform introduced the figure of the regional prosecutor who specialises in juveniles, but the police are still building bridges with regional prosecutors.

At the local level some positive initiatives have been taken in order to fight certain types of violence or crime in a more global and effective way through the creation of specific *protocols* among the different agencies dealing with the problem, including the prosecutor and the police. In fact, collaboration with other agencies through protocols is encouraged in section 30 of the National Police Service's "2001 Provisional Rules on police intervention with juveniles". For example, in the case of the protocol for domestic violence: "... consensual performing of all the agencies: schools, health, services, hospitals, prosecutors, police, judges and so on". Evaluations of the protocol outcomes shows an increase in the number of complaints reported to the police and to the criminal justice system and more convictions resulting from co-ordination of the different agencies.

### **Police discretion under this system**

Police services in Spain have a large amount of discretionary power, just as in many other countries. This is because police activities are not always qualitatively equal. Within the Spanish system police cannot use diversion formally – only the prosecutor is allowed to do so. Following the law strictly, police should always report improper behaviour and offences committed by juveniles. However, they do use diversion informally. It must be said, though, that the 2000 reform has reduced police discretion to some extent: it has introduced certain limits to the performance of the police by regulating in more detail the conditions for the detention of juveniles. In addition, police services must follow the prosecutor's orders when they perform criminal investigations and are under the juvenile welfare system when they perform child protection tasks.

In Spain, law regulates police proceedings, as they must be subject to the rule of law. However, there is a common thought that the police should be "softer" with certain groups, especially those not able to defend themselves or to attack. This is the case with youngsters and children. This is based on the assumption that juvenile offenders are not responsible for their acts, thus they are not guilty. Their offences are seen as the result of the failure of those institutions in charge of socializing juveniles. Therefore police have a difficult role when dealing with juveniles. They must react to juveniles' offences, so they do have to intervene, but at the same time they should try not to stigmatise juveniles while performing their control function. For instance, two of the common characteristics of juvenile police units are that police officers do not wear uniforms and they receive specific training on skills that encourage juveniles to trust them.

When facing juvenile delinquency the police use even more discretion. They tend to react only when there is clear evidence of a crime and then they will apply the least degree of sanction permitted. In fact, when dealing with juveniles, police services tend to perform in a manner different from that which the law strictly stipulates. The reason for this adjustment is to try to avoid the stigmatisation that any criminal justice system intervention generates. This informal diversion by the police is mainly done in two ways:

- (1) Use of conciliation and mediation: a mediation process between the two parties to avoid a legal proceeding. The aim is to reach an agreement and avoid a lawsuit and police inquiry.

- (2) Diversion to other social control agencies: i.e. diverting police intervention to another social agency or institution. The aim again is to avoid the stigmatisation associated with a lawsuit or police inquiry. For instance, parents or legal guardians assume control and responsibility for the young offender's further actions. Another method of diversion is to refer the case to less stigmatising social agencies such as education, health or welfare agencies/institutions.

Out of this informal diversion arises the problem that police officers are not trained to undertake mediation, conciliation or referral to other agencies. These are not strictly legal actions because Spanish law does not regulate them as police actions. In the event that it becomes regulated by law, training could then be included in police curricula. In fact, conflict, resolution strategies are already part of the training curricula of some police services in Spain<sup>12</sup>.

## **Conclusion**

As a result of the promulgation of the new law on the juvenile justice system in 2000, Spanish police have changed the way they work with juveniles. The reform is a shift towards *treatment ideology* which considers that juveniles are not responsible for their acts and envisions juvenile crime as a result of problems in their process of socialisation – so it is in fact a shift towards a “softer” approach to juvenile delinquency.

The law has introduced a very detailed regulation on police intervention with juveniles. It lowers the maximum time of detention, introduces the possibility of claiming *habeas corpus*, and lowers the age of criminal responsibility. All in all limits police intervention and stresses the protection of the basic rights of juveniles.

In Spain there were already special juvenile police units, but they are now regulated by law. Members of these units receive special training. The functions of the police under the new system are quite wide as they range from protecting children at specific risk to detaining juveniles who have committed a crime. The law reinforces co-ordination between prosecutors and police services. It appears to be a more effective way of fighting criminality and reducing victimisation of juveniles.

When dealing with juveniles, police services tend to use more informal diversion. In Spain this diversion consists mainly of conciliation and mediation, and diversion to other agencies. This still happens even though these functions are not recognised by law and policemen are not trained to do so.

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<sup>12</sup> For instance, during the Basic Training Course of the Catalan Regional Police-Mossos d'Esquadra there is a 17 hour course on “mediation and communication”. The course aims at teaching cadets how to use mediation for the alternative resolution of conflicts, how to analyse conflicts and decide whether mediation is suitable, and techniques of mediation.



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