



FINAL SPAIN REPORT

CHILD-FRIENDLY JUSTICE IN ADMINISTRATIVE PROCEDURES APPLIED TO THE TREATMENT OF NON-ACCOMPANIED MIGRANT CHILDREN AND ADOLESCENTS.

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I. INTRODUCTION/ PRESENTATION

1.1. Brief introduction to the principles of child-friendly justice, adapted and accessible to children and adolescents (NNA)

The respect of human rights of children and adolescents in the justice field is relatively heterogeneous even though all European countries have undersigned and ratified the UN Convention on the Rights of the Child. The juvenile criminal justice in Europe remains at precarious or deficient levels regarding its adaptation to the minor population, and at present time, many of them, still lack an educational approach, and a punitive approach trend persists.

While Spain has made a relevant effort in that field, there is still a long way to go so that the focus based on human rights, such as child-friendly justice for children and adolescents, is added into the judicial and administrative procedures and in the response to systems of protection and social services.

“MENAS” receive a different and special treatment within the Child Protection System in Spain. They are not integrated with the rest of Spanish adolescents who are unprotected, but they are welcomed by the administration of a separate regime. However, this is not, per se, a reception resource that is more specific and fulfilling of the minors’ needs effectively. On the contrary, I think that the fact of putting them in a separate regime provokes their exclusion and differentiation. We can now see how this figure is criminalized in the mass media.

There are many adolescents who will be better off in more generic environments together with other Spanish adolescents, and there are many other “MENAS” who are not properly evaluated and should be at therapeutic centers.

Interview by DNI SPAIN under the Project named ERASMUS + 2019, social worker at MENAS protection center in the Granada capital.

The present report focuses on the response and effectiveness of the application of child-friendly justice for children and adolescents in two key scenarios: administrative procedures, and, in Aragon and Andalusia; furthermore, it focuses on the high-priority populations and of most concern for the Spanish state: children and adolescents in migration contexts, particularly the non-accompanied migrant children and adolescents category which is used to name those who are not accompanied by their families.

This report addresses the response and effectiveness of the application of friendly justice for children and adolescents in two key scenarios: administrative procedures in Aragon and Andalusia. As well as focusing its gaze on one of the populations of great concern and priority for the Spanish State: children and adolescents in migration contexts of particular interest take unaccompanied migrant children and adolescents, a category that is used for those who they don't come with their families. The debate has been resolved regarding whether or not to name this population group "MENAS", in this sense and recently in mid-2019, social entities and administrations agreed to use unaccompanied migrant children and adolescents (NNAMNA), however, even in the legislation and from the practice of professionals and in the media, “MENA” continues to be used, and it will still take time for a total change. From DNI Spain and in the face of the persistent document, the concept of unaccompanied migrant children and adolescents is used. In some parts “MENAS” may be used, particularly when opinions have been collected or if the law or program describes it that way.

For the purposes of this Report, the definition of Friendly Justice for children and adolescents has been considered in the Guidelines on Friendly Justice as developed and approved by the Council of Europe.

The Guidelines address the rights of children and adolescents in all legal areas (civil, administrative, criminal), at all stages of the proceedings (before, during and after), and in all capacities and circumstances (whether child victims, witnesses, perpetrators, as part of the proceedings, or "only" affected by legal proceedings, such as seizure of property by a judicial agent). The above are not a binding instrument, they are intended to serve as a practical tool for member states to help them adapt their judicial system, in law and in practice, to the specific needs of children and adolescents.

1.2. Presentation of the purpose of the study: collective, analyzed phenomenon, data, and statistics¹

The Spain report focuses on two Autonomous Communities (CCAA), and at the same time focuses its country view on the response that the Spanish State gives to minors in migration contexts. This is a population that has taken importance for the characteristics of the response it requires.

The Autonomous Communities of Andalusia and the Autonomous Cities of Ceuta and Melilla are geographically embedded in the Southern Border of Europe. Although the entry of migrants into our country is produced to a greater extent through the aerial border posts (Madrid, Barcelona), in the last twenty years and, especially during the past five years, the arrival of African immigrants has considerably increased through the Andalusian coasts and the border posts of Ceuta and Melilla. In 2018, approximately 58,000 migrants entered through Andalusia and 6,500 entered through Ceuta and Melilla.²

The above has a special role and singularity in the framework of these migratory flows, due to the conditions of vulnerability and challenges that the children and adolescents in migration contexts pose for the protection and reception system of the country.

The profile of these non-accompanied migrant children and adolescents is usually that of minors between 14 and 18 years of age, although the highest average is concentrated in the age group of 16/17 years. They come mainly from North African countries (Morocco, Algeria) and countries in sub-Saharan Africa such as Guinea, Ivory Coast or Gambia, and to a lesser extent, from war-torn countries such as Syria, Iraq or Sudan. Between 86% and 97% are male³.

According to data from the State Attorney General's Office, 1,293 cases of unaccompanied foreign minors were registered in Spain in 2016; in 2017 the figure amounted to 3,803; in 2018

¹ It should be noted that these dynamics are changing, and some aspects could be solve, modified when the report will be public, or will become more complex or new elements will be appear.

² Andalusian Association for Human Rights, 2019. "Migrant Children: Human Rights in the Southern Border 2019", Sevilla.

³ IBIDEM.

to 7,053 NNA⁴. However, we must specify that these data are unreliable, due to the scarcity and inaccuracy of the sources of registration (Official “MENAS” Registry). On the other hand, according to State data, in 2017 there were 5,717 unaccompanied foreign children in Spain and 7,673 foreign children (not “MENAS”) in residential care situations.⁵

Regarding the Community of Aragon and the reality of non-accompanied migrant children and adolescents in that territory, official sources indicate that throughout 2018 the arrival of these minors in the Community has increased significantly. Such is the situation that the Child Care System has overflowed at certain times, with a direct impact on the system itself.

Since 2017, the increase in the arrival of non-accompanied migrant children and adolescents has been significant. It has gone from managing 5 files in 2015, to 40 files in 2018. The largest volume of non-accompanied migrant children and adolescents, focuses on the town of Zaragoza, being Teruel the next province to receive this population; then, Huesca receives a very small number of them.

This situation is collapsing the centers located in Zaragoza, since the number of non-accompanied migrant children and adolescents attended in 2017 was 45 (6 of which correspond to centers in Teruel, 3 to Huesca, and 36 to Zaragoza), which is 31.25% with respect to the total arrivals in 2017 (144). This is a situation that far exceeds the 2016 data (14.09% with respect to the total arrivals in centers). These percentages are much more significant if it only takes into account the autonomy centers of Zaragoza, where the percentage of MENAS with respect to the number of children served in these centers is 80%.⁶

However, these data are not reliable, since there currently is no true data on the number of non-accompanied migrant children and adolescents in Spain. What exists is a sub-registry of “MENAS” because not all minors are registered. The data obtained from the non-accompanied migrant children and adolescents records are being questioned by the Immigration Prosecutor because they recognize the difficulties in knowing how many children and adolescents in the context of migration enter the country.

The decision to migrate is mainly due to economic reasons. Although according to their narratives, they also come because they think that in Europe, they will achieve a better standard of living, in other cases because they feel alone, the majority of family friends from their close environment have migrated and decide to follow the same destiny. Others live on the street, have no family reference (broken families) and decide to bet for a better life (cases of urbanites).

Most of these children have a predefined immigration plan. Many of them have family members residing in Spain or in countries of central or northern Europe, with whom they intend to meet. They undertake the trip in order to improve their economic situation and enjoy prosperity and more dignified living conditions. They hope to be able to work and thus send remittances to their families. In other cases, such as those in Syria or Iraq, they are fleeing war and insecurity in their countries, where their lives and integrity are seriously threatened.

⁴ State Attorney General, 2018. “2018 Annual Report”, Madrid.

⁵ Data from www.infanciaendatos.es of the Ministry of Health, Consumption and Social Welfare.

⁶ Aragon Justice Report 2008, Zaragoza.

In general, non-accompanied migrant children and adolescents, have undergone a hard life path, in which misery, violence and exploitation at the hands of mafias have been present and have significantly conditioned their emotional and physical health.

The children are usually frightened, with no knowledge of the language, and lie trying to obtain their goal of being admitted into the country and not being returned to their home country. They have matured in a forced and different way from a child of their age under normal conditions... Their documents are false and with errors, and it is very difficult to offer them information appropriate to their condition. (Interview conducted by DNI SPAIN in the framework of the ERASMUS + 2019 project, Luz Cuadra, Lawyer, Volunteer Legal Counselor.)

Upon arriving in Spain, they face institutional, social and media rejection. The institutions highlight their status as migrants instead of their status as minors. Therefore, as explained below, the State, far from protecting them, aggravates their defenselessness and causes new situations of vulnerability. Even those unaccompanied migrant children and adolescents that are finally supervised by the Autonomous Communities do not enjoy the same rights and freedoms as Spanish children in residential care.

1.3 Research methodology: scope of the study, geographical delimitation, tools and information sources.

The research was divided in two parts. In the first part end 2018 and first quarter of 2019, the research focused on the analysis of administrative procedures that in Spain regulate the protection of non-accompanied migrant children and adolescents, who are found in the Spanish territory. The study has focused on three central moments or phases that are crucial for the protection and determination of the future of these children and adolescents: the location, registration and first reception phase; the phase of determining the age of children and adolescents, which will condition the legal regime of application (protection of children's rights for migrants); and the phase of definitive reception and guardianship, family reunification or repatriation.

For the analysis of these procedures DNI Spain have relied on secondary sources of information, considering reports from the State Attorney General's Office, the Ombudsman, the Andalusia Ombudsman for Minors, and reference NGOs working on the protection of the rights of migrants and children on the southern border, such as Save The Children, Andalusia Association for Human Rights (hereinafter APDHA) or the Platform of Children's Organizations of Spain (hereinafter POI), and information and studies produced by DNI Spain.

In addition, 21 surveys and 2 interviews were conducted to professionals working with migrant children and adolescents in context of migration at the Emergency Shelters and/or Residential Care Center.

Given the competence distribution system of the Spanish State, in matters of child protection, each Autonomous Community has developed its own instruments and protocols. In this case, the documentation and field work has focused especially on the Autonomous Community of

Andalusia, which is the Community that is the entry and first reception of the vast majority of children in migration contexts; and in the Autonomous Community of Aragon, which is, together with the Basque Country and Catalonia, one of the Autonomous Communities of final destination of these children.

In the second part of the research, DNI Spain facilitated a consultation with non-accompanied migrant children and adolescents in Zaragoza, with the approval of the IASS- Social Services Aragon Institute, Children's Division, with whom a Workshop of the Voice of non-accompanied migrant children and adolescents was coordinated in a protection center⁷ with two types of modalities.

The workshop was designed for two groups of children: a group A with minors of long stay and a group B with minors of short-medium stay. The space had the active participation of a mediator who helps with the adaptation of the questions and the translations, since the participants do not speak the Spanish language fluently. The voice workshop was scheduled for March 21st, but the State of Alarm decreed under the COVID-19 measures, forced the cancellation of the consultation as designed.

However, DNI Spain has encouraged the participation of these groups through questionnaires and online consultations, for which we have had the collaboration of the teams of educators. The questionnaires, questions, and their methodology were adapted, translated into Arabic, and a glossary was added for a better understanding of the proposed terms. DNI Spain was able to count with the participation of 3 adolescents from group A and another 3 from group B.

The presential designed voice workshop have been postponed and will be held once the Alarm Status and the restrictive measures will have ended and will come more to normality.

II. ANALYSIS OF THE IDENTIFICATION PROCESS, DETERMINATION OF AGE, AND RECEPTION OF CHILDREN AND ADOLESCENTS WHO ARE NOT ACCOMPANIED IN MIGRATION CONTEXTS

2.1. Legal and regulatory framework

In the Spanish legal system, there is an unresolved tension by the public authorities between the protection approach and the immigration approach applied to the treatment of children and adolescent in migration contexts.

The competence in the matter of legal protection of the minor corresponds to the State, since it is governed by civil law, but, on the other hand, the CCAA (Autonomous Communities) have the powers in matters of social rights (education, health, social protection). Within this framework, the Autonomous Communities have developed their own child protection system, always under the state legal framework and, consequently, have provided their own regulatory framework and the instruments and resources necessary to fulfill this mandate and develop

⁷ The Center is not mentioned to protect the identity of the adolescents whom participated.

their competitions. The normative instruments of reference for the protection system in Spain are Organic Law 1/1996 of legal protection to minors, and Law 26/2015 of modification of the protection system for children and adolescents. In Andalusia, Law 1/1998 is for the Rights and Attention to Minors, and Decree 42/2002 on homelessness, guardianship and custody of minors.

The rights of migrants are exclusive competence of the State. It is mainly regulated by Organic Law 4/2000, of January 11, on the rights and freedoms, and social integration of foreigners in Spain. The regulation was approved by Royal Decree 557/2011, dated April 20; Royal Decree 162/2014, of March 14, which approves the regulation of operation and internal regime of foreign detention centers. Law 12/2009, of October 30, regulates the right of asylum and subsidiary protection; and the Regulation that develops it was approved by Royal Decree 203/1995, of February 10.

Organic Law 4/2000 recognized foreign minors with a broad framework of rights, freedoms and legal guarantees and established the principle of presumption of minority of the “minor”. However, after the subsequent entry into force of Organic Law 4/2015, of March 30, on the protection of citizen security, a more restrictive framework of rights for migrants was established. This Law regularized the so-called *non-refoulement*, which represents a clear violation of international law, since it allows the return of foreign persons intercepted at border posts to a third country (in this case Morocco), without establishing previous safeguards that guarantee their safety in this country, and without this country having committed not to returning the migrant to their country of origin where their life could be in danger.

These types of actions do not allow an individual evaluation of the personal situation and status of people in migration contexts. The express nature of this measure does not allow migrants to exercise the right to asylum and international protection, they are not assisted by lawyers, nor is a difference established between adults and minors. The immediate expulsion occurs against all persons who are intercepted

Furthermore, Organic Law 4/2015, also broke the principle of presumption of minority of migrant children and adolescents, while promoting, as stated above, the principle of return. Article 12.4 of said Law empowers the Prosecutor to question the validity of documents proving the identity of the child or adolescent, including the passport and, where it applies, to determine their age based on medical tests. This practice has been strengthened and became a general rule after the approval of the Framework Protocol on certain actions in relation to Unaccompanied Foreign Minors, of October 13, 2014.

According to articles 10.2 and 39 of the Spanish Constitution, it is clearly observed that the Spanish legal system must respect the content of the United Nations Convention on the Rights of the Child (hereinafter CRC), which therefore becomes mandatory. In this sense, Article 14 of the Spanish Constitution which enshrines equality and non-discrimination, must be interpreted and applied within the framework of the CRC. Thus, the Spanish legal framework should not

establish any differentiation of treatment and recognition of rights between Spanish children and adolescents and foreign children and adolescents.

In any case, as the UN Committee on the Rights of the Child has warned in its review of compliance with the obligations arising from the UN CRC to the Spanish State, unaccompanied children in migration contexts must be guaranteed effective legal protection throughout the Spanish territory and the principle of non-refoulement and the best interests of the child must prevail at all times. Similarly, at all times, the protection and the immigration approaches should prevail, and all children, regardless of their nationality and legal status, should enjoy the protection and catalog of rights contained in the UN Convention on the Rights of the Child. In this same sense, the Spanish Ombudsman and the Supreme Court have also ruled.

2.2. Stakeholders who intervene in the procedure

The stakeholders of the protection and the immigration systems who are competent to attend and intervene in the different procedures of location, care and reception, protection and repatriation, as applicable, of minors in the context of migration in Spain are as follows:

- a) **Police:** the body responsible for the identification, custody and Central Registry of non-accompanied migrant children and adolescents is the **Provincial Brigade of Foreigners and Borders**.
- b) **Immigration Prosecutor's Office:** It is involved in the procedure for determining the age and affiliation. It is anomalous that the juvenile prosecutor's office is not the body in charge of initiating the age determination file, which is quite revealing of the principles that govern this procedure and that, a priori, it makes the condition of nationality prevail over age, contrary to the provisions of the UN Convention on the Rights of the Child.
- c) **Legal Counsel:** This body may intervene in the procedure for determining age and also in repatriation, as recognized by the Law, although such intervention is not prescriptive. As recommended by the Ombudsman and the UN Committee on the Rights of the Child, the presence of a lawyer on the duty of minors during this phase of the procedure should be guaranteed, in order to ensure his/her defense and the application of the principle of the best interests of the minor, mainly when it comes to procedures in which the Administration itself may have interests opposed to those of the NNA.
- d) **Public Administration:** The Delegation or Sub delegation of the Government (state body) responsible for the immigration records, the child treatment team of the Autonomous Community (autonomous body), and the autonomous public institution responsible for guardianship of the child.
- e) **Human Rights Institutions:** **The Ombudsman** at the state level and its regional analogue, whenever this figure exists in some Autonomous Communities such as Andalusia or Aragon. This figure receives complaints from NGOs and the children and adolescents themselves, it also has the competence to investigate at the request of a party or ex officio, those facts on which they have indications or suspicions that irregularities are being committed or violating the fundamental rights of non-

accompanied migrant children and adolescents. As a result, it issues resolutions and recommendations addressed to the Administrations and other responsible State bodies, urging them to modify the harmful behavior of human rights and adopt effective protocols and safeguards that guarantee the full exercise and enjoyment of the rights by this group. It also has the power to visit the centers where there are children and adolescents, including non-accompanied migrant children and adolescents centers, conduct thematic studies on the subject and issue an annual report containing all the actions carried out, which include those on the subject of childhood, migrants and the non-accompanied migrant children and adolescents.

- f) **Private entities:** Because they are majority, **private companies that manage non-accompanied migrant children and adolescent's protection and reception centers** can be considered. In some cases, they are also non-profit entities, but in general, these organizations are more present in emergency actions and processes and immediate reception. For example, organizations such as the Red Cross or CEAR have a prominent role in this phase of the procedure.

There are also other types of organizations with an advocacy profile that carry out counseling, accompaniment, legal defense and social denunciation in matters of asylum, refuge and protection of unaccompanied children in migration contexts. Among them, **the APDDHHA, the Caminando Fronteras Association, or the Migrant Jesuit Service** stand out in Andalusia, Ceuta and Melilla.

- g) **Forensic doctors and health professionals:** they participate as physicians in the practice of the age determination tests to children in migration contexts whose age is not questioned.
- h) **Unaccompanied Foreign Minors:** holders of rights and obligations who are not accompanied by a person of legal age.

2.3. Description and phases of the procedures:

2.3.1. Location procedure, identification and registration. Immediate reception

2.3.2. Age determination procedure

2.3.3. Procedure for definitive reception and guardianship, family reunification or repatriation.

2.3.4. The Passport as document prior to obtaining the residence permit which is requested at the Consulate.

2.3.1. Location Procedure, identification, and registration. Immediate reception

The Framework Protocol on certain actions in relation to non-accompanied migrant children and adolescents, of October 13, 2014, provides that when an unaccompanied foreign minor is located by the police in Spanish territory, they must transfer them to and communicate with the Prosecutor's Office, the Delegation or Sub Delegation of the Government of the corresponding province and the Autonomous Administration, competent in matters of child protection.

The Police, specifically the Provincial Brigade of Foreigners and Borders must prepare the police profile of the child or adolescent, with as much of the following data as possible: fingerprint, photograph, and personal identification data provided by the children and adolescent (name, surname, affiliation, nationality, age, and country of origin). They must also record the documents proving their age and nationality if the children and adolescents have them, as well as the Autonomous Administration that assumes the reception of the child and the data of the Reception Center managed by public or private entity where the children or adolescents are provisionally received.

Subsequently, they must transfer this record to the Scientific Police so that they can check if the children or adolescent is already registered on the non-accompanied migrant children and adolescents National Registry. Otherwise, the Provincial Brigade of Foreign Affairs and Borders must proceed to the registration by issuing a Foreigner Identification Number and a Personal Identification Number.

In both cases, the Police must relay this information to the Foreign Affairs Prosecutor's Office, who, as analyzed below, shall intervene to mainly determine the age of the minor.

As of when a non-accompanied migrant child or adolescent is identified in the Spanish territory, he/she will be immediately received in a provisional reception center for non-accompanied migrant children and adolescents by the competent Autonomous Administration, or if the minor already appears in the "MENAS" Registry, he/she will be transferred to the corresponding center.

However, as stated above, after the entry into force of Organic Law 4/2015, regarding the protection of citizen security, an exception has been established to the principle of non-refoulement that clearly contravenes the best interests of the child. This Law came to legalize the express return at the border, by empowering the State security forces and bodies to immediately return the minor to the bordering country in whose border post it was intercepted.

This practice, which has received numerous complaints from civil society⁸ organizations and the Andalusia Ombudsman for Minors⁹, is contrary to human rights, since it means leaving the protection and future of migrants to a third country (Morocco), among which there may be asylum and international protection seekers.

In relation to children and adolescents, this practice aggravates even more their vulnerability as the refoulement principle applies equally for adults and minors and exempts the authorities from liabilities regarding the protection of those migrant minors. The expulsion takes place on the spot and by force, without the presence of lawyers, without previously informing migrants of their rights, including the right to asylum, and without any formalities to ascertain the age of

⁸ Platform of Children's Organizations, 2017. "Supplementary Report to the V and VI Report on the Application of the UN Convention on the Rights of the Child and its Optional Protocols", Spain.

⁹ Andalusia Ombudsman for Minors, 2017. "2017 Annual Report", Sevilla

the persons, nor taking into account the best interest of the children or adolescent, if applicable.

Foreign Act of 2000, in accordance with the UN-CRC, established as a general principle the presumption of minority and non-refoulement for those foreign minors in migration contexts for whom there were doubts about their age. However, as of Organic Law 4/2015 and the Framework Protocol on MENAS of 2014, this general presumption has been broken and has been reversed in practice by the principle of presumption of coming of age.

The determination of age is the most critical procedure for children and adolescents, since it will end up determining the legal regime of application (immigration law or child protection) and its destination.

In this procedure, there are remarkable differences as to whether the child or adolescent in the context of migration is a national of any European country, in which case, the Police will contact the embassy of such country in Spain directly, asking them to make the corresponding inquiries to proceed to clarify the age of the child or adolescent and proceed, where appropriate, to the repatriation and / or family reunification of the child or adolescent.

In the event that the child or adolescent is not a national of any EU country, the first thing to check is if his/her country of origin has signed a collaboration and / or repatriation agreement with the Spanish State, in which case the procedures will begin for this through the embassy or consulate of that country in Spain, provided that the return to their country is considered the best for the children or adolescents, by applying the principle of the best interest of the child. These actions would be carried out by the Delegation or Sub delegation of the Government of the province in which the children or adolescent has been intercepted.

When the children and adolescents come from a country with which Spain has not signed a Repatriation or Collaboration Agreement, if it has official documentation accredited by his/her country that allows to prove his/her identity and age minority undoubtedly, it will be considered valid and will be a reliable proof to determine his/her age minority. At this point, in practice, the documents that are accepted as official ones to determine the age of the foreign child are only the passport and the national identity document, excluding the birth certificate or the family book.

The Framework Decree of "MENAS" of 2014 establishes a catalog of exceptions to this principle, which have as a consequence the annulment of the validity of the documentation that the children carry, and their consideration as undocumented. This has the direct effect of questioning their status as a minor. These cases are:

- When the identification document shows signs of falsification.
- When there are contradictions on the documents presented by the child or adolescent
- When there is a suspect of contradiction between the age shown on documents and the physical appearance of the child and adolescent.
- When the data provided on the identification documents does not correspond or are contradictory to what the children and adolescents say during the interviews.

- When the identification documents provided by the child or adolescent are clearly unbelievable.

Based on these assumptions, the Prosecution Ministry (PM) must consider medical tests to determine the age of the child. This procedure is based on the principles of speed in the practice of the test, informed consent of the children and adolescents and medical-sanitary control.

The type of medical tests to be applied varies according to each Autonomous Community and, as established by the non-accompanied migrant children and adolescent Framework Decree, they must be always practiced by forensic doctors. In the Autonomous Community of Andalusia the test consists of an x-ray of the carpal of the left wrist. Other type of tests applied in other Autonomous Communities such as Aragon, in addition to the wrist x-ray, are the dental exam and x-ray of the clavicle.

After conducting the test, the physician responsible for their practice must prepare and send to the Prosecution Ministry (PM) a medical report as soon as possible, in which at least the following content is specified: identity of the physician, date and time of completion of the test, type of technique used to perform the tests, test results and conclusion. It is important that the maximum / minimum range is established (usually 2 years) as well as the margin of error of the test. The PM may, where appropriate, request the repetition of the test when it considers that the medical report is not clear.

Based on the medical report, the Prosecution Ministry will issue a Decree to end the file and the process of age determination. Said Decree contains documentation of the facts, legal documentation and an operative part in which the age of the NNA was determined in accordance with the medical tests performed, always considering as the subject's age the lower section of the range indicated in the medical report.

The Prosecution Ministry's decree is reported to the Police, to the Delegation or Sub Delegation of the Government, to the Public Autonomous Entity and the Reception Center. From here, there are several scenarios regarding the future of the child or adolescent.

- a) If his/her age minority is accredited: the provisional Reception Center where the child or adolescent resides and the corresponding Autonomous Community Public Entity are notified, which must issue a resolution assuming the final reception and guardianship of the child or adolescent, and process their residency permit before the Government Delegation or Sub Delegation.
- b) If his/her legal age is accredited: The Reception Center and the Public Entity will issue a termination resolution in the center; then, the minor is obligated to leave it. On the other hand, the Government Delegation or Sub Delegation may issue a resolution of expulsion from the State or internment in a CIE. In both cases it is common for the unaccompanied foreign child to end up in the streets.

The Decree of the Prosecutor's Office that sets the age of the NNA is appealable. However, the body that reviews it is the same that has issued the resolution; therefore, in practice, this review has few effects.

The most difficult is.... Telling children that they were not considered as minors and that they will not have protection. Interview conducted by DNI Spain under the frame of the ERASMUS +m 2019 project. Luz Cuadra, Lawyer, Volunteer Legal Advisor

2.3.3. Procedure of reception or guardianship, family reunification or repatriation.

Different scenarios and possibilities open for the unaccompanied foreign child or adolescent after the decree of the Prosecutor's Office that determined their age:

- a) **If the Decree of the Prosecutor's Office** determines the age of majority of the children and adolescent, he/she will be transferred to the Government Delegation or Sub Delegation. Then, the legal framework of the Foreigners Law will be applicable. The options available are:
 - That the children and adolescents be transferred to a CIE (Foreigners Internment Center), together with adults, and their expulsion from Spanish territory is processed. To this end, the Spanish authorities will initiate the repatriation procedures with the country the children or adolescent belong to.

This situation places the children or adolescent in a vulnerable situation which is clearly contrary to the best interests of the child. On the one hand, as noted above, there is a wide margin of error in the results of the age determination tests.¹⁰ The Ombudsman, in its 2018 report has found that in Spanish CIES there are at least 88 unaccompanied foreign children placed together with adults¹¹.

- That the child is in a street situation. This reality, hard as it is, occurs frequently, either because the provisional Reception Center where children and adolescent was housed, expels it from the center without transferring it to the police or the Government Delegation once the Prosecutor's Office issues the decree; or because after passing through the CIE it was not possible to achieve repatriation of children and adolescents to its country of origin; or because the Police itself leaves children and adolescents to its own fate.

In this situation, non-accompanied migrant children and adolescents remain in a street situation and are exposed to great vulnerability. On one hand, and despite the fact that the Decree of the Prosecutor's Office has determined their legal age, their minority of age is recorded on the official identity documentation they bear. This prevents them from accessing basic social rights such as working, renting a home, registering or having a health card. On the other hand, the options to get out of the street are often their integration into prostitution and trafficking networks or other organized crime groups that are drug related. In other cases, the street situation becomes chronic, with the serious negative effects that this has on their health and development. For example, in the case of the cities of Ceuta and Melilla, this reality

¹⁰ Spain Ombudsman, 2019. "2019 Annual Report", Madrid

¹¹ Spain Ombudsman, 2019. "2019 Annual Report", Madrid

is very visible. According to organizations such as APDHA¹² or Save the Children¹³, there are about 100 adolescents and young people in the streets that are completely abandoned by the state.

b) **If the Decree of the Prosecutor's Office** determines that the child or adolescent is effectively a minor, it will be transferred to the Autonomous Administration. The legal regime for the protection of minors will be fully applicable. The child protection team of the corresponding Autonomous Community will interview the child and collect all the data to raise an individualized intervention proposal with the child or adolescent, always considering the best interests of the child. In this case, the options are as follows:

- That the repatriation of children and adolescent to their country of origin be agreed. For this purpose, the Administration must ensure that the safety and welfare conditions are guaranteed in their country of origin and that the family, or the State protection system, can take care of him/her and meet their needs and rights.
- That the family reunification of children and adolescent be agreed in those cases in which they have a family member in Spanish territory or in another EU member country, provided that they have sufficient means and resources to guarantee their safety, development and protection.
- That the definitive reception and guardianship by the Autonomous Administration be agreed. In this case, the children and adolescents must be transferred to a definitive residential center, considering their specific characteristics and needs, and the Administration must process the resolution of guardianship and the residence permit.

In any case, once the final reception of children and adolescents has been decided, the Autonomous Administration has a maximum period of three months to issue the guardianship resolution and nine months to process the residence authorization before the Government Delegation or Sub Delegation. The residence permit will be valid for one renewable year, as of the issuance of the Decree determining age by the Prosecutor's Office.

2.3.4. The passport as a document prior to the residence permit, requested at the Consulate

Most non-accompanied migrant children and adolescents arrive in Spain without a passport, lose it or destroy it. In any case, it is an indispensable document to request a residence permit or to prove age. For this purpose, the procedures must be managed before the respective Consulate of their country of origin. Often, there are bureaucratic obstacles that hinder this process, including:

a) In the case of Morocco, the valid birth certificate with the authorization of the parents, the identity documents of the parents, the certificate of registration and the

¹² Andalusia Association Pro Human Rights, Andalusia 2019. "Migrant Children: Human Rights on the Southern Border", 2019

¹³ Save The Children, 2016. "Invisible Children: Unaccompanied Foreign Minors, Victims of Trafficking and Refugees in Spain", Madrid.

family book are required. Sometimes their parents do not have the economic resources to send the documents, and others simply do not send the proper documentation because they do not have them.

b) Other cases, such as Guinea Conakry, they do not have the equipment to make biometric passports and being far from Spain they also do not manage to process the papers timely and adequately.

c) In other countries such as Rumania, guardianship is not recognized, therefore, even if the children and adolescents are protected, it is possible to process the passport because they request the regrouping of the underage person, waiting for this until they are of legal age to travel to their country and process their passport.

The consulates have their internal regulations regarding the issuing of the passport, and they have recently hardened the procedures due to the falsification of documents. The deadlines for obtaining the passport are long, and children turning between the ages of 17 and 18, no longer have time to process their residence permit.

III. STATUS OF FULFILLMENT AND IMPLEMENTATION OF THE CHILD-FRIENDLY JUSTICE PRINCIPLES FOR CHILDREN AND ADOLESCENTS IN MIGRATION CONTEXTS IN THE SPANISH STATE. COMPARATIVE ANALYSIS FROM THE AUTONOMOUS COMMUNITIES OF ANDALUSIA AND ARAGON

3.1. Level of implementation and good practices

3.1.1. Procedure of identification and registry of the minor. Compliance of the accessible child-friendly justice principles: good practices, obstacles, and difficulties

Among the following proposals, what information about the administrative procedure and children's rights is given to the minor person involved?

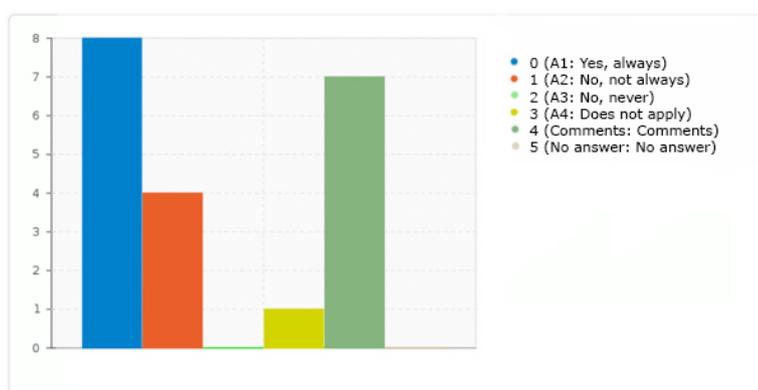


Source: survey conducted by DNI Spain to professionals of social entities, and administration who work in the field of protection and social services, May 2019

3.1.1.1. The right to be informed

Within the framework of this procedure, both the police and the staff of the immediate or emergency reception center where the foreign children and adolescents are provisionally sheltered, must inform them, as first actions, about the right to asylum and the right of special protection they enjoy as unaccompanied foreign minors, by recording this process in writing. However, in practice, and due to various factors and voids, children and adolescents do not always receive the information through the most appropriate channels and procedures according to their degree of maturity, nationality and language.

When written information is given to a minor, by administrative authorities, social services and/or resources, is there an adult to read it with him/her and to make sure he/she understands?



Source: survey conducted by DNI Spain to professionals of social entities, and administration who work in the field of protection and social services, May 2019

On the one hand, in relation to the Foreign Police, professionals do not have specific training on children's rights, contrary to what could be presumed of the Brigade for the Protection of Minors, a body that, a priori, presents greater knowledge and experience in direct dealing with children and adolescents. In addition, when the location of a non-accompanied migrant children and adolescent occurs, an interpreter who speaks the mother tongue of the child or adolescent is not always available. Therefore, in most cases, they delegate the process of informing about their rights to the staff of the reception centers.

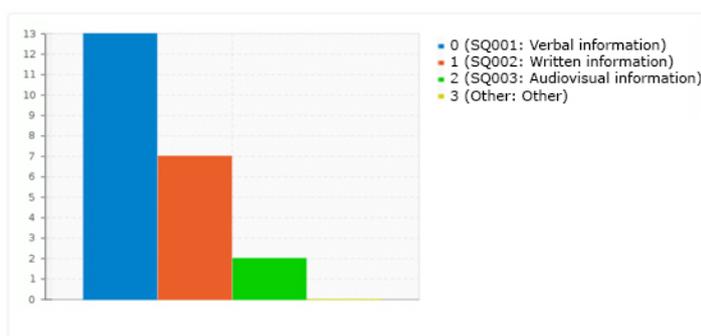
Regarding the Center in which the emergency reception is carried out, although most of the professionals have previous training and experience of work with children, according to the interviews and questionnaires they have conducted, it seems that most of the Professionals have not received specific training on the principles of friendly and accessible justice for children and adolescents.

Being a 100% professional sector, they work with specific materials. To begin, the training of the professional (those who work with children) is key, since they need to have criteria as a minimum training base, as well as a

theoretical base. The entity guarantees specific training adapted to the work methodology necessary for children. Interview conducted by DNI SPAIN in the framework of the ERASMUS + Project, to Ricardo Centellas Albert, Coordinator of the Minors Program of the Federico Ozanam Foundation, Zaragoza.

Due to the high turnover of staff in the Child Protection Centers, particularly the non-accompanied migrant children and adolescents' centers, and the high demand for jobs for these centers, it happens that in many cases professionals are hired without having specific work experience with this collective. Therefore, they do not know their particularities, conditions of vulnerability and needs, nor do they receive prior training on standards that respect the Rights of the Child to follow when conducting the first interviews. For the same reasons, they also do not know in depth the rights granted to minors in the framework of the asylum and refuge procedure, or in the framework of the United Nations Convention on the Rights of the Child.

How is the information about the administrative procedures, and children's rights provided by the administrative and social services staff and those working within the different resources offered?

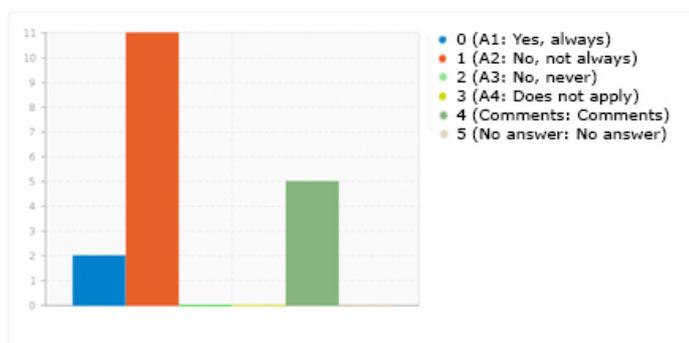


Source: DNI Spain survey of professionals from social entities, and administration working in the field of protection and social services, May 2019.

Finally, added to it is the language barrier in other cases. Although all the Reception Centers have the figure of a sociocultural mediator, who acts as an interpreter with non-accompanied migrant children and adolescents, the reality is that almost no center specifically has a professional interpreter, and this professional is not hired full-time in most cases, so their presence and working time in the center are reduced. Moreover, this limitation manifests itself more intensely when the reception takes place during the weekend, since it is less likely that there is a mediator working in the Center.

Spain Report: Child-Friendly Justice in Administrative Procedures

If the minor does not speak the national language(s), is a cultural mediator always present?



Source: DNI Spain survey of professionals from social entities, and administration working in the field of protection and social services, May 2019.

Another important void or gap that is observed is the absence of a lawyer or legal advisor who may be present and accompany, free of charge, the migrant children or adolescents during this first part of the procedure. In addition to assuming a guarantee of protection and legal defense of the rights of the minor, it would reinforce the consideration of the best interests of the child in all phases of the procedure¹⁴.

*... When the "MENA" arrives at the center, it must adapt to the dynamics of operation of each Center. This is something that seems logical but in practice it is not easy. If the MENA arrives during a weekend, it will surely be interviewed by the team that works on the weekend, among which there is usually no figure of socio-cultural mediator or interpreter. Even among the team of professionals on duty, none of the workers or social educators can speak the MENA's language. If the foster care is done during the week there are more chances that the mediator and / or an interpreter may be present. **Interview conducted by DNI SPAIN in the framework of the ERASMUS + 2019 project, social worker in protection center for "MENAS", in Granada capital.***

These weaknesses observed in practice hinder and impede the information process, so that, in most cases, it will be other non-accompanied migrants children and adolescents housed in the Center who end up interpreting and informing their peers of their rights.

¹⁴ Spain Ombudsman, 2010. "Minors or Adults? Procedure for the Determination of Age", Madrid.

3.1.1.2. Right to protection.

*... I think that the time of the initial interview is very important. The venue should be prepared very well, ensuring that it is an intimate and pleasant, cozy space. The worker and / or educator who conducts the interview should also be relaxed and have sufficient time and no limit for this interview, incorporating a psychologist and an interpreter into their team. But in practice, due to the dynamics and functioning of the Centers, due to the saturation of tasks and time constraints that we have, we do not always have the space and time due at the time of the initial interview. Sometimes, in this first interview we must introduce another "MENA" of the same nationality into the space or at least speak and / or understand the language of the new "MENA" because we do not have the figure of the translator or the mediator (maybe that day they have not gone to the center or are engaged in other tasks outside the Center) ... **Interview conducted by DNI SPAIN in the framework of the ERASMUS + 2019 social worker in a center for protection for "MENAS", in Granada capital.***

After the examination carried out in Spain, the UN Committee on the Rights of the Child, in its 2018 Final Observations (22 and 23), highly valued the creation and operation of the unified "MENAS" Registry, as a tool of great value and efficiency for the protection non-accompanied migrant children and adolescents who are located and received in Spain.

Although without a doubt it has been a great advance, there are still some elements which necessitate management improvement. In this sense, from the Platform of Children's Organizations (POI)¹⁵, the need to improve the coordination between the Police and the Administration (Government Delegation / Sub-delegation, Child Protection Service) is pointed out, and to facilitate access to the MENAS Registry to other police officers (currently only the Provincial Brigade of Foreigners and Borders has access to this Registry).

When the Police intercept an unaccompanied foreign child or adolescent at border posts or in Spanish territory, they must ensure that it has not been a victim of trafficking or is at risk of being trafficked. To do this, in the event that this minor is accompanied by an adult, from whom his relationship cannot be proven, the police, with the approval of the Prosecutor, must carry out DNA testing, prior informed consent of the adult who accompanies the foreign child or adolescent.

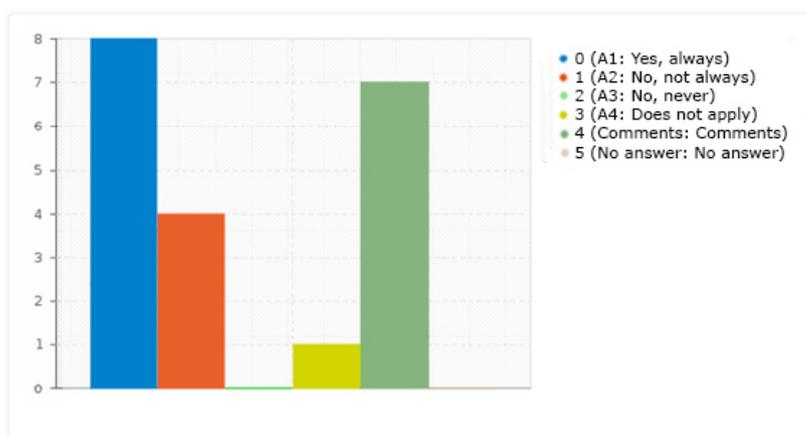
Immediately, and while the DNA test is being verified to determine the parentage and / or relationship between the minor and the accompanying adult, the child and adolescent is provisionally separated from the adult.

Of special concern is the general praxis of not informing minors with the rigor and depth required about the figure of asylum and the rights and actions that assist them. In most cases, non-accompanied migrants children and adolescents are being deprived of this right due to misinformation. Express returns take place at the border (non-refoulement), or the professionals at the emergency centers and immediate reception do not have specific training

¹⁵ Platform of Children's Organizations, 2017. "Supplementary Report to the V and VI Report on the Application of the UN Convention on the Rights of the Child and its Optional Protocols", Spain.

in the field, and in practice it is observed that foreign children and adolescents are not considered as holders of this right¹⁶.

When written information is given to a minor, by administrative authorities, social services and/or resources, is there an adult present to read it with him/her to make sure he/she understands?



Source: DNI Spain survey of professionals from social entities, and administration working in the field of protection and social services, May 2019.

3.1.1.3. Right to privacy, intimacy and confidentiality.

Based on the reports consulted and the interviews and questionnaires carried out during the first reception or emergency, unaccompanied foreign children and adolescents suffer significant limitations in the exercise of these rights.

In some cases, these are issues or limitations that are related to a lack of budgetary forecast and planning of the public policy of protection by the Autonomous Communities. In Andalusia, for example, according to the Andalusia Association for Human Rights¹⁷, the immediate reception centers are saturated and do not have adequate facilities for the child or adolescent. In most Emergency Centers the number of residents far exceeds the available places, so there is overcrowding. The child or adolescent share a room and sometimes also a bed.

For its part, in his Reports, the Andalusia Ombudsman¹⁸, has also warned on these aspects, meaning that the facilities and equipment of these spaces are not adapted for use by children and adolescents. In most cases they do not have spaces for leisure, free time and recreation.

¹⁶ Spain Ombudsman, 2017. "Spain Ombudsman's Report to the V and VI Report on the Convention on the Rights of the Child and its Optional Protocols", Madrid.

Andalusia Defender of the Minor, 2017. "2017 Annual Report", Seville.

Andalusia Defender of the Minor, 2018. "2018 Annual Report", Seville.

¹⁷ Andalusia Association for Human Rights, 2019. "Migrant Children: Human Rights in the Southern Border 2019", Seville.

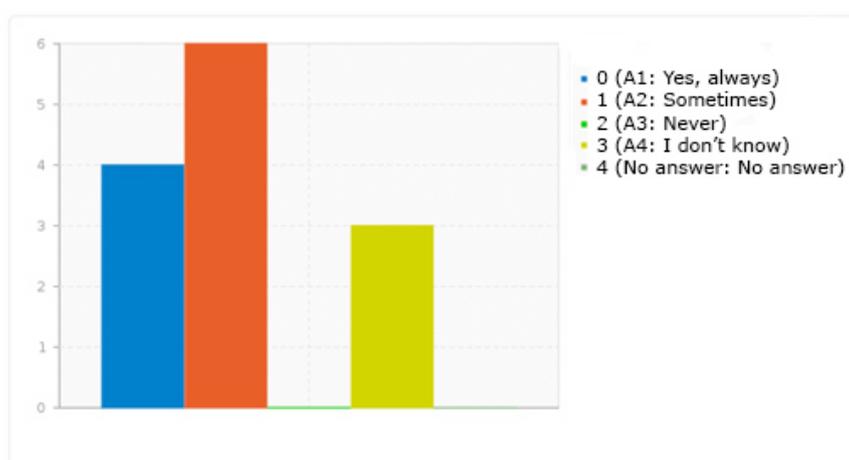
¹⁸ Andalusia Defender of the Minor, 2017. "2017 Annual Report", Seville.

Andalusia Defender of the Minor, 2018. "2018 Annual Report", Seville.

Nor is there a food and hygiene regime adapted to the child or adolescent, even clothing is lacking.

On the other hand, in some cases it is the lack of adequacy of police protocols and praxis, which violates the right to confidentiality and privacy of these NNA. For example, when non-accompanied migrant children and adolescents are intercepted on the patera or on the ground, they are handcuffed with cable ties and taken to the police station and immediate reception centers in police vans¹⁹.

Do officials from administrations, social services and resources explain in simple words, the possibility of children and adolescents to appeal decisions?



Source: DNI Spain survey of professionals from social entities, and administration working in the field of protection and social services, May 2019.

3.1.1.4. Participation and the right to be heard.

In the first reception procedure, the minors do not have within their reach the possibility of formalizing complaints in the emergency centers where they are received²⁰. The protection centers do not have the protocols established for those purposes, and in any case, the language barriers, uncertainty about the future and misinformation act as blocking factors.

In practice, the complaints are presented when children and adolescents have been in these spaces a longer time and are mainly processed through the HR NGO and / or the Andalusia Defender of the Minor.²¹

During this first reception phase and until the final decision on their situation and destination is taken, children and adolescents will be interviewed by the Police, the professionals of the Center where they will temporarily reside, the Prosecutor's Office and Minor Protection Services of the Autonomous Community. Initially, when the Police intercept the minor, an in-

¹⁹ Andalusia Association for Human Rights, 2019. "Migrant Children: Human Rights in the Southern Border 2019", Seville.

²⁰ Andalusia Association for Human Rights, 2019. "Migrant Children: Human Rights in the Southern Border 2019", Seville.

²¹ Jesuit Migrant Service, 2018. "Remove from the Labyrinth. 2018 Southern Border Report", Madrid.

depth interview should be conducted, in the presence of an interpreter or a lawyer, in order to assess the most appropriate place or resource of reception according to the circumstances of each case. However, due to the saturation and lack of resources of the Andalusia Protection System, there are no specific or differentiated resources.

3.1.1.5. Celerity.

When a non-accompanied migrant child or adolescent is intercepted by the police in border posts or in Spanish territories, and until file of guardianship, family reunification, repatriation or expulsion is determined (if considered of legal age), the elapsed period should not exceed 2 months, but in practice it can take up to six months²².

When the child or an adolescent is intercepted in a patera, the landing at the port takes place and they receive emergency humanitarian attention. There they can be held for up to 72 hours, staying with adults, until they can later be moved to an immediate reception center.

In addition, as mentioned above, due to the saturation and lack of resources of the child protection system in Andalusia, the stay in the temporary shelters for children and adolescents that finally become protected by the Andalusia Board can reach up to 9 months²³ or more, until they are transferred to a definitive reception center that has facilities and spaces that are more adequate and adapted to children.

3.1.2 Procedure to determine the age. Observance of justice-friendly principles: good practices, obstacles and difficulties.

3.1.2.1. The right to be informed.

The 2014 "MENAS" Decree provides that the child or an adolescent can give written consent to carry out the tests, informing them previously about: the type and characteristics of the tests to be performed; the possible risks to their health; the purpose and the possible consequences derived from the tests when their age is determined. This consent must be given in the presence of the doctor and / or the Police, and the minutes must be drawn up.

The child or the adolescent may refuse to have the test performed, but in practice this plays against it, since the Public Ministry can decree the presumption of the subject being of legal age and, therefore, terminate the file for determining age.

But the main shortcoming of this procedure is that the child or adolescent does not have the advice or support of a lawyer or legal advisor. In addition, the problem of understanding the language by the child or adolescent is also reproduced here, since it is possible that in many cases neither the police, nor the staff of the Reception Center nor the medical practitioner

²² Andalusia Defender of the Minor, 2017. "2017 Annual Report", Seville.

²³ Andalusia Association for Human Rights, 2019. "Migrant Children: Human Rights in the Southern Border 2019", Seville.

speak the mother tongue of the migrant child or adolescent. Therefore, as a consequence, it is quite frequent that the child or adolescent has not fully understood the information provided, or even has not been explained the consequences of the practice of the test or their right to oppose the practice of the same.

3.1.2.2. The right to protection.

The procedure of determining the age establishes several safeguards to protect the integrity and dignity of the child or adolescent.

a) Prohibition of repeating medical tests that have already been practiced.

In practice, this principle is not always respected. In fact, as reported by different NGOs²⁴ and the Ombudsman²⁵, it is common that when a non-accompanied child or adolescent is transferred from the Autonomous Community, the medical test will be repeated to confirm their age and not infrequently yields different results, which, on the other hand, questions the validity and effectiveness of these tests as a means of verification of the age of these children or adolescents.

b) Prohibition of conducting medical tests that pose a risk to the health of the NNA.

This principle is observed without any cases having been reported by NGO's or the Ombudsman of medical tests performed that affect the physical health of the child or adolescent.

c) Performing medical tests by specialized medical practitioners: forensic doctors.

The procedure is always supervised and accompanied by medical-health personnel. However, it is not always forensic doctors who carry out the procedure as stated in the Decree itself and as also recommended by the Ombudsman²⁶.

3.1.2.3. The right to privacy / confidentiality.

The "MENAS" 2014 Decree establishes that the transfer of the non-accompanied migrant children and adolescents to the hospital, when carried out by the Police, must be done in a vehicle that does not have the police badges, and of course the child or adolescent cannot be handcuffed. It can also be done by the staff of the Center where the child or adolescents is hosted, an option that is usually the one practiced. In any case, there have been no testimonies by the people who have been polled and interviewed in cases in which children

²⁴ Andalusia Association for Human Rights, 2019. "Migrant Children: Human Rights in the Southern Border 2019", Seville.

²⁵ Ombudsman of Spain, 2010. "Minors or Adults? Procedure for the Determination of Age", Madrid.

Ombudsman of Spain, 2019. "Annual Report 2019", Madrid.

Ombudsman of Spain, 2017. "Report Ombudsperson of Spain to the V and VI Report on the Convention on the Rights of the Child and its Optional Protocols", Madrid.

²⁶ Ombudsman of Spain, 2010. "Minors or Adults? Procedure for the Determination of Age", Madrid.

and adolescents have been restrained or handcuffed, but it is common that when it is the Police who transfer the child or adolescent it is done in an official police vehicle.

3.1.2.4. Participation and the right to be heard.

As previously mentioned, the fact that the child or adolescent does not have the legal assistance of a lawyer during the procedure, as well as no guarantee that translators, interpreters and / or mediators will be available during the procedure really frustrates the right to participation and to be heard by the child and adolescent in the procedure. Both the Ombudsman and the Supreme Court and the Constitutional Court have declared that it is mandatory for the child and adolescent to have legal counsel during this type of procedure.

These limitations also condition the possibilities of resorting to the Fiscal Decree that ends the procedure. But even if the child or adolescent exercised this right and appealed the resolution, the fact that it is the same Prosecutor who has issued the resolution who knows, and resolves said appeal provides few guarantees and possibilities. In some cases, children and adolescents go to human rights organizations to appeal these resolutions and / or file complaints with the Defender of the Minor in the case of Andalusia.

On the other hand, in the framework of the procedure the forensic doctor does not conduct any interviews or listens to the child or adolescent that is being subjected to the age determination tests. It is not even a requirement foreseen in the procedure.

Consequently, the child and adolescent are immersed in these types of procedures against their own will with little chance of opposing the practice of the tests and also having difficulties in appealing the decision adopted by the Prosecutor's Office (Decree). They are treated more as passive objects of the procedure than as rights holders.

3.1.2.5. Celerity.

The procedure has been designed for celerity. It does not last longer than one week.

3.1.2.6. Best interest of the Child.

The critical element of departure is that, as stated by the professionals interviewed, and the reports of different NGOs, the Ombudsman and the Andalusia Defender of the Minor, in the cited report, the age determination testing is being done to non-accompanied migrant children and adolescents that have official and valid identification documents that allow them to reliably prove they are minors. An example of this are birth certificates or the family book, documents that are not considered valid by the Prosecutor's Office. In the same sense, the Supreme Court has also expressed its opposition.

Within the framework of this procedure, irregularities are frequently commented that end up creating defenselessness to the children and adolescents. As noted by the Ombudsman²⁷, the evidence is not very reliable or rigorous. It is common for them to produce different results according to the test performed and for the same person. As collected in reports sent by the Ombudsman to the General Courts²⁸, there have been cases of foreign children who, having

²⁷ Spain Ombudsman, 2010. "Minors or Adults? Procedure for the Determination of Age", Madrid.

²⁸ Spain Ombudsman, 2019. "2019 Annual Report", Madrid.

had the same age determination test but in different Autonomous Communities or hospitals, showed different results on the determination of their age.

Another added problem presented by this type of evidence is that the statistical samples on which they are based for the establishment of the age bracket come from the western population (usually from the US, where this methodology is produced). Therefore, the margin of error is further extended considering the racial and ethnic peculiarities and differences of the population of African origin.

On the other hand, it should also be kept in mind that the carpal radiography test of the left wrist, for example, establishes by default a 2-year margin of error, which, by definition, is quite unreliable. On the other hand, on other occasions the medical reports themselves are issued incomplete, without establishing the margin of error or the age range.

In conclusion, it seems that this procedure and the way in which it is conducted is manifestly contrary to the best interests of the child. It is necessary to reverse the principle of questioning of the identity documentation carried by the child and adolescent and the presumption of legal age of non-accompanied migrant children and adolescents in practice and resort to the application of the practices of age determination on a subsidiary basis, and only in those cases in which there are serious doubts about the reliability or validity of the identification documents of the child or adolescent, considering as proof documents the family book, the birth certificate, in addition to the passport or the personal identification document from the country from which the child or adolescent is a national. Finally, in the event that it is necessary to apply this type of tests, they must be considered together with other complementary evidence such as conducting interviews by multidisciplinary professionals to assess their degree of mental development.

3.2. Host procedure.

3.2.1. Informed consent / participation / the right to be heard.

Once the minority of age has been determined, the child and adolescent is interviewed by the low-ranking team of the competent Autonomous Administration (where the child and adolescent has been transferred at the time of the first reception). It is about finding out if conditions are safe for family reunification or repatriation to their country.

Within the framework of this procedure the child or adolescent is not guaranteed the assistance of a lawyer, despite the fact that Spanish legislation establishes it. The linguistic and cultural barrier is also present. Therefore, in practice, it cannot be said that the child or adolescent have rigorous information about the whole procedure and the rights that assist them, nor that their opinion is considered decisive to adopting the final decision.

In residential Reception Centers, the child or adolescent do not have a means of recourse or complaints, beyond the possibilities they have of presenting complaints before the Ombudsman.

3.2.2. Celerity.

In practice, and despite there being set deadlines for the Administration to issue the resolution of guardianship and the administrative authorization of residence (maximum 3 months), the principle of celerity is not respected.

Regarding the residence permit, the maximum resolution period being 9 months, it is even worse, the procedures are delayed by the Reception Center, which is the entity responsible for processing it in most cases²⁹. The child and adolescent reach the majority of age and cease to be supervised by the Administration without even having received the residence permit. This has a serious impact on their immediate future.

When they turn 18, they must leave the center, and they are in a situation of total helplessness and great vulnerability. As they do not have a residence permit, they are in an irregular administrative situation and are exposed to being intercepted by the Police and having an expulsion file opened and / or are interned in a CIE. On the other hand, because they do not have a residence permit, they cannot process the work permit, so they do not have the financial means to survive and end up in street situations or in prostitution and organized crime networks. Many embark on a new migratory journey to countries in central and northern Europe.

INSTRUCTION 1/2020 OF THE SECRETARIAT OF STATE OF MIGRATIONS WHICH ENABLES ADOLESCENT'S MIGRANTS WITH AGE OF EMPLOYMENT TO WORK

On March 6st, 2020, Instruction 1/2020 of the Secretary of State for Migration is published, which enables adolescent's migrants with age of employment to work. This Instruction contemplates that people over 16 years old, who have a residence permit are enabled to work with the authorization of the guardians or parents. The art. 36 of Organic Law 4/2000, of January 11th, on the rights and freedoms of migrants in Spain and their social integration already contemplated it, for all migrants who attain the age of majority 16st years old, in the case of supervised adolescent , the residence permit was enabled on the one hand and the authorization to work on the other, to facilitate their start to do internships in companies, and / or work. Subsequently, the authorization to work is no longer enabled, granting only the residence permit.

The work authorization expired with the residence permit. However, from the immigration offices an instruction is issued internally, which will not be authorized to work until the publication of this instruction. Pending to know what the procedure will be to follow and if it will be applied retroactively for those who have already a valid residence permit. This regulation already existed before but was later repealed. This authorization to work is an opportunity for adolescents to enter into the world of work with appropriate jobs to their age and maturity, according to the ILO, (they cannot be night work, unhealthy jobs that harm their health and development.

However, this instruction does not affect the situation of young people over 18 years of age who, keeping their residence permit, have to continue looking for a full-time, one-year employment contract. An impediment that often forces them to lose their permission and to put them in an irregular situation.

²⁹ Andalusia Defender of the Minor, 2018. "2018 Annual Report", Seville.

It is important to emphasize that the majority of non-accompanied migrant children and adolescents arriving in Spain have an average age between 16 and 18 years. Therefore, the delay in the issuance of the resolution of guardianship and residence permit in many cases causes that the children reach the majority of age, and therefore are forced to leave the child protection system without having resolved their administrative situation.

3.2.3. Protection

In general, the situation of residential shelters for non-accompanied migrant children and adolescents is precarious. As reflected in their reports, the Ombudsman and the Andalusia Defender of the Minor, and the NGOs that work with this group, the conditions at the level of infrastructure, human resources and methodologies of these centers present deficiencies and weaknesses which necessitate improvement in order to effectively guarantee the protection of the migrant children and adolescents received.

First of all, they are deprived of the enjoyment and exercise of the right to education. As the vast majority of the migrant adolescents received are over 16 years of age, they are no longer in the compulsory school range, so they are not usually enrolled in secondary schools³⁰. On the contrary, they are encouraged to receive different professional training courses that, on the other hand, are not usually homologated with the training system and therefore when completing these training cycles, the adolescent does not receive an official degree.

To this we must again add the language barrier. Most of the Centers do not have interpreters and socio-cultural mediators are not employed full-time. The child or adolescent usually follow a language immersion course but within the centers themselves. However, there are very valuable resources that have been revealed as a good practice in the process of social integration of this group. It is the Language Immersion Classrooms that exist in many secondary education centers³¹.

Something positive that has been achieved is that, temporarily, migrant children and adolescents who do not yet have a residence permit can enroll in the INAEM after agreeing with the Administration, (Minors and Employment), providing a document called Informa, which is a document issued by the Sub Directorate for Child Protection where it reports on the situation of the child or adolescent under guardianship, which contains their personal data NIE number, and their guardianship situation, a document that guarantees their identity and allows them to enroll in any training that the INAEM, as well as participating in projects such as Orienta Joven and Garantía Juvenil. This means that they have the opportunity to train to get a job or an internship in a company.

³⁰ Andalusia Ombudsman, 2018. "2018 Annual Report", Seville.

³¹ Andalusia Association for Human Rights, 2019. "Migrant Children: Human Rights in the Southern Border 2019", Seville.

APPROVAL OF YOUR STUDIES IN THE COUNTRY OF ORIGIN

Many of the adolescents who come, have an academic training carried out in their country, and that by bringing the requested documents they can be homologated in the Ministry of Education and Vocational Training, achieving to homologate or validate their studies at the level that they really have to study and continue. With their training, some of them are homologated to the MIDDLE GRADE, which gives them the opportunity to apply to another training with a higher level or to raise the mark in order to get the training they want. The homologation supposes the declaration of the equivalence with the titles of the current Spanish educational system.

From the Socio-labour Centers, Training Centers, they also offer professional training but there are few who can access as they require more knowledge of Spanish.

"I do not want to study Spanish at the Socio-Labour Center because we are all there only Moroccans, and we do not learn anything", it is better to be with the Spanish and speaking with them I learn faster."

"I am in the Secondary Institute I am with all the Spanish, but I only know English and French, but I don't like mathematics and language because I started studying when they had already started and now I don't understand, why we study history as it helps in nothing. I prefer to work."

Secondly, it is also contrary to law the non-granting of work authorization to these children and adolescents from the age of 16. It is discrimination based on their origin and nationality and against their right to work, since people of Spanish nationality can enter the labor market and have the right to work at the age of 16. This restriction will immediately limit, as well as in the medium term, the process of socio-labor integration of these people when they reach the majority of age, which, as we have said, end up in a situation of helplessness and without the possibility of accessing the labor market because they do not have the training, the experience or the work permit. As stated by the Ombudsman and the Committee on the Rights of the Child, it is a violation of the human rights of the non-accompanied migrant children and adolescents.

Thirdly, both in the interviews and questionnaires carried out, as well as in the reports of the Ombudsman and the Committee on the Rights of the Child, the situation of saturation of places and lack of adequate infrastructure is noted, particularly of adequate spaces for leisure activities and enjoyment of free time. This, together with the situation of precariousness and the excessive workload that the workers of these centers bear, does not favor a harmonious and respectful coexistence among the children and adolescents.

Unfortunately, situations of violence and the relations of exploitation and power that are established between the children and adolescents themselves as well as between them and the professionals working in the Centers are frequent. The UN Committee on the Rights of the Child in its Report to Spain in 2018 warned that there had been complaints of abuse and forced sexual relations by caregivers and security personnel of the centers. In general, the personnel

that work in these Centers do not have specific training or knowledge about the human rights of children and adolescents.

Fourth, at the social and media level, this group suffers stigma and rejection. The treatment they receive by some media outlets criminalizes them and contributes to generating social alarm and rejection in the municipalities and neighborhoods where they are housed. In recent months there have been concentrations and even attempts of aggression and assaults on some “MENA” Reception Centers in Andalusia and Catalonia.

.... The situation is very precarious and highly saturated, and especially in those centers that are managed by private sector companies, not NGOs. In general, the staff is under a lot of pressure and stress, many hours are worked, without paid overtime, weekends and night hours, without the remuneration taking into account this schedule availability; we also work under contracts that recognize our professional category below the one that we have according to our degrees, and also much lower than the responsibilities and tasks we have carried out in practice.

... The way to manage the Centers, especially those that are managed by private entities. In my case, I have had the opportunity to work in a center managed by a company and in a center managed by an NGO. The difference is abysmal. The company did not have the experience or the know-how to manage with social criteria and criteria based on the respect and well-being of children. Nor had they hired qualified professionals and the situation of precariousness in the management of resources, both human and material was pitiful, very improvable. It is a topic, but it was clearly seen that the economic vision prevailed more than anything else.

... the environment in the “MENAS” Centers is difficult. There are few spaces and many demands, so in general, although there are many arrivals and departures, almost weekly, there is usually an oversizing of the capacity of the center. There is a lack of space, the MENAS do not have much privacy, sometimes we get the feeling that the center is too small, and the kids are distressed, stressed or apathetic, resigned as well as frustrated.

Added to this, we cannot always offer specialized and individualized resources according to the needs of each MENA. That is why we as professionals also become frustrated, we have the feeling of not succeeding, of not achieving the objectives of the plan, of failing the “MENA”.

... from the Administration perspective they do not provide either. There is a long delay in the processing of residency permits, sometimes it even seems tendentious, because it is not understood that we are receiving “MENAS”, offering them protection resources in response to the Convention on the Rights of the Child, but then on a practical level, the bureaucracy and the world of the right of foreigners enters with its limitations and its ways and all sense of the welfare or the best interest of the minor is lost. There is much, much delay in the processing of residency permits.

It is incomprehensible that a “MENA” cannot work from the age of 16, like the rest of the Spaniards; it is intolerable that a “MENA” is left on the street when they turn 18, without resources to accompany or promote emancipation. Alright, if you tell me that they have been in Spain since they were 12 or 13, even 14 years old, it may be that at this time they were able to weave nets, which also seems very disproportionate for a teenager, but, in short, they would have a pass. But it is not understandable that a MENA who has been in Spain for one or two years, who has not been able to work or receive qualified professional training, and who sometimes has not even had the residence authorization papers, when they turn 18 we tell them, "Come on, you are of legal age now, it is your turn to continue on with your life, but alone." It is an institutional abandonment by the State in every rule, and the worst, as I say, is that it is intentional.

*Having this future on the horizon for “MENAS”, you cannot work with them with enthusiasm. Sometimes I feel bad, I feel as if I am lying to them, that we are failing them. They do not tell me that I lie to them, but I see it in their eyes ... It is very frustrating. What do you say to a “MENA” that, at 18 years of age, after one or two years of staying in a Center they have to go on the street without residence or work authorization? **Interview conducted by DNI SPAIN within the framework of the ERASMUS + Project to a social worker in a protection center for***

"MENAS", in Granada capital.

IV. CONCLUSIONS AND RECOMMENDATIONS.

4.1. Conclusions process with adolescents (based in a practical experience in Zaragoza, Aragón)

On the places that children and adolescents have visited since their arrival in Spain:

All the children who have been asked the question have gone through a Temporary Foster Care Center for a short time (COA) and then have been referred to a Medium Stay Center in different residences for children and adolescents, although they have also come directly from a different center and has been referred to a Medium Stay Center.

During the course of their stay, they go to other places such as the Sub-directorate for Children and Adolescents, where they come and are interviewed by the Case Coordinator, who is the one who reports on their situation and communicates the steps to follow regarding the educational social administrative situation and child accommodation.

Another place they have visited is the Foreign Police Brigade so that they can register in the RMENAS Registry, if they have not done so before because someone goes directly without the company of any adult.

They also return to rectify their data before submitting the residence permit application. Health Center, (Institute of Legal Medicine of Aragon - IMLA) place where they come for medical visits and in the event that they are required for proof of the age decree. Juvenile Prosecutor's Office, in the event that they require an interview with the judge about their administrative situation or about the doubts of the age decree.

Ozanam Resource Center, through an Agreement between IASS; Protection of Children and Adolescents and the entity, for the Autonomous Community of Aragon is the documentation center where the documentation of the country of origin is managed to obtain the passport and then for the application for the residence permit or renewal of the permit, nationality or modifications of the residence permit to work.

If they know why they have gone to those places:

Most of the participants in the consultation answered If they know the reason why they have gone to these places, to check if they are of legal age, to do their documentation, or to take the age test.

They also say that they went to the Resource Center to make the passport documents and their residence permits.

On whether the places have been cozy and pleasant, most of the participants in the consultation mentioned that there are not places (UCRIF Police Brigade), or the (IMLA) as they cause fear to be with the police and in the places where they have to do the proof of age, and the considered violent the exploration of the genitals, for example. They are generally not pleasant places and professionals.

However, in the Resource Center they can talk to the professionals who carry their documentation, they explained to them and in some cases they are accompanied by an educator and a mediator that speaks to them and explains in their native language how the administrative situation is.

In "Supervía" Protection of Children is a pleasant place where they can speak with the coordinator of your case and explain the itineraries that the child or the adolescent will take with him / her or to communicate a new element in their situation.

Regarding direct conversation with professionals:

In most cases, the conversation is direct with the professionals, although a mediator is always with them as reference educator and in case, they do not know the Spanish language.

On whether it would have helped him feel comfortable and comfortable in meetings:

As a general rule when it comes to documentation procedures and when determining the age decree, it is not pleasant to be alone, however, it is important to be accompanied by a person who knows him/her and who knows that he/her will defend his rights. The discomfort of having to share personal information, is something they don't like to talk about in meetings with professionals.

In most conversations with professionals, they speak in the presence of a mediator and always accompanied by their case coordinator or guardian.

Know your rights:

Regarding whether they have received information about their rights from the professionals they have met on their way to their administrative procedure.

Adolescents participants in the consultation, affirmed that they have received information about their rights from professionals who have been found throughout the procedure, before or after the procedure.

However, it has not been detailed in detail, nor has any meeting or training been convened about what it means in a general way, what are their rights and also their responsibilities. In any case, they are aware about their responsibilities about the administrative procedures they have to follow under the migration offices.

Regarding their rights, they know that they have the right to have their documentation, to have housing, education and scholarships to cover their primary needs (clothing, food ...)

Regarding the clarity of the information, they stated that it is fairly clear. They do not understand that if it is a right to have documentation, they have to wait so long and request documentation from the country of origin, and they do not understand the deadlines that say

that it is three months to resolve the permits and yet many commented that the deadlines are more than three months.

From whom they would like to receive information about?

The results of the questionnaires carried out show that there are several options of the professionals who would have liked to receive the information, among the most prominent being educators, case managers, lawyers, mediators. From those who would not like to receive information are from the police and of the judges.

Regarding: How would you like to receive information about your rights? Internet media, WhatsApp, Facebook, email also to counseling centers, via social networks and free telephony always there is an option.

It also seemed important to them to have information about their rights through the same center of protection and in their mother tongue, to be systematically informed about their updated situation.

Decisions of concern:

Regarding the professionals they met during the procedure and if they have made an important decision for them, the majority affirmed that they did make an important decision. The professionals who helped them to make the decision were: case coordinator, the police, the judge and the Consulate officials (depending on which administrative situations.) The most important decision of those who participated in the questionnaire were three decisions: the first the documentation, the second the work and the third the studies.

As for whether their opinion has been taken into account, they asked questions and if they allowed themselves to express themselves in their language, the following conclusions emerged:

Some said that they did explain the procedure to them and that they were able to answer the questions that they doubted, while others trusted the professionals' decisions and did not ask questions or give their opinions, on the other hand, they also stated that in some cases they were taken into account their opinions, but that in very important decisions no longer depended on their opinions eg. When the majority decree comes out, they cannot continue in the appeal for children and adolescents, even if children and adolescents' opinions were required. They could not do anything on behalf of that determination of solution. Or when they say that they have to study as it is compulsory, they cannot say that they do not want to study but rather to work, their opinions are not always effective and taken into consideration.

Regarding whether they can express themselves in their native language, not in all places where are migrant children and adolescents have a mediator or translator, but in most cases, they previously stay with a mediator to accompany them to the professionals' appointments.

If they could go back, they would change something in how the decision was made:

Most of them responded that they would not change the decision that was made.

Regarding the duration of the time in which the resolution of its administrative procedure came out.

It seemed to them that it was very slow, sometimes the resolutions took a long time and reached them when they were of legal age.

Regarding the recommendations of the administrative procedure:

- That the permit resolution timeline could be faster,
- That all passports are valid to obtain a residence permit, some say they are false because they come from the country of origin,
- That the residence permits are also for work.

4.2. Recommendations

It is recommended that the Administration:

- Initiate action to review existing and available resources within the child protection system that are intended for the reception and protection of non-accompanied migrant children and adolescents, and consequently plan and adapt the resources according to the needs of this phenomenon and the specifics of this group.
- Ensure that non-accompanied migrant children and adolescents are advised and assisted by a lawyer throughout the administrative procedure of immediate reception, age determination, and guardianship and definitive reception by the Administration. This would allow the child or adolescent who is in the context of migration to know their rights effectively and, above all, to exercise and defend them with guarantees of independence from the Administration. This has a special value especially in those aspects of the administrative procedure in which the interest of the Administration is in contradiction with the interest of the child, as is the case of the controversial procedure for determining the age, or delays in the issuance of residence authorizations.
- Increase the provision of professional services specialized in translation, interpretation and intercultural mediation in the child protection system, in order to ensure that at any time in the resources of the protection system for non-accompanied migrant children and adolescent there is at least one professional available with this profile. Their presence must be guaranteed in interviews conducted with non-accompanied migrant children and adolescents, especially in the procedure for determining age and in the procedure for assessing family reunification, repatriation or definitive guardianship.
- Promote, in alliance with the companies and non-profit organizations that manage the Shelters and resources of the child protection system, training programs for the staff

on the principles of child-friendly justice, the human rights of the child and according to the framework of the Convention and the rights of the Child in migration contexts.

- Promote and regulate the application of a common protocol for all “MENAS” Protection Centers that guarantee the existence of an internal procedure for appeals and complaints available to children and adolescents in migration contexts; carry out periodic quality assessments in the management of the Protection System Centers.
- Remove the legislative, regulatory and administrative obstacles that condition the exercise and enjoyment of their rights by the non-accompanied migrant children and adolescents under the protection system, with special emphasis on the elimination of barriers that prohibit these Children and Adolescents from working at the age of 16, and delays in the issuance and renewal of residence and work authorizations. It is recommended that a first residence and work authorization be established, at the age of 16, for an initial duration of 5 years.

It is recommended that the legislature:

- Repeal the sections of Organic Law 4/2015, of March 30, on the protection of public safety, which are harmful to the human rights of the non-accompanied migrant children and adolescents and expressly prohibit so-called *refoulement*.
- Carry out the corresponding legislative and regulatory actions to ensure that the procedure for determining the age of the non-accompanied migrant children and adolescents guarantees the application of a single protocol for conducting tests throughout the Spanish territory, the presence of a lawyer who assists the child or adolescent throughout the entire procedure and, expressly prohibits the application of these tests to those who carry a passport, national identity document and / or official birth certificate of their country.

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