

MIPREDET

Analysis of procedures
and conditions of minors'
pre-trial detention

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FINAL
REPORT



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PROLOGUE

It is widely agreed upon that children need to be treated differently from adults in justice systems, as we are talking about young people who are still going through a development process, transitioning from childhood to adulthood.

In this regard, it is important to treat them in an appropriate manner especially when deprivation of liberty is used since, as pointed out by the Committee on the Rights of the Child in General Comment no. 10 (2007), this deprivation may have negative consequences on the harmonious development of children, as well as on their reintegration into society. This is the reason why Article no. 37 of the Convention on the Rights of the Child (1989) explicitly stipulates that detention “shall be used only as a measure of last resort and for the shortest appropriate period of time.”

In addition, it must be underlined that, as established by the Rules of the United Nations for the Protection of Juveniles Deprived of their Liberty (1990), “the length of the sanction should be determined by the judicial authority, without precluding the possibility of his or her early release” (Fundamental Perspectives, 2). Also, the recent Directive (EU) 2016/800 points out in its Article 10, regarding the limitation of deprivation of liberty, that the decision of depriving a child from his/her liberty shall be subject to periodic review. Furthermore, the length of time for which a child may be deprived of his/her liberty, whether pre- or post-trial, should always be taken into account, as “every child arrested and deprived of his/her liberty should be brought before competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours” (General Comment no.10, 2007).

Likewise, the objective being the reinsertion of children into society, it is necessary to ensure a judicial treatment which is tailored to their care and development needs, their stage of development, and their level of maturity. This concept needs to be the one to regulate the work carried out with the children after the sentence (basing the approach of this work on the particular needs of each case, found after a complete psychosocial evaluation), but must also be present from the moment children come into contact with the justice system.

In this respect, the United Nations (2010) indicates that the situation during which children find themselves most vulnerable comes moments after having been arrested by the police, especially if some of the procedural guarantees have not been respected. In this regard, rule no. 13 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, General Assembly of the United Nations, 1985) points out that “detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.” Similarly, rule no. 17 specifies that “restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum.” Likewise, rule no. 17 of

the UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules, General Assembly of the United Nations, 1990) underlines that “detention before trial shall be avoided to the extent possible and limited to exceptional circumstances” and “to ensure the shortest possible duration of detention”, while rule no. 18 specifies the conditions under which an untried juvenile should be detained.

In recital no. 3 of the (EU) 2016/800 Directive, the European Parliament and Council underline that “although the Member States are parties to [the Conventions and Rules mentioned in the above], experience has shown that this in itself does not always provide a sufficient degree of trust in the criminal justice systems of other Member States”, and that these ideas should be reinforced. It is for this reason that an effort has been made to reinforce the procedural guarantees for children who are suspects or accused persons in criminal proceedings through the (EU) 2016/800 Directive. The Directive’s main objective, explained in recital no.1, is to “establish procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration.”

Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings is precisely the centrepiece of the project from which emerges this publication.

When the project started, the Directive was still at the proposal stage, but everything led to believe that it was about to be approved. Therefore, it was considered necessary to analyse, on the one hand, if the national legislation of the Member States complied with the Directive or if, on the contrary, changes needed to be made; and on the other hand, assessing needed to be made in order to determine whether or not, when implementing national legislation, as well as the Directive, in practice, Member States complied with all procedural safeguards.

This is how the MIPREDET project: *Analysis of procedures and conditions of minors’ pre-trial detention* emerged, with the aim to evaluate pre-trial detention procedures for minors in the different countries taking part in the project. In short, its aim is to understand to what extent the (EU) 2016/800 Directive is implemented and, from there, to offer a compendium of conclusions and recommendations which can be of use to the European Union and to the Member States, as a tool to improve the juvenile justice systems based on collected data.

The participation of entities of different countries has been necessary in order to carry out the project. More specifically, the Fundación Diagrama (Spain) led project counted on the participation of the International Juvenile Justice Observatory (Belgium), Association Diagrama (France), Istituto Don Calabria (Italy) and the Universidade Católica Portuguesa do Porto (Portugal). Likewise, the project counted on the participation of over a 100 professionals in the area of juvenile justice, such as judges, prosecutors, lawyers, technical staff of administration of justice, police authorities, detention facilities personnel, etc.

Within the area of pre-trial detention, emphasis has been placed on the right of the children and the holders of parental responsibility to information, the right of the children to assistance by a lawyer, individual evaluation, medical examination and, especially when detained as a cautionary internment measure in a detention centre, on the right to maintain regular and meaningful contact with parents, family members and friends, to have access to appropriate education, orientation and training, as well as to receive medical assistance.

In particular, regarding the right to information which must be provided to the child, much attention has been given to analysing if this is done in a manner taking into account his/her specific necessities and vulnerabilities. Attention is also given to analysing whether or not the Guidelines of the European Council on child-friendly justice are taken into account, as mentioned in the Directive. Furthermore, emphasis has been placed on verifying whether or not if, in practice, along with article 4, children are informed promptly regarding their status as suspects or accused, as well as of their rights, and whether it is done in a written and/or verbal manner, and in a simple and accessible language.

As for the holders of parental responsibility's rights to receive information regarding the procedural rights applicable, as mentioned in Article 5, it has been examined whether or not this information is given, in which way (oral and/or written), and how quickly.

Moreover, this report analysed whether or not the Member States make sure that the minors receive assistance by a lawyer without undue delay for them to effectively exercise their rights of defence, as indicated in Article 6. Similarly, it analyses whether or not they receive this assistance from the moment they are informed of their status of suspects or accused, if their lawyer is present during police interrogations, if they may speak to their lawyer in private prior to these interrogations, and if their lawyer is present during the investigation proceedings, during detention or when required to appear before a judiciary body.

Regarding the right to an individual assessment, as specified in Article 7 of the (EU) 2016/800 Directive, the focus has been on analysing whether or not the Member States make sure the specific needs of the child are taken into account during the process, and how so, as well as determine the degree of criminal responsibility and the appropriateness of applying each measure. The research has also analysed who is carrying out this assessment, as well as on the moment this assessment is made, and on whether or not this assessment takes into account the personality and maturity of the child, his/her economic, social and family context, as well as any specific vulnerability he/she might have.

Similarly, the research evaluates whether or not the right to a medical examination, as stated in Article 8, is respected during police custody and in cautionary internment. It studies the procedure which is applied in order to exercise this right (who asks for it, to whom, with which motives, etc.), and which professional performs the medical examination.

PROLOGUE

Finally, the care children benefit from when deprived of liberty as a cautionary measure in a detention centre has been evaluated, to see if it is consistent with what is stated in Article 12. Special attention has been given to the way Member States participating in the project ensure the right to education and training, the right to access programmes that foster development and reintegration into society, the right to medical assistance, and to family life.

This evaluation and analysis are organised in four chapters in this publication. The first chapter is a comparative assessment of the European norms regarding pre-trial detention of children. The second chapter is dedicated to the analysis performed by each country regarding its national legislation, with the aim to assess to what extent it meets the requirements of the (EU) 2016/800 Directive. The third one is a comparative analysis of the implementation in practice of national legislation and of the directive in the different countries, based on a qualitative study and national seminars. Finally, the last chapter gathers all the conclusions reached regarding the work accomplished and the recommendations made by the partners involved to improve the systems of juvenile justice in Europe.

To conclude, I would like to thank the professionals and institutions which have made possible the development of this project, whose efforts and dedication are reflected in the present publication ■

Francisco Legaz Cervantes
Chairman of Fundación Diagrama

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The MIPREDET Project: Analysis of procedures and conditions of minors' pre-trial detention, in which this publication is framed, has been carried out in collaboration with partners from different countries: *Association Diagrama* (France), *Istituto Don Calabria* (Italy), *Universidade Católica Portuguesa do Porto* (Portugal) and the *International Observatory of Juvenile Justice* (Belgium). Without their great experience, effort and dedication it would not have been possible to accomplish this publication.

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Also we would like to show our thank to all the experts taking part in the seminars, all of them professionals from de justice realm, who analysed and thought about the minors' rights in the juvenile justice system and about the implementation of the Directive (EU) 2016/800 of the European Parliament and Council related to the suspected or accused minors' procedural guarantees.

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CHAPTER 1:

Children in pre-trial detention in Europe

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SCIENTIFIC REVIEW

Yannick van den Brink

This chapter is a contribution of the International Juvenile Justice Observatory (IJJO) to the project “MIPREDET - Analysis of procedures and conditions of minors’ pre-trial detention”, whose main objective is to analyse the procedures and conditions in which an untried child is deprived of liberty, to know the actual practice and the legal requirements, and how these influence such situation in Europe. The data from this text stem from the results of a study commissioned by by the Directorate General for Justice (DG Justice) of the European Commission. to collect data on children’s involvement in judicial proceedings in the EU, upon which several study reports were published. It examined data from the Member States on children’s involvement in criminal, civil and administrative judicial proceedings, of which the International Juvenile Justice Observatory was a member of the steering committee¹.

This chapter focuses on the legal framework and procedural safeguards regarding the pre and post-charge stages of children’s pre-trial detention, comparing national and international standards and procedures applicable in each EU Member State with the standards of the Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings so as to provide an overview of the changes and improvements brought about by the new Directive. First, the scope of application of juvenile pre-trial detention will be examined, followed by a study of the rights of children suspected or accused in criminal proceedings, and their right to specific treatment in case of deprivation of liberty.

Name of Member State/country abbreviation

Austria AT; Belgium BE; Bulgaria BG; Croatia HR; Cyprus CY; Czech Republic CZ; Denmark DK; Estonia EE; Finland FI; France FR; Germany DE; Greece EL; Hungary HU; Ireland IE; Italy IT; Latvia LV; Lithuania LT; Luxembourg LU; Malta MT; Netherlands NL; Poland PL; Portugal PT; Romania RO; Slovakia SK; Slovenia SI; Spain ES; Sweden SE; United Kingdom - England and Wales UK-E&W; United Kingdom - Northern Ireland UK-NI; United Kingdom - Scotland UK-S. K

¹ <http://www.childreninjudicialproceedings.eu/Home/Default.aspx>

1. INTRODUCTION

PRE-TRIAL DETENTION DEFINITION

Pre-trial detention designates the holding of a defendant before trial on criminal charges either because the established bail could not be posted or because release was denied (United Nations, 1990). A child is held in pre-trial detention where he or she is deprived of liberty and is awaiting a final decision on his or her case from a competent authority (United Nations Office on Drugs and Crime, 2006). In Europe, 46% of the incarcerated population has not been tried yet (Aebi et al., 2014). Such data is not available regarding detained children (aged under 18), but it is estimated that in 2011, 14,600 children were held in detention after trial in the European Union, while, in the only 7 EUMS (EU Member States) for which data was available, 3,386 were held in pre-trial detention (European Commission, 2015).

There are two stages of pre-trial detention: Firstly, there is the ‘pre-charge’ stage. It occurs at the moment when a child has been arrested and is held in police custody but has not yet been charged with an offence. Secondly, there is the ‘post-charge’ stage which refers to the moment when the child is put into custody after the investigation authority has established that there was enough evidence to charge the child with a criminal offence and has decided to hold the child in custody prior and/or during the trial (European Commission, 2015).

LEGAL FRAMEWORK

In all judicial proceedings involving a child, the best interest of the child shall be the guiding principle for every decision made. This means that MS (Member States) should respect and implement the right of all children to have their best interests assessed and taken into account as a primary consideration in all actions and decisions concerning them¹.

In consequence, a rights-based and individualised approach to the assessment and determination of the child’s best interests should be adopted. Such an approach should take into account the personal context, situation and needs of the child concerned and incorporate the following elements:

- Due consideration of the child’s views, identity, protection, safety and situation of vulnerability; and

¹ See Articles 3(1) and 21 of the *Convention on the Rights of the Child* (United Nations, 1989); p. 4 of *Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly justice* (Council of Europe, 2011); *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Art. 3, para. 1)* (UN Committee on the Rights of the Children, 2013).

- respect for the other rights of children at all times, including their right to dignity, liberty and equal treatment².

Key international standards applicable in all EU Member States that govern the rights, status and role of children involved in criminal proceedings include:

- The UN Convention on the Rights of the Child (CRC; UN General Assembly, 1982).
- The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (Council of Europe, 2011).
- The European Rules for juvenile offenders subject to sanctions or measures (ERJO; Committee of Ministers of European Council, 2008).
- A number of EU Directives and Regulations (European Commission, 2016), and in particular the recently adopted Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (Dir. (EU) 2016/800, 21 May).
- The European Convention on Human Rights (ECHR; European Council, 1950), Art. 5 (1)(c) and (3) and applicable child-specific case-law.
- The Beijing Rules (UN General Assembly, 1986) and Havana Rules (UN General Assembly, 1990), which also constitute relevant standards and will be taken into account in this analysis.

Regarding pre-trial detention of children, the following principles are laid down in the CRC, Art 37:

States Parties shall ensure that:

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

² Council of Europe (2011) at pp. 4, 19 and CRC Committee (2013) at pp. 4, 9, 13-16, 18-20.

According to the UN Committee on the Rights of the Child in General Comment no. 10 (2007), Article 37(b) CRC, which provides safeguards for the application of deprivation of liberty of children, entails that State Parties should provide for an effective package of alternatives for pre-trial detention of juveniles to safeguard the last resort-principle and should ensure that a juvenile can be released from pre-trial detention as soon as possible, and if necessary under certain conditions.

In Art. 37(c) CRC, which regulates the legal position of children who are deprived of their liberty, it is also reiterated that the needs of juveniles should be taken into account and that these needs can differ depending on the age of the child. Furthermore, the importance of contact and correspondence with family is highlighted in this provision.

Those principles are restated in almost identical terms in most international and European instruments (e.g. Guidelines 19-22 of the Council of Europe [2011]; Rules 5 and 10 ERJO; Art. 5(1)(c) and (3) ECHR and applicable child-specific case-law³), and complemented by lists of rights of which the child is the primary holder and which shall be guaranteed at every phase of the proceedings.

In 2013, the European Commission has proposed a Directive on procedural safeguards for children suspected or accused in criminal proceedings, which was adopted in 2016 (Dir. (EU) 2016/800. 21 May). Articles 10-12 of the new Directive reiterate the principles laid down in Article 37 CRC, and the Directive introduces a list of measures that are consistent with the Guidelines on Child-Friendly-Justice (European Council, 2011).

Next to more general provisions, such as the right to information (Art. 4), the right to legal representation (Art. 6) and the right to privacy in criminal proceedings (Art. 14), more child-specific provisions relative to pre-trial detention are laid down in its new Directive.

This chapter will focus on the legal framework and procedural safeguards regarding the pre and post-charge stages of children's pre-trial detention, comparing national and international standards and procedures applicable in each EU Member State with the standards of the Directive (EU) 2016/800 on procedural safeguards for children suspected or accused in criminal proceedings so as to provide an overview of the changes and improvements brought about by the adoption of the Directive. First, the scope of application of juvenile pre-trial detention will be examined, followed by a study of the rights of children suspected or accused in criminal proceedings, and their right to specific treatment in case of deprivation of liberty.

³ See especially *Nart v. Turkey*, App. No. 20817/04, Judgment, 6 May 2008; *Güvec v. Turkey*, App. No. 70337/01, Judgment, 20 January 2009; *Korneykova v. Ukraine*, App. No. 39884/05, Judgment, 19 January 2012.

2. SCOPE OF APPLICATION OF PRE-TRIAL DETENTION FOR CHILDREN IN THE EU⁴

The new Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings imposes restrictions on the scope of application of pre-trial detention regarding children.

Article 10(1) implements the 'last resort and shortest period' principle, providing that: "Member States shall ensure that children are deprived of liberty before their conviction only as a measure of last resort and for the shortest appropriate period of time. Due account shall be taken of the age and individual situation of the child".

Article 11 concerns the use of alternative measures to detention: "Member States shall ensure that, where possible, the competent authorities have recourse to measures alternative to detention (alternative measures)". Recital 46 of the Directive further specifies that "such alternative measures could include a prohibition for the child to be in certain places, an obligation for the child to reside in a specific place, restrictions concerning contact with specific persons, reporting obligations to the competent authorities, participation in educational programmes, or, subject to the child's consent, participation in therapeutic or addiction programmes."

Finally, Article 12 (1) provides in particular that "Member States shall ensure that children are detained separately from adults, unless it is considered in the child's best interest not to do so".

2.1. MINIMUM AND MAXIMUM AGES OF APPLICATION

In all EUMS, pre-trial detention is applicable to children who have reached the minimum age of criminal responsibility (MACR). Every MS has an age under which children are considered as not capable of committing a criminal offence, namely the MACR, hence they do not face criminal procedure or sanctions (European Commission, 2014).

A majority of MS have a MACR of between 13 to 15 years old, with the exception of 5 jurisdictions which apply a lower age limit: IE, NL and UK-S 12, and the UK-E&W and UK-NI 10 (European Commission, 2014).

Five MS allow the prosecution of children under the MACR when they have committed serious

⁴ All statistics on national legislations and procedures are taken from the EU study *Data on Children in Judicial Proceedings in EU28* (European Commission, 2015).

offenses (BE, IE, LT, LU and PL) (European Commission, 2014).

On the contrary, seven MS allow their judges to decide that a child above the MACR but lacking sufficient discernment will not be considered criminally responsible (AT, BG, CZ, DE, IT, RO and SK), and the law of one MS (EL) allow children to be held criminally responsible in the case of serious crimes only (European Commission, 2014).

The highest age limit for juvenile justice is 17 in the vast majority of MS (European Commission, 2014)

Nevertheless, 11 jurisdictions (BE, CZ, DE, GR, IT, LU, NL, PT, SE, SI and UK-E&W) provide for the extension of this limit, if a judge decides so and if certain circumstances are satisfied. In EL, IT and LU, an adult up to 25 can be tried in the juvenile justice system “if the offence was committed when the offender was below the usual upper age but tried when he or she was older, or if the offender’s level of maturity or discernment is equivalent to that of a person below the usual upper limit” (European Commission, 2014).

The usual way to deal with children below the MACR is to involve social services. Indeed, juvenile justice systems are designed for children above the MACR in almost every country (European Commission, 2014).

2.2. CASES OF APPLICATION OF PRE-TRIAL DETENTION

In some legal systems (AT, FI, FR for children above 16 and UK-E&W), adults and children are treated under the same criteria regarding the decision to place a person in pre-trial detention. Following the ECtHR judgment in *Smirnova v. Russia*⁵, those criteria include: the risk that the accused will fail to appear for trial; the risk that the accused, if released, would take action to prejudice the administration of justice; or commit further offences; or cause public disorder.

In some other jurisdictions, further criteria have to be fulfilled before the decision to place child suspects in pre-trial detention can be taken (e.g. DE, IT and FR for children under 16). Such criteria will often refer to the “appropriateness of the measures in the light of the child’s age, vulnerability and other circumstances, as well as the seriousness of the crime the child is suspected of having committed” (European Commission, 2014).

The fulfilment of the requirement that pre-trial detention be a measure of last resort will mostly depend on the existence and availability of appropriate “alternatives to pre-trial detention”.

⁵ *Smirnova v. Russia*, App. Nos. 46133/99 and 48183/99, judgment, 24 July 2003, para. 59.

Alternatives to pre-trial detention exist in 17 EUMS⁶. Following the study of the EU, they include in particular:

- Electronic monitoring (e.g. FI and FR)
- The child is placed within an educational community (e.g. LU and IT)
- The child is placed under the supervision of a reliable person to ensure the child is present at the judicial hearings. (e.g. CZ) (European Commission, 2014).

2.3. TYPES OF PRE-TRIAL DETENTION

Various Member States have set up specific facilities for children in pre-trial detention in order to prevent them from being held in the same prisons or police station as adults (European Commission, 2014). They include in particular:

- Closed detention centres specialised for children(e.g. BE, DE, UK-NI)
- ‘Free zones’ that ensure children are not forcibly held in their cells within detention facilities (e.g. CZ)
- Surrogate custody, i.e. residential institutions for young people (e.g. DK);
- Custody in other suitable places chosen for the purpose (e.g. NL) (European Commission, 2014)

All MS but BE and PT have legislation demanding that children must be detained in separate facilities than adults during pre-trial detention⁷. (Study on Data Collection, European Commission, 2014, p.28). However, because of a lack of appropriate facilities several MS (e.g. CY, DE, IE) face challenges in fulfilling this requirement. For example, small police stations often do not have separate cells for children (European Commission, 2014).

Furthermore, this obligation is sometimes subjected to restrictions provided for in the law, such as in CY and IE, where the obligation to separate children in pre-trial detention from adults should be respected “in so far as it is practicable” (European Commission, 2014). And in several MS, other circumstances may prevent this obligation from applying: for example when it is considered in the child’s best interest (e.g. SE, CZ, AT) or on the request of the parents (e.g. FI) (European Commission, 2014).

At the moment, there is no available data regarding the percentage of child (suspected) offenders held separately from adults while in pre-trial detention.

6 Data on Children in Judicial Proceedings in EU28, European Commission, available at: <https://skydrive.live.com/> [Accessed 18 November 2015]

7 As requested by Art. 37 of CRC (UN General Assembly, 1982), Article 13.4 of Beijing Rules (UN General Assembly, 1986), and point IV.A.6.20 of *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, (Council of Europe, 2011).

2.4. DURATION OF THE MEASURES

There exist a legal obligation to make sure that pre-trial detention in juvenile justice is used for the shortest appropriate period of time in 15 jurisdictions (AT, BE, CZ, DK, EL, ES, FR, PL, PT, RO, SE, SI, SK and UK-S), while 14 jurisdictions do not have this legal obligation (BG, CY, EE, FI, HR, HU, IE, IT, LT, LU, LV, MT, NL and UK-NI) (European Commission, 2014).

The “maximum duration of juvenile pre-trial detention” differs from MS to another regarding both the pre-charge and the post-charge stages of the proceedings.

For pre-charge pre-trial detention (police custody), the majority of the MS require a 24 hour maximum duration (Study on Data Collection, European Commission, 2014) without access to a judge, but also allow extensions (up to 72 hours in BG, CZ and HU) under exceptional circumstances. Some MS have a higher maximum duration, such as 48 hours in LV, MT and PT, and 72 hours in PL and RO. In relation to post-charge pre-trial detention, most MS have a maximum time limit of between 3 and 6 months, which can be extended (generally up to 1 or 2 years) in exceptional circumstances or for very serious crimes.

In some MS, the maximum length of pre-trial detention depends on the age of the child (e.g. RO) (European Commission, 2014).

3. RIGHTS OF SUSPECTED OR ACCUSED MINORS IN CRIMINAL PROCEEDINGS

The new Directive of the European parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings (Dir. (EU) 2016/800, 11 May) provides children in detention with a set of rights that have to be duly respected by EUMS authorities.

3.1. RIGHT TO INFORMATION OF CHILDREN - ARTICLE 4

The current European and international standards provide that, from the first stage of their involvement in judicial proceedings and at every step throughout the process, all children should be fully informed⁸ of, inter alia:

- Their rights and the mechanisms they can use to exercise their rights in practice or to defend them where necessary;
- Practical matters, such as the relevant procedures involved, expected timeframes and their place and role in the proceedings;
- The availability of protective measures and existing support services;
- Where applicable, the charges brought against them and the possible consequences;
- The general progress and outcome of the proceedings, including all relevant judgments and decisions made.

This information should be directly provided in a timely fashion to children, be adapted to their age and maturity, be written in a language they understand, and be gender and culturally sensitive. It should also be provided to the child's parents or legal representatives (Council of Europe, 2011). Moreover, child-friendly equipment and informatics, such as specially designed websites and help-lines, should be made widely available in all MS (Council of Europe, 2011).

MS recognise that the child has the right to information when involved in criminal proceedings, and that these rights may be exercised at any time during the procedure (contingent upon disparities in national legislation). This legal right includes the right to receive information concerning the child's

⁸ See, inter alia, pages 17 and 20 of the Council of Europe Guidelines (Council of Europe, 2011); pages 15 and 17 of *General Comment N° 12 (2009). The right of child to be heard (UN Convention on the Rights of the Child, 2009)*; Articles 13, 37 and 40 of the *CRC (UN General Assembly, 1982)*; *Justice in Matters involving Child Victims and Witnesses of Crime. Model Law and Related Commentary (UN Office on Drugs and Crime, 2009)*; *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC, 2005)*; *The EU rights of victims of trafficking in human beings (European Commission, 2013)*.

rights, as well as the procedure and legal system. Such information should include specifics regarding the time, place, progress and outcome of the proceedings, the judgment of the court, the child's right to a remedy and the availability of support or social services.

The EC study also advises that some MS have put child-sensitive measures in place:

- "A statutory requirement to provide information about rights and procedures in a child-friendly format (6 MS);
- A statutory requirement to communicate the decision of the court in a manner adapted to the child's level of understanding (10 MS);
- A statutory requirement to provide information in a manner that takes the special needs of the child into account (6 MS); and
- The development of guidance, or codes of conduct, aimed at judicial and other competent authorities on the provision of information to children (4 MS)." (European Commission, 2015).

Nevertheless, in practice, these safeguards are limited. While there is a provision in every MS but HU that child suspects/offenders have the right to receive information about their rights and the procedures in place, such information will generally be given by the police, as being the child's first contact with the authorities. However, MS' legislative provisions regarding what has to be communicated by the police, and to whom, differ (European Commission, 2015, p10).

In some MS, the right to receive information also applies to the child's parents or legal representatives. In the majority of MS, the right to receive information in a child-friendly format does not exist. In some MS (e.g. CZ), there are no detailed rules on the content of information to be provided, or on the manner to provide it, while in some others (e.g. DK), the only obligation regarding information refers to the charges brought and the right to remain silent (European Commission, 2015). In consequence, practice on the ground varies greatly.

3.2. RIGHT TO INFORMATION OF THE HOLDER OF PARENTAL RESPONSIBILITY - ARTICLE 5

The Guidelines on Child-friendly Justice of the Council of Europe (2011) require that when children are arrested and are taken in custody; children and their parents (or legal representatives) should be promptly and adequately informed of the reason for which the child has been taken into custody (Para. IV, A.1).

When Children are deprived of their liberty, the right to parental assistance supplements the right of each child deprived of liberty to maintain contact with his family through correspondence and visits, provided that this contact is not against the best interest of the child (article 37 (c) CRC).

The European Commission Directive (EU) 2016/800 on procedural safeguards for criminally suspected or accused children provides in Article 5 that MS shall ensure that the holder of parental responsibility of the child or, where that would be contrary to the best interests of the child, another appropriate adult, is provided with the information that the child receives in accordance with Article 4.

While in some MS, the right to receive information also applies to the child's parents or legal representatives, data regarding the compliance with this right is not available at the moment regarding those MS and MS where this right does not exist in national legislation. In consequence, the percentage of children who were given the opportunity to contact their parents before being questioned by the police, the percentage of children who were interviewed by the police in the presence of a parent or trusted person, and the maximum number of hours per child (suspected) offenders spent in police custody without a parent or trusted person being informed, are also unknown statistics.

3.3. RIGHT TO A LAWYER - ARTICLE 6

MS must ensure that “children who are suspects or accused persons in criminal proceedings have the right of access to a lawyer” in accordance with Article 6 of the new Directive (EU)2016/800.

MS must guarantee that children are provided legal counsel and representation without excessive delay, and with all the safeguards that permit them to exercise their rights efficiently⁹. In particular:

- Free legal assistance shall be accessible to children, under conditions the same or more lenient than adults¹⁰;
- Lawyers who represent children should seek to promote the views and opinions of the child and provide the child with information and reasons essential for them to exercise their rights¹¹ (European Commission, 2015).

All MS (except for DK and SE) hold the police (or other pertinent authorities) under legal obligation to present information to apprehended children concerning their rights to legal representation.

In all MS, children suspected of offenses have the right to a lawyer during all stages of the proceedings. However, in some MS, certain stipulations apply (European Commission, 2015):

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

10 Council of Europe (2011) at p. 8 and CRC Committee (2007) at p.15.

11 Council of Europe (2011) at p.8.

- In CY and CZ, the right to legal representation during proceedings exists for children over the age of 15. For younger children, this right comes into existence solely during the trial itself;
- In FI and UK-S, the right to legal representation exists solely during the investigation stage (FI) or during interrogation (UK-S).

There are only seven MS that do not provide child suspects with the right to mandatory defence (CY, DK, EE, MT, UK-E&W, UK-NI and UK-S). In other MS, this right may be restricted, such as in CZ, where the right applies to children over the age of 15, and in NL, where only children under the age of 16 may benefit.

Similarly, the EC study informs that in places where the right to mandatory defence exists, it may be conditional upon the weight of the charge. For example, in BE, mandatory defence exists solely if the case goes to trial while in DE, it is only guaranteed if the child is held in pre-trial detention. In EL, the right to mandatory defence is reserved for child suspects accused of an offence which, if committed by an adult, would be considered as a serious crime (European Commission, 2015)

Article 40 (2)(b)(iii) CRC provides that a juvenile has a right to legal or other appropriate assistance in the preparation and the presentation of his or her defence, unless it is considered not to be in the best interest of the child. The Beijing Rules 7.1; 15.1 state in particular, that “throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid”.

The right to legal aid for child suspects exists in all EUMS but HR; however, the conditions of access are subject to great variation between MS:

- “In all MS except BE, DE, DK, EE, LT, LU, MT and SE, access to legal aid free of charge for child suspects is subject to a means-test;
- In 14 MS (AT, BG, CY, CZ, DE, EL, ES, HU, IE, NL, PL, SE, SK and UK-E&W), legal aid is provided free of charge depending on the merits of the case;
- In six MS (BE, DK, EE, LT, LU and MT), no conditions are set: legal aid is available to all child suspects free of charge” (European Commission, 2015).

Some MS call for additional requirements. In CY, legal aid is provided gratis to child suspects charged with a serious offence (designated as charges that carry a prison sentence surpassing one year) in addition to a means-test, which takes into account a suspect’s financial circumstances to determine eligibility for legal aid. In DE on the other hand, merit-tests are performed, but means-tests are not. Finally, in DK and SE, legal regulations demand that child suspects will have to

repay the costs incurred by the country if they are provided free legal aid and are then convicted (European Commission, 2015).

3.4. RIGHT TO AN INDIVIDUAL ASSESSMENT - ARTICLE 7

The Havana Rules require that every juvenile is interviewed as soon as possible after arriving in an institution or detention facility. A psychological and social report should be drafted on the basis of this interview in which the specific type and level of care and programme are determined (Rule 27).

The EC study informs that “most MS recognise the importance of obtaining an individual assessment of a child involved in criminal proceedings, which takes into account the child’s legal, psychological, social, emotional, physical and cognitive situation. Only in six MS (EE, HU, LT, MT, RO and SK) is the need to obtain a comprehensive understanding of the child not emphasised in legislation or policy” (European Commission, 2014, p.15).

This individual assessment of the child may only be performed by a multidisciplinary team of professionals if it is to produce a comprehensive image of the child’s specific circumstances and needs. A majority of MS recognise the importance of a multidisciplinary approach and only BG, LU and PL limit its application (European Commission, 2014).

Implementation of such a multidisciplinary approach takes various forms depending on MS. Some prefer an informal cooperation (10 EUMS), while other have resorted to formal procedures of cooperation (13 jurisdictions) or the set up of formal institutions (e.g. BE, NL, SE, SI and UK-E&W) (European Commission, 2014).

3.5. RIGHT TO MEDICAL EXAMINATION - ARTICLE 8

Neither the Council of Europe Guidelines (Council of Europe (2011), nor the CRC explicitly provide for a right to medical examination for children accused/suspected of a crime. The Havana Rules, on the other hand, provide several safeguards in this matter (see especially Rules 27 and 50 for children in detention). In a few MS, there exists a legal obligation to offer child suspects/offenders health care and appropriate social and therapeutic programmes (after trial proceedings), and some MS guarantee the right to medical assistance (e.g. BE and ES), as well as the right of children to have their parents present during medical examinations (e.g. CY). However, there is no extensive data on the availability and practice related to the right to medical examination for children held in pre-trial detention.

3.6. ANALYSIS OF THE COMPLIANCE OF NATIONAL LEGISLATION WITH THESE ARTICLES

Articles 4 to 8 of the Directive (EU)2016/800 of the European parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings provide extensive safeguards regarding the rights of children involved in criminal proceedings.

In some of the articles (Article 4, Article 6), the Directive refers to European and international rules already binding EUMS or matches the policies already in place in many MS (e.g. Article 7).

Most articles also provide specific guidance on what is expected from EUMS in terms of implementation and procedures, and will require many EUMS to update their legislation and policies regarding children involved in criminal proceedings in light of the Directive (notably Article 5, Article 8).

4. RIGHT TO A SPECIFIC TREATMENT IN CASE OF DEPRIVATION OF LIBERTY



During placement in a closed institution, the Beijing Rules emphasize the child's need for all necessary individual assistance: while in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality (Rule 13.5).

The Havana Rules contain minimum standards for the deprivation of liberty of children. When deprived of their liberty, the particular needs of juveniles with regard to age, personality, sex, type of offence, mental and physical health should be taken into account (Rule 28). Moreover, the design of detention facilities should be such that the need of the juvenile for privacy, opportunities for association with peers and participation in sports and leisure-time activities can be fulfilled (Rules 32). Other basic rights that are stipulated are the right to education (Rule 38), the right to (open air) recreation (Rule 47) and the right to communicate with the outside world (Rules 59-62). In order to safeguard these rights, effective and independent inspection mechanisms should be in place and children who are deprived of their liberty should have access to remedies in case of a violation of their rights (i.e. the right to file complaints to an independent authority) (Rules 72-78).

The Directive (EU) 2016/800 of the European parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings similarly provides in Article 12(5) that:

“When children are detained, Member States shall take appropriate measures to:

- [A] ensure and preserve their health and their physical and mental development;
- [B] ensure their right to education and training, including where the children have physical, sensory or learning disabilities;
- [C] ensure the effective and regular exercise of their right to family life;
- [D] ensure access to programmes that foster their development and their reintegration into society; and
- [E] ensure respect for their freedom of religion or belief.”

4.1. MAINTAIN REGULAR AND MEANINGFUL CONTACT WITH PARENTS, FAMILY AND FRIENDS

The separation of children from their parents is a measure of last resort¹². So, when children are deprived of their liberty, the right to parental assistance gives rise to the right of each child deprived of liberty to maintain contact with his family through correspondence and visits, provided that this contact is not against the best interest of the child¹³. Moreover, when a child is detained, the information on admission, place, transfer and release should be provided without delay to the parents and guardians or closest relative of the juvenile concerned¹⁴. In addition, parents or family members have the right to assist the child in order to make a complaint during detention¹⁵.

The right for children held in pre-trial detention to maintain contact with family and friends exists in all MS. In some MS (e.g. BG, FI and SE), the same stipulations apply for children as for adults regarding the right to maintain contact. Other MS, such as CZ, have adapted the rules to the specific needs of children (European Commission, 2014). Regarding the regularity of contact, there is some important variation between MS, which go from the right to a daily one hour visit in CY to one visit every three weeks for at least one hour in SK.

12 The Beijing Rules, para. 18.2.

13 Article 37 (c) CRC.

14 The Havana Rules, para. 22.

15 The Havana Rules, para. 78.

At the moment, there is no available data on the percentage of places of detention that make efforts to encourage visiting and communication between children detained and their parents, guardian or an adult family member, nor on the average number of visits per week per child in pre-trial detention.

4.2. RECEIVE APPROPRIATE EDUCATION, GUIDANCE AND TRAINING

In Rule 62.6 (c) ERJO it is stated that (except in case of a very short period of deprivation of liberty) 'an overall plan of educational and training programmes in accordance with the individual characteristics of the juvenile shall be developed (...). Most importantly, 'the views of the juvenile shall be taken into account when developing such programmes' (Rule 62.6 (d)).

Some EUMS (e.g. FR and NL) have established safeguards in order to guarantee to children in pre-trial detention the right to complete compulsory education (European Commission, 2014), but there is no exhaustive data on the compliance of EUMS with this right.

4.3. RECEIVE MEDICAL CARE

The right to receive medical care is guaranteed in some EUMS (e.g. BE and ES), as well as the right of children to have their parents present during medical examinations (e.g. CY) (European Commission, 2014), but there is no exhaustive data on the compliance of EUMS with this right.

5. CONCLUSION

The adoption of the Directive (EU) 2016/800 of the European Parliament and the Council on procedural safeguards for children suspected or accused in criminal proceedings is a key part of the agenda of the EU concerning juvenile justice, and, more specifically, juvenile pre-trial detention.

Its adoption should have the effect that safeguards provided by International Human Rights texts would be implemented in EU legislation, making them binding obligations for Member States under EU law. Most of those standards are already present in the national law of a great majority of EUMS, but the Directive will give them a basis in law and not only in practice, as it is currently the case regarding some of the rights.

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CHAPTER 2:

Analysis of national regulation on pre-trial detention of minors



NATIONAL REPORT: **Italy**

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1. PRE-TRIAL DETENTION DEFINITION



The definition adopted by the project partners is the following: “A child is held in pre-sentence detention where he or she is deprived of liberty and is awaiting a final decision on his or her case from a competent authority” (United Nations Office on Drugs and Crime, 2007, p.97)

In a general legal context, it is someone who is being held in custody by government authorities. For example: during the investigation of his possible participation in a crime (“investigate detention”); prior to trial on criminal charges either because the established bail could not be posted or because release was denied (“pre-trial detention” or “temporary detention”) [Cf., pre-trial detainee]; or in the case of a criminal defendant who has threatened to escape or otherwise violated the law while awaiting trial or who is considered mentally ill and susceptible of causing harm (“preventive detention”). Regarding refugee and immigrant law, a detainee is a foreign national in the custody of government authorities who is waiting for officials to decide if he or she may stay in the country or will be forced to leave (variant: internee).

PRE-CHARGE: CUSTODY OR ARREST OF THE CHILD

Arrest in flagrante delicto

Officials and judicial police can arrest the child caught in flagrante delicto if the crime is one for which custody can be applied (Art. 23 D.P.R. 448/88). Outside cases forecast by the first comma, officials and judicial police can accompany the child, caught in “flagrante” and “intentional” crime (for which the law in force forecast detention for a period not inferior to a maximum of 5 years), by his family house. In case where it is not possible to accompany the child to his/her family house, the child is accompanied by a public or private certified community and judicial authorities are duly informed in order to start the related procedures.

Public officials and judicial police must consider the seriousness of the fact and the age and personality of the child.

Custody of a child suspected of having committed a crime

The custody of a child suspected of crime is allowed and applied in case of intentional crimes for which the law forecast life sentence or reclusion not less than a maximum of 12 years.

Duties of Judicial police in case of arrest or custody of an underage

Public officials and judicial police carrying on the arrest or custody of the child must give

immediate notice to Public Prosecutor and the owner of parental authority (or the foster family referent). Juvenile justice administration services must be notified too.

When the hypothesis forecast by art 389 (coma 2) of the penal procedure code cannot be applied, the person implementing custody or arrest will take the child in front of the Public Prosecutor (PM, Publico Ministerio) or by the public or certified community individuated by the same PM.

The PM can as well impose that the child stays by the family residence.

Prerequisites to apply arrest

Arrest in flagrante delicto is always discretionary taking into account the seriousness of the fact, the age and the personality of the child (coma 1, Art. 16 D.P.R. 448/88).

- [1] Flagrante delicto.
- [2] Imputability (Art. 98 R.D. n. 1398, 19 October) a child is imputable from 14 years (Art.97 R.D. n. 1398, 19 October) old if able to plead.
- [3] Seriousness of the crime.
- [4] Personality of the child.

Crimes for which arrest is allowed (always discretionary for minors)

The reference standard is Article 23 of the Code of Criminal Procedure for Minors (D.P.R. 448/88, 22 September). Intentional crimes for which the law forecast life sentence or reclusion not less than a maximum of 9 years (Art. 23.1, D.P.R. 448/88, 22 September). In imposing the sentence the criteria stated at art. 278 (D.P.R. 447/88, 22 September) and 19.5 (D.P.R. 488/88, 22 September) i.e. the maximum sentence forecast for the attempted or committed offence, the minimum decrease forecast for the underage must be applied.

Arrest can applied as well in case of:

- [1] rape
- [2] attempted or committed crimes as forecast by Art. 380 (coma 2 p.p.c. letters e,f,g,h; D.P.R. 448/88, 22 September)

It is not possible to impose arrest for cases forecast by Art. 73(5) (D.P.R. 309/90, 9 October) and for the ones forecast by Art. 385 (D.P.R. 447/88, 22 September).

Prerequisites to apply custody

The reference standard is Art. 17 of Code of criminal procedure for minors (D.P.R. 488/88, 22 September):

- [1] Imputability (Art. 98 R.D. n.1398, 19 October) a child is imputable from 14 (Art.97 R.D. n.1398, 19 October) years old if able to plead;
- [2] Absconding risk (Art. 384 D.P.R. 447/88, 22 September).

Crimes for which custody is allowed

Custody can be applied for the same crimes for which arrest in flagrante can be imposed when the normative in force forecast detention for a period not inferior to the minimum of 2 years.

Fulfillment of Judicial police in case of arrest or custody

The reference standard is Art. 18 of Code of criminal procedure for minors (D.P.R. 488/88, 22 September), in relation to Art. 386 of Code of criminal procedure (D.P.R. 447/88, 22 September).

- [1] Identification of the child;
- [2] Notification to the Public Prosecutor by the Juvenile Court;
- [3] Notification to parents, parental authority or eventual foster care referents;
- [4] Notification to trustee defence lawyer or Public Defender (to be appointed);
- [5] Notification to Juvenile Justice Centre Social Services Office (U.S.M.M.);
- [6] Draft of minute related to arrest/custody (to be sent by 24 hours);
- [7] Draft of minute related to identification, identification of domicile and appointment of Defender (Art. 349.3 D.P.R. 447/88, 22 September);
- [8] SDI and AFIS outputs (specific documentation requested by national legislation);
- [9] Paper of accompaniment of the child to the identified facility.

Last but not the least, Art.20 (D.L. n. 272, 28 July) states that in the application of arrest or custody the appropriate care to protect the child's privacy are taken in order to reduce the potential material or psychological suffering.

The use of physical coercive tools is strongly prohibited, unless serious reason regarding security exist. By the Judicial Police Offices the child must be kept in rooms separated by adults.

Prerequisites to apply accompaniment of the child following flagrante delicto

The normative of reference is art. 18 bis of Code of criminal procedure for minors (D.P.R. 488/88, 22 September).

- [1] Flagrante delicto.
- [2] Imputability (Art. 98 R.D. n. 1398, 19 October) a child is imputable from 14 years (Art.97 R.D. n. 1398, 19 October) if able to plead.
- [3] Seriousness of the crime.
- [4] Personality of the child.

Crimes for which accompaniment is applied following flagrante delicto

Accompaniment following flagrante delicto is applied in case of intentional crimes for which the law forecast life sentence or reclusion not less than a maximum of 5 years.

Such act is different from identification as it impacts on the liberty of the child and needs to be confirmed as prescribed by the law.

Such measure is applicable only after contacting the competent Public Prosecutor and when the family unit is well known.

Fulfillment of Judicial police in case of accompaniment following flagrante delicto

- [1] Identification of the minor.
- [2] Notification to the Public Prosecutor by the Juvenile Court;
- [3] Notification to trusty Defence lawyer or Public Defender;
- [4] Notification to Juvenile Justice Centre Social Services Office (U.S.M.M.);
- [5] Notification to owners of parental authority or the foster care referent for the taking in charge of the child. These must monitor child's behavior and keep him/her at disposal of the Public Prosecutor. When family is not available or are not suitable the Public Prosecutor must be immediately notified;
- [6] Draft of minute related to accompaniment (to be sent by 24 hours);
- [7] Draft of minute related to identification, identification of domicile and appointment of Defender (dell.art.349 III comma p.p.c);
- [8] SDI and AFIS outputs (specific documentation requested by national legislation);

- [9] Draft of Minute related to the placement of the child or paper related to the accompaniment by the facility.

As for accompaniment following flagrante delicto the child cannot be detained more than 12 hours and he can be accompanied to a location different from his family house and entrusted to third person only under Public Prosecutor authorization.

The *notitia criminis* for a child under 14 years (not imputable) must in any case be always transmitted and communicated to the Prosecutor's Office by the Juvenile Court even if it will lead to a sentence of acquittal (due of course to the fact that in Italy a child under 14 years is not chargeable).

POST-CHARGE: CAUTIONARY INTERMENT MEASURE

Pre-trial detention in a juvenile penal institution is regulated by Art. 23 of D.P.R. 448/98 listing the condition for its application that vary from the provision adopted for adults.

The application of pre-trial detention in juvenile penal institution is applied in case of intentional crimes for which the law forecast life sentence or reclusion not less than a maximum of 9 years (Art. 23.1. D.P.R. 448/88, 22 September) or, apart from such cases, when we proceed for one of the crimes specifically listed by the law.

Furthermore, the law in force for minors specify that the terms of pre-trial detention forecast for adults are reduced in consideration of the child's age: of the half if under 18 years and two thirds if under 16 years (Art. 23.3 D.P.R. 448/88, 22 September).

In general, the application of precautionary measures causes a certain limitation of personal freedom hence, the same are adopted in the full respect of the following principles and conditions:

- Principle of legality (ex. Art. 272 D.P.R. 447/88, 22 September): existence of serious evidences of guilt (*fumus commissi delicti*) ex Art. 273 D.P.R. 447/88, 22 September.

Subsistence of specific precautionary needs (ex Art. 274 D.P.R. 447/88, 22 September) such as: investigation requirements related to a concrete danger as for the acquisition or authenticity of the proof; danger of absconding of the indicted, if the Judge retains that a sentence larger than 2 years could be issue; needs for social protection, if there is the risk that the indicted commits serious crimes using arms or other tools useful for personal violence or targeted against the constitutional order i.e. organized crime or other crime of the same type of those for which we are proceeding.

- Principle of adequacy: i.e the Judge, in imposing the measures, must take into account the specific adequacy of each of them in relation to the nature and degree of precautionary needs to be satisfied (ex Art. 275.1. D.P.R. 447/88, 22 September).

- Principle of proportionality: i.e. every measure must be proportional to the offence's entity and the sanction that has been or could be imposed (ex Art. 275.2. D.P.R. 447/88, 22 September).
- Principle of graduality: i.e. the pre-trial detention can be imposed only in case any other measure is considered as inadequate (ex Art. 275.3. D.P.R. 447/88, 22 September).
- Principle of rights' protection: i.e. the modality of execution of precautionary measures must safeguard the rights of the person submitted to the same where the application of the same right is not conflicting with the precautionary needs of the case (ex Art. 275.3. D.P.R. 447/88, 22 September).

Some statistics

Table 1. Entrance in Juvenile Penal Institutions in Pre-trial Detention at 31.01.16 according to reason, nationality and gender¹

REASON	ITALIANS			FOREIGNERS			TOTAL		
	m	f	mf	m	f	mf	m	f	mf
Pre-trial detention	-	-	-	-	-	-	-	-	-
From freedom	5	-	5	6	-	6	11	-	11
From first Reception Centres	6	-	6	8	1	9	14	1	15
From prescription due to transformation of the measure	-	-	-	-	-	-	-	-	-
From permanence at home due to transformation of the measure	-	-	-	-	-	-	-	-	-
From community for Transformation of the measure	1	-	1	-	1	1	1	1	2
From Community due to new proceeding	-	-	-	-	-	-	-	-	-
From Community due to aggravation of the measure	13	-	13	9	3	12	22	3	25
From Adult penal Institution	-	-	-	-	-	-	-	-	-
Total							53		

Source: Juvenile Services Informatics System (SISM).
Data elaboration of 2nd February 2016

¹ The total number of youths entered in Juvenile penal institutions at 31st January 2016 is 91, hence the 58.2% of entrance in Juvenile Penal Institutions are due to Pre-trial Detention. Source: Juvenile Services Informatics System (SISM). Data elaboration of 2nd February 2016.

2. LEGAL FRAMEWORK: SCOPE OF APPLICATION OF PRE-TRIAL DETENTION

2.1. MINIMUM AND MAXIMUM AGES OF APPLICATION

The definition of the age range related to the application limits of the maximum duration of precautionary measures is effected on the base of the parameters forecast by the juvenile jurisdiction (14-18).

The age of the indicted to be considered, will correspond to the age at the moment the crime was committed, which will also apply in the case of a precautionary measure is imposed after the achievement of 18 years by the youth offender.

2.2. CASES OF APPLICATION OF PRE-TRIAL DETENTION

Once notification of the crime is received, the Public Prosecutor has the duty to immediately book it in an appropriate crime register. The eventual arrest is under police discretion, according to the seriousness of the event, the age and the personality of the minor. Juvenile offender's parents are immediately notified about the crime. Always taking into consideration the seriousness of the act, the age and personality of the minor, the minor is taken to police headquarters where they can be kept no more than 12 hours. After this period the person who has parental authority (or the guardian or other delegated person) will take the minor into custody. Police will inform the Public Prosecutor (PM, Pubblico Ministero) and the Juvenile Social Services. Parents or the eventual custodian are advised of their duty to ensure the minor's disposal to the Prosecutor and to monitor his/her behaviour. If this is not possible, police informs the Prosecutor who will provide for the minor to be accompanied to a First Reception Centre (CPA).

All these measures must be confirmed by the Judge of the preliminary investigation (GIP, *Giudice delle Indagini Preliminari*), the hearing takes place within 48 hours from the filing of the request by the PM. The Counsel and the person with parental authority must be advised immediately. Therefore, the GIP proceeds to interrogate the minor. At the end of this hearing the minor may be released, otherwise a preventive measure or remand can be applied. The GIP has the task of adopting measures restricting personal freedom if this proves necessary during the investigation. He/she also decides whether it is necessary to extend these measures, following a request by the

PM. In addition, at the request of the parties the GIP decides whether to admit taking evidence during the pre-trial phase and presides over the proceedings.

From the act of filing the crime the PM has six months' time to carry out investigative activities for assessing the facts and verifying the evidence against the suspect. Once investigations have been completed the PM will be able to ask for:

- [1] An extension of the time for closing investigations;
- [2] The dismissal of the proceeding when the fact turns out to be unfounded (the act is not foreseen by the law as crime, the suspect did not commit the act or sufficient evidence does not surface);
- [3] Indictment (*rinvio a giudizio*);
- [4] Summary trial (*giudizio immediato*).

As highlighted at previous chapter, pre-trial detention can be applied when we proceed for intentional crimes for which the law forecast life sentence or reclusion not inferior to a maximum of 9 years. A part from such cases, it can be applied for one of the crimes, committed or attempted, forecast by Art. 380 coma 2 letters e, f, g, h of the penal procedure code and in any case for the crime of rape (D.P.R. 447/88, 22 September).

The judge can impose pre-trial detention in the following cases:

- If serious needs related to the investigation exist in relation to contexts of danger for the acquisition or authenticity of the proof;
- If the indicted absconded or there is a concrete danger of absconding
- If, due to the modalities and circumstances of the crime and the personality of the child, there is the concrete risk that the indicted commits serious crimes using weapons or other tools useful for personal violence or targeted against the constitutional order i.e. organized crime or other crime of the same type of those for which we are proceeding;

The terms forecast by art. 303 of the penal procedure code (D.P.R. 447/88, 22 September) are reduced of the half for crimes committed by underage (i.e. under 18) and of two third for those committed by youths under 16 years. They become effective from the capture, arrest, detention or accompaniment.

Pre-trial detention is always optional. Its infliction is subject to the occur of prerequisites common to all custodial measures and to the need to avoid the interruption of the ongoing educational pathways.

In imposing a sentence of pre-trial detention the Judge must hence take into consideration a range of objective and subjective factors such as:

- The personality of the child
- The family and social background
- The ongoing educational pathways that must not be interrupted.

Concluding, we can refer to the Art. 23 of D.P.R. 448/88 defining autonomously the custodial needs despite reproducing the Art. 274 of the penal procedure code (D.P.R. 447/88, 22 September) stating that pre-trial detention can be imposed:

- [1] When serious and binding probative requirements.
- [2] When there is a concrete risk of flight (but as we saw this is not sufficient to impose pre-trial detention if not accompanied by the other listed conditions).
- [3] When there is the risk, presumed by the concrete facts and child's personality that the indicted relapse committing further crimes using arms or other tools useful for personal violence or targeted against the constitutional order i.e. organized crime or other crime of the same type of those for which we are proceeding.

2.3. TYPES OF PRE-TRIAL DETENTION

Precautionary measures targeted to youth in conflict with the law can have characteristics and aims different from the ones forecast for adults even if, obviously, those targeted to youths must take into consideration the peculiarity of a personality in development phase.

Hence as well for children and youths precautionary measures cannot be imposed:

- If there are not serious evidence of guilt;
- If we can assume a possible non compos mentis of the child and subsequent acquittal;
- If the fact is not socially relevant with the opportunity to dismiss the case (nonsuit for irrelevance of the fact²);
- If a probation measure can be imposed.

² Nonsuit for irrelevance of the fact (Art.27 D.P.R. 448/88, 22 September): it is applied when the offence is mild, occasional and any further course of proceedings would jeopardize the minor's educational needs. The judge, upon request by the Public Prosecutor, may apply a safety measure.

The application of precautionary measures is not possible if there are not serious needs related to the investigation exist in relation to contexts of danger for the acquisition or authenticity of the proof. Among such measures, the first and softest one is *Prescription* (Art.20, D.P.R. 448/88, 22 September), the Judge may give rules of conduct concerning studying, working or other activities which are useful to the minor's education, at the same time entrusting the minor to the check and assistance of the juvenile Services of the Justice Administration.

The second one is *Permanence at home* (Art.21 of D.P.R. 448/88, 22 September), the Judge may order the minor to stay at home, as a precautionary measure not involving detention. This implies the obligation for the minor to stay at his family home or at another private residence, with a wide discretionary power on the judge's side as for the studying or working needs, or for other activities which contribute to the minor's education, with surveillance duties entrusted to a parent or to the people whose home the minor is staying at.

The third one is *Placement in Community* (Art.22 of D.P.R. 448/88, 22 September), the Judge may order the minor's placement within a community, which is a precautionary measure of an intermediate level between staying at home and detention, where great importance is given to initiatives for the re-socialization and social re- inclusion activated by local authorities and social private institutions. The law and the scientific and operative debate support a multidisciplinary management of communities (State, local Authorities and private entities). Childrens' rights and interests are guaranteed both on legal and practical fields by specific agreements with the Justice administration and by assessment and prescription imposed by the Court.

The last and most afflictive measure is *Pre-trial detention* (Art.23 of D.P.R. 448/88, 22 September). The general criteria to apply such measures is the one above mentioned for the precautionary measures mentioned, i.e. serious needs related to the investigation (in relation to contexts of danger for the acquisition or authenticity of the proof); concrete danger of escape; concrete risk of the youth committing serious crimes using weapons or other tools useful for personal violence or targeted against the constitutional order i.e. organized crime or other crime of the same type of those for which we are proceeding. The trend is in any case to use detention only as *ultima ratio* (last resort) through the use of alternative measures and tools tending to the rehabilitation and re-inclusion of the youth taking into account his personality, needs and skills.

2.4. DURATION OF THE MEASURES

The maximum pre-trial detention period varies depending on the phase of the proceedings and the nature of the alleged offence. The maximum period of detention during proceedings at first instance is 18 months (Art. 303.1.b.3, D.P.R. 447/1988, 22 de September).

The law in force for minors specify that the terms of pre-trial detention expected for adults are reduced in consideration of the child's age: by half if under 18 years and two thirds if under 16 years.

3. RIGHTS OF MINORS SUSPECTED OR ACCUSED IN CRIMINAL PROCEEDINGS

The Code of Criminal Procedure for Minors (the D.P.R. 448/88, 22 September) laid the basis for a profound cultural transformation where recognizing the minor as bearer of particular rights and need for protection are concerned. In fact, it symbolizes how the Judicial System must act in regards to the rights of minors.

By now it is clear that the wellbeing of the child involves an entire system of rights which places minors at its very core and protects them even if they have not entered in conflict with the law.

Fundamental rights such as: the right to live, the right to integrity, the right to be in the best possible health, the right to be protected from any form of violence be it psychological or physical, the right to be looked after and not neglected, the right to not be abused or exploited, the right to be respected, educated and to have access to information, the right to safety, to have an adequate living standard and to be able to develop physically, mentally, spiritually, morally and socially, the right to receive assistance for their parents or family, the right to rest and to leisure time, etc. should be guaranteed to every child and adolescent and are strictly connected (and in some cases transversal) to the ones related to children suspected or accused in criminal proceedings covered by the Directive (EU)2016/800 (Right to information of children [Article 4], Right to information of the holder of parental responsibility [Article 5], Right to a lawyer [Article 6], Right to an individual assessment [Article 7], Right to medical examination [Article 8]).

In this context, we will focus our attention on four of these fundamental rights which the Penitentiary system defines as “treatment elements” (The right to safety and protection; the right to wellbeing; the right to education and training) i.e. a series of opportunities offered to minors in order to allow them a better quality of life, more in line with legality and civil existence, hence, their absence could seriously compromise the delicate psychological-physical balance of minors in conflict with the law. On the other hand, the same convey a greater of shared “responsibility”. Responsibility which does not only fall upon the Ministry for Justice but also upon all those whose role it is to maintain the wellbeing of minors, such as their families, their school and the social services.

[1] The right to safety and protection (under the care of the Juvenile Justice System)

This implies the protection of the general wellbeing of minors in order to guarantee and promote their physical and mental integrity and also their psychological development. The limitation of freedom of minors is only done with the aim of “overseeing their

education". Taking these minors away from their normal social context aside from protecting society from delinquency, safeguards the minors themselves and ensures that they avoid committing the same mistakes again.

[2] The right to wellbeing (under the care of the Juvenile Justice System).

The Juvenile Justice System and the National Health care system collaborate to ensure the general wellbeing of minors in virtue of the changes made to the legislation by the DPCM of the 1st April 2008 (D.P.C.M., 1 April), which in fact, transferred the care of minors to the National Health care system. All minors, even those subjected to criminal procedure, undergo medical, physical and psychological tests. Legislative Decree of the 22nd June 1999, n. 230 «Reorganization of Penitentiary medicine» (D.L. 230/99, 22 Jun) states that all inmates, the same as for regular citizens, have the right to preventive medicine, diagnosis, cure and rehabilitation. The National Healthcare System guarantees to all inmates and minors in criminal procedures: prevention, information and education aimed at teaching individuals and the collective the importance of health; complete access to information regarding their personal health status upon entering the Justice System, during their stay within the system and at the time of exiting the system; interventions to prevent, cure and support psychological and social discomfort.

[3] The right to education and training (under the care of the Education Ministry; Local Authorities).

Education and further education are both guaranteed (in collaboration with the Education Ministry where education is concerned and with Regional Authorities where further education is concerned), so that minors can have an active and productive role within society. From what emerges from the Memorandum of Understanding between the Education Ministry and the Justice Ministry "Special Education programmes in correctional facilities", they commit to: organize education and training courses in order to promote the acquisition of abilities and personal skills; set up educational and technical workshops to support and help with schoolwork and training courses undertaken in the correctional facilities; organize programs to develop and improve personal skills, also using digital technology; enable foreigners, ethnic minorities and those with serious educational deficits to study the Italian language in order to be better integrated into society and find employment upon their release. In agreement with various companies, the Juvenile Justice System operates training schemes which give the opportunity of personal growth and self-improvement in order to gain stance in society.

[4] The right to leisure time

Leisure is also indispensable for the development and dignity of the individual, even more so if a minor. Activities such as sport, culture, art, training or entertainment constitute important factors not only for a harmonious development of the personality but an effective integration in society. And, because social reintegration is the main objective of

the Justice System, it is no wonder that a great deal of importance is given to the positive outcome of these activities. The Justice System collaborates with local organizations delegating to them the responsibility of overseeing minors in these leisure activities.

As for the right to a lawyer (Art. 6 Directive (EU)2016/800) and the right to information of the holder of parental responsibility (Art. 5 Directive (EU)2016/800), we can say that the child, with reference to the right to defence was considered not suitable or not fully suitable to become aware and assess the gravity of the criminal act and the moral and material consequences of the same. Hence the Constitutional Court highlighted the need for a better protection through the implementation of defence guarantees and the enhancement of technical defence. Last but not the least, it ratifies the need of assistance by the parental authority.

This way the client of the lawyer is not only the child but the parental authority as well who has to be duly informed about the procedures involving the minor. In our criminal proceeding, hence, the application of the defence right has had and still has to some extent, a geometric and triangle shape where parents or the parental authority play a crucial role. Such paradigm is justified by the systemic-relational dimension of the juvenile criminal proceeding that is the theoretical model on which it is based. In such perspective, the child in conflict with the law must recognize in his lawyer the only figure of reference able to guarantee, through ad hoc legal tools, the full application of his defence right.

The lawyer must hence possess juridical skills and a psycho-juridical interdisciplinary background. The lawyer is not a mere expert in law but must have a deep knowledge of the essential paradigm of the other relevant social sciences (psychology, sociology and criminology). To make the child an active subject of his defence is the challenge and only a lawyer with specific skills can guarantee the achievement of such aim.

The experience in the field tells us that the only juvenile law background and the simple knowledge of the juvenile delinquency issue is not sufficient.

The qualification of the lawyer must constitute a sort of added value and must be framed in a wider perspective and in the ability to interact and understand the complexity of the general framework in which he/she operates maintaining his/her own role in the contact with the other according to a new and innovative professional paradigm and approach.

Concluding, the lawyer must be able to interact with the child, listen him/her and make him/her understand the meaning of the criminal proceeding to then translate his/her educational needs within the judicial pathway.

4. RIGHT TO SPECIFIC TREATMENT IN CASE OF DEPRIVATION OF LIBERTY

4.1. MAINTAIN REGULAR AND MEANINGFUL CONTACT WITH PARENTS, FAMILY AND FRIENDS. RESTRICTIONS ON THIS RIGHT SHOULD NEVER BE USED AS PUNISHMENT

Particular attention is given to the need for children to maintain, improve or rebuild, if interrupted, the relation with the families and the other meaningful person. They hence can always communicate with their loved ones despite their economical condition. The necessary tools to write (and send a letter) and to phone (telephone card) are freely provided by the administration when needed.

The use of face to face meeting and telephone calls is promoted paying particular attention to the existence of specific exemption to the planned limits of frequency, duration and number of visitors. If it appears that the family and significant person do not maintain relations with the child, the Directorate reports to the competent Juvenile Social Service Office (USSM) for the appropriate interventions.

Face to face meeting and telephone call are duly recorded in specific registers.

The meeting and the mail and telephone communication between the child and their appointed lawyer are governed by the penal procedure code (D.P.R. 447/88, 22 September) and the penitentiary regulation (D.P.R. 230/00, 30 Jun).

FACE TO FACE MEETING/VISITS

Children realize 6 meeting per month (1 hour maximum per visit) with the person authorized by competent Authorities.

In case of children detained for one of the crimes forecast by the first period of the first coma in Art. 4 bis of the penitentiary regulation (L. 354/75, 26 July) for which the prohibition of benefits is in force, the number of meetings available is n.4.

For each meeting is allowed the participation of a maximum of n.3 person. Such person must be identified through presentation of a valid Identity Document. Children visitors must be accompanied by an adult. The meeting has a minimum duration of 1 hour.

The Director can authorize face to face meetings notwithstanding to the limits related to the number of meetings, the number of participants and duration stated in the previous comas in case:

- infirmity
- the meeting having to be held with progeny
- incoming dismissal or during festivity
- specific indications by the therapeutic and observation team
- benefit for regular, participating and correct behavior
- particular urgencies or circumstances (sudden events, visitors' residence distance from the structure, time passed from the last visit).

Except for health and security reasons or other specific motivations imposing the use of separating tools or specific rooms or still infirmary, the visits are carried out in a common room furnished in order to create an adequate and positive environment.

For cases forecast by coma 11 the Director can authorize the child to spend part of the day with the authorized person in specific rooms or outside and to have lunch with them.

Ad hoc rooms are tailored to the meeting between the youth offenders and their lawyers. The monitoring by penitentiary police is carried out visual basis (and through the use of ad hoc tools) but conversation cannot be heard.

During the visits a correct behavior must be maintained; the exchanges of objects is not allowed, as well as to smoke and eat. Penitentiary police in charge of the control may rebuke transgressors and, as the case may be, suspend them from the visits informing the Director of the institution who will have to decide for the exclusion.

CORRESPONDENCE AND MAIL

Received and outgoing mail is delivered every day. Children will deliver the outgoing mail to the referent penitentiary policeman at any moment of the day. Before the responsible agent leaves, they deliver it to the chief petty officer in charge who will send it to the reception for the sending that is carried on by the penitentiary policeman in charge of vehicles management. The post in arrival follow the opposite procedure. If the mail is subject to the provision stated by Art. 18 ter (L. 95/04, 8 April) the chief petty officer in charge delivers it directly to the Director.

If outgoing or incoming mail is considered suspect, the chief petty officer in charge will retain it and inform the Director (Art.1.3 L. 95/04, 8 April). The child is immediately informed, and if they

agree, the mail will be opened and inspected in front of way, while making sure to avoid reading its content.

On the mail to be sent children must always indicate their name and surname.

TELEPHONE CALLS

Youths who have already had their visits can make one (1) telephone call per week with the person and the fixed numbers authorized by the competent authority. In case of children detained for one of the crimes forecast by the first period of the first coma at Art. 4 bis of the penitentiary regulation for which the prohibition of benefits is in force (L. 354/75, 26 July), the number of telephone calls available is two (2) per month. The maximum duration of each telephone call is 10 minutes.

The Director can authorize telephone calls notwithstanding to the limits related to the number of meetings, the number of participants and the duration stated in the previous comas in case of:

- infirmity
- the meeting have to be held with progeny
- incoming dismissal or during festivity
- specific indications by the therapeutic and observation team
- benefit for regular, participating and correct behaviour
- particular urgencies or circumstances (sudden events, visitors' residence distance from the structure, time passed from the last visit).

To this aim, the condition of separated children is particularly important. The telephone contact is established from penitentiary police. For cases forecast by coma 23 the recording of telephone calls is always prescribed and arranged.

4.2. RECEIVE APPROPRIATE EDUCATION, GUIDANCE AND TRAINING

Given the age of IPM users, the treatment actions pursue an educative aim oriented to the global and harmonic development of the youth (intellectual, moral, emotional, relational) and their accountability in terms of re-elaboration of the crime and the social reparation of the committed offence.

The IPM's Directorate promotes and makes use of a close cooperation with the competent local agencies (Municipality, schools, training bodies, juvenile justice services and other key actors) playing a fundamental role in the management of children's treatment and protection inside

and outside the Juvenile Penal Institution. The terms of such cooperation are included in the educational/training proposal of the IPM drafted yearly from the Directorate in agreement with the other relevant actors.

There is hence a wide range of treatment opportunities. Among them we highlight: literacy; educational activities; training activities (in the field of handcraft and food); training courses funded by the European Social Fund; Sport, cultural and artistic activities. Furthermore, the work activities developed within the Juvenile penal institution are considered part of the training pathway³. The activity related to the cleaning of common spaces aims to a greater assumption of responsibility by the children as for the self-care and the environment one.

A tailored educational project is drafted by the observation and treatment team, such plan forecast the stipulation of an ad hoc agreement between the child and the referent adult figures. Such agreement has a strong educational value as it stimulates in the child the assumption of responsibility and ask him/her to respect the signed contract. The observation and treatment team meet regularly for the exchange among operators, the monitoring and assessment of the ongoing educational projects and to propose eventual needed modification.

If the juridical conditions and the needed sources are available, tailored educative projects, the development of external actions oriented to education, orientation, training, work, socially useful activities and restorative activities will be strongly promoted.

The selection of treatment activities must give priority to the educational, training and working pathways interrupted with the arrival of the minor in the juvenile justice system.

The quality and the formal juridical certification of the internal activities (i.e. implemented within the juvenile penal institution) should be aligned with those of the external environment

4.3. RECEIVE MEDICAL CARE

All children are submitted to a health check by the internal health staff within 24 hours from their entrance in the Juvenile penal institution. Once the needed permits are obtained, children make the necessary blood tests and other tests requested to assess the absence of infectious disease.

The health service is guaranteed by the National Health Service present in the facility with a daily medical device. Furthermore a doctor is available for 3 hours a day. The doctor provides first aid support, when he/she is not on duty, the service is guaranteed by the local health service. Nursing staff is available for 11 hours per day together with part of the state run dental health care.

³ These include: canteen, green and facility maintenance.

The nurses are equipped with commonly used drugs appropriately safeguarded. These are provided by the National Health Service. The request for medical examination should be, unless otherwise required, notified to the referent penitentiary agent in the morning before starting the daily activities.

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NATIONAL REPORT: **France**

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French headlines tend today to suggest that traditional protective models are outdated. The French reality is no longer consistent with the post-war context in which the 1945 ruling was conceived. The behaviour of minors has evolved and the features of educational measures designed during the “trente glorieuses” postwar period are perhaps no longer completely in step with the relevant population today.

Even though sociologists such as Laurent Mucchielli believe that today’s criminal behaviour is similar to yesterday’s, in courts, we now find a higher number of youngsters with even more violent and uncontrollable behaviours, to which we apply educative measures according to the 1945 ruling, which may result inefficient in some cases.

Furthermore, although the present climate provides us with little cause to be optimistic about the traditional pillars of family, we are living with a level of economic progress capable of generating full employment and an education system offering equal opportunities. In addition, there exists other courses of liberty deprivation which can be looked into and which fall somewhere between basic detention and total non-accountability of a minor with all constraints removed.

Beyond these observations, and as a way of introducing to this research, it is first essential to recall the essence of our reference text, the Ruling of 2 February 1945: Delinquent young people need to be protected at the same time as punished, and the specific nature of their situation requires for it to be handled by specialist judges or magistrates, both at the investigation stage and at the stage of trial.

1. PRE-TRIAL DETENTION



Pre-trial detention consists of the imprisonment of the indicted individual, prior to their trial. Only the liberty and custody judge may decide to place them in pre-trial detention, at the request of the examining magistrate or the public prosecutor. This measure is applicable where it constitutes the only way to:

- preserve evidence or prevent conspiracy between perpetrators;
- protect the investigation, ensure it can be brought before the courts, and put an end to the offence;
- prevent recidivism.

The duration of pre-trial detention is 4 months for minor offenses, with a possible extension of up to 2 years, and 1 year for serious offences with a possible extension of up to 4 years.

Pre-trial detention may be terminated:

During the investigation upon the decision of the examining magistrate, by a ruling from the pre-trial chamber (chambre de l'instruction), or following a request for prompt release from the detainee or public prosecutor.

Following the investigation, pre-trial detention will be only terminated in cases of misdemeanours following a decision to dismiss proceedings by the examining magistrate or following a referral order to the criminal court.

2. LEGAL FRAMEWORK

SCOPE OF APPLICATION OF PRE-TRIAL DETENTION



2.1. MINIMUM AND MAXIMUM AGES OF APPLICATION

2.1.1. UP TO THE AGE OF 13

Up to the age of 13, only educational measures may be imposed upon the accused. A child should be educated rather than punished, which does not mean that educational measures cannot, include an element of constraint: the child should be monitored by an educational team and they may be handed over to an institution or to a host family.

In 2002 the legislator introduced, from the age of 10 (the age always being at which the offense was committed) the possibility of bringing 12 different educational measures available to a young person, for example: bans on frequenting a given place, or a given person (accomplice or victim) or on possessing a given item. This might also consist of imposing a citizenship course or a remedial measure.

2.1.2. AGE 13 TO 16

Minors aged between 13 and 16 cannot be placed in pre-trial detention except for in one of the following cases:

- [1] if they incur a criminal sentence;
- [2] if they wilfully evade their obligations under legal supervision, where this includes an obligation to adhere to their placement in a closed educational facility.

2.1.3. AGE 16 TO 18

Minors aged 16 years and over may not be placed in pre-trial detention except for in one of the following cases:

- [1] if they incur a criminal sentence;
- [2] if they incur a correctional sentence of a duration equal to or greater than three years;
- [3] if they wilfully evade their obligations under legal supervision, passed in line with the provisions of Article 10-2 of the ruling of 2 February 1945 or the obligations pursuant to a compulsory residence order with electronic surveillance.

2.2. CASES OF APPLICATION OF PRE-TRIAL DETENTION

According to the law, pre-trial detention is considered as an exceptional measure, which derogates from the principle of maintaining an individual's liberty.

Indeed any individual, be they suspect or accused, shall be presumed innocent until proven guilty by a court of law. Any individual who has not been tried should therefore remain free in principle. However, due to the requirements of an investigation or as a safety measure, the individual may also be subject to one or several obligations under legal supervision. Where these are deemed insufficient, the individual may, exceptionally, be held in pre-trial detention. (Preliminary Article and Article 137 of the Criminal procedure code).

Pre-trial detention may not be ordered or prolonged unless it is the only way to preserve material or other evidence, prevent either intimidation of witnesses or victims, or fraudulent conspiracy between the individual standing trial and their accomplices, protect the person standing trial, ensure the person standing trial does not abscond from justice, put an end to an offence or prevent recidivism, put an end to an exceptional and persistent breach of the peace caused by the seriousness of the offence, the circumstances in which it was committed, or the scale of the damage caused.

Whilst exceptionally used for adults, pre-trial detention is a fortiori exceptional for minors. It may only be ordered with minors where essential and where it proves impossible to make use of any other provision.

- A minor aged under 13 at the time of the offence may not be imprisoned under any circumstances.
- A minor aged 13 to 16 may only be placed in pre-trial detention in criminal cases, for a maximum duration of six months renewable once.

Nevertheless, in correctional matters, the minor aged 13 to 16 may be placed in pre-trial detention where they have evaded their obligations under legal supervision.

2.3. TYPES OF PRE-TRIAL DETENTION

If the minor has been accused (an individual is considered "accused" all the while their trial is not yet definite or where they are awaiting initial trial), the magistrate overseeing the case may send a minor either to a youth wing of a prison or to a special young offenders institute (6 of these exist in France).

2.4. DURATION OF PRE-TRIAL DETENTION

Minors aged 13 to 16 may be placed in pre-trial detention for a duration of 15 days, which can be renewed once if the sentence they have incurred is less than 10 years. If the sentence incurred is equal to or greater than 10 years, the duration of pre-trial detention is a month, renewable once. For minors aged over 16, where the sentence incurred is equal to or less than seven years, pre-trial detention may not exceed one month. At the end of this period, it may be extended by reasoned order, subsequent to adversarial debate, for a duration of one month. This extension may not be ordered more than once. In other cases, if the sentence incurred is greater than seven years, pre-trial detention is approved for a duration of four months, which can be renewed. It may not however exceed one year.

In criminal matters, pre-trial detention of minors aged over 13 but under 16 may not exceed six months. In exceptional cases, this may be extended once for a duration not longer than six months.

For minors aged over 16, pre-trial detention may not exceed one year. This may exceptionally be renewed for a period of six months, however the total duration of detention may not exceed two years.

Where pre-trial detention is ordered following revocation of legal supervision or of house arrest with electronic surveillance (*assignation à résidence sous surveillance électronique*), against a minor previously placed in pre-trial detention for the same crime, the cumulative duration of their detention may not exceed by more than one month the maximum duration of the detention initially provided for by law.

Exceptionally therefore, a minor aged between 10 and 13 may be detained for a maximum duration of 12 hours, only where there is sufficient reliable and consistent evidence that they have committed or attempted to commit an offence or serious offence punishable by at least 5 years' imprisonment (for example a murder, rape, robbery, theft committed by organised gang...). They must then appear before the magistrate.

A minor aged between 13 and 15 may be placed in custody for a duration of 24 hours where there is sufficient reliable and consistent evidence that they have committed or attempted to commit an offence.

A maximum extension of 24 hours is possible in the case of an offence or serious offence punishable by at least 5 years' imprisonment.

The French public prosecutor must be informed of the custody ruling from the outset.

Minors aged 16 to 18 who are suspected of acting alone may be placed in custody for 48 hours. If they are suspected of acting as part of a gang, the custody period may be up to 72 hours.

3. RIGHTS OF MINORS SUSPECTED OR ACCUSED IN CRIMINAL PROCEEDINGS



Firstly, it is important to clarify that the use of the term “minor placed in custody” is theoretically impossible for a minor aged under 13. Here we are talking about a “detained minor”.

The French public prosecutor must be informed of the custody ruling from the outset. Legal representatives must be immediately informed about placements in custody, except where a contrary ruling has been made by the public prosecutor for minors aged over 13. For minors aged 10 to 13, the presence of a lawyer is mandatory from the start of the detention period.

Minors aged under 16 must be immediately examined by a physician.

Those aged over 16 may, if the minor or their legal representatives so request, be examined by a physician.

4. RIGHT TO A SPECIFIC TREATMENT IN CASE OF DEPRIVATION OF LIBERTY

Individuals prosecuted or convicted of offences committed under the age of 18 shall fall within the remit of specialised court systems (examining magistrate for minors, children's judge, juvenile assize court). They may exceptionally be imprisoned. If they are minors at the time of their imprisonment, they must be sent to an establishment which features on the list of establishments equipped to receive minors. They shall be subject to a detention system which should be largely education-based.

If the minor has been accused (an individual is considered "accused" all the while their trial is not yet definite or where they are awaiting initial trial), the magistrate overseeing the case may send a minor either to a youth wing of a prison or to a special young offenders facility (6 of these exist in France).

Minors must be detained in a specially-adapted establishment: a special young offenders institute (établissement pénitentiaire spécialisé pour mineurs - EPM) or in a youth wing of a prison or of a correctional facility.

Minors should be kept strictly separate from adults and be given an individual cell. A minor may be placed with another detainee of the same age for medical or personality reasons. Minors aged over 16 may exceptionally partake in joint daytime activities with adults, subject to specific monitoring and authorisation by the head of the facility.

In young offenders' institutes, detainees are housed in areas called "living units", including communal rooms and cells. In establishments which house members of both sexes, joint activities may be organised.

However, girls must sleep in a different living unit to boys, under the surveillance of staff of the same gender. This does not mean that, where necessary, higher ranking male staff may not intervene in girls' living units, in the presence of a female supervisor.

Moreover, given the vulnerability of children deprived of liberty, the importance of family ties and promoting the reintegration into society, competent authorities should respect and actively support the fulfilment of the rights of the child as set out in international and European instruments. In addition to other rights, children in particular should have the right to:

- Maintain regular and meaningful contact with parents, family and friends,
- restrictions on this right should never be used as a punishment;
- receive appropriate education, guidance and training and
- receive medical care.

4.1. FAMILY

4.1.1. FAMILY TIES SUBJECT TO VARIOUS LEGAL PROVISIONS

Minors benefit, in the same way as adults, from a number of provisions which allow them to maintain contact with the outside world and, more particularly, with their families.

On the one hand, minors can benefit from the same opportunities as adults. There are provisions which do not require the movement of persons, such as the telephone, correspondence by letter, and also parcels. There are also provisions into place allowing visiting hours for family members. Legislators have gradually sought to limit the possibility of restricting or undermining all of the above means of communication. As a result, when it comes to an accused detainee, the examining magistrate has a duty to explain any decisions which refuse visiting rights to a member of the family in cases of over a month of pre-trial detention (Article 145-4 of the Criminal procedure code). Right of appeal is also possible.

Refusal of visiting rights to a member of the family must be explained by giving a specific reason linked to the safety or good order of the institution (Article D.515-1 of the Criminal procedure code).

Furthermore, given the specific nature of their age, minors also benefit from provisions which are specific to them.

According to lawmakers, the family should also play a key role in the minor's rehabilitation into the community. The family thus constitutes a cornerstone in both the minor's detention and preparation for their release. This is why the prison administration and legal protection for youth and minors systems must ensure that these links are fostered. The circular relating to the detention system for minors (Circulaire de la DAP n° 2007-G4 du 8 juin 2007 relative au régime de détention des mineurs) stipulates, for example, that sending a minor to one prison establishment over another should be in their personal interest. To achieve this, attention should be paid to different criteria including "proximity to where the minor ordinarily lives in order to support work to maintain or restore family ties".

In terms of means of communication and, more specifically, visiting hours, this circular also stipulates that in cases where the family lives far from the establishment, extended visiting hours could be systematically implemented. Legal protection for youth and minors can also foster visiting hours sessions, by offering information on modes of transport.

Maintaining family ties is not always a given. Indeed, family ties can be influenced either involuntarily due to practical considerations or voluntarily if in the interests of the minor.

4.1.2. FAMILY TIES RESTRICTED DUE TO PRACTICAL CONSIDERATIONS

Occasionally, some elements have, limited the preservation of these links between the family and the minor. Among such difficulties, we primarily have the cost of visits and geographical distance, the two most commonly-combined factors.

As a consequence to the small number of establishments being able to house minors, geographical distance between their parents' place of residence and their place of imprisonment becomes a restriction. Prison youth wings and, more specifically, youth offender institutes are few and far between and, furthermore, are often located far from urban areas: 6 institutes situated in Orvault, Porcheville, Quiévrechain, Meyzieu, Marseille and finally Lavaur. The East and Centre of France are, for minors, prison deserts, as they are devoid of such institutes. This geographical distance can involve, depending on the case in point, significant transport costs. And since families of detained minors often come from modest backgrounds, imprisonment can compound this situation. In such circumstances, the frequency of visits will be affected.

In a study carried out in 2005, the Uframa association noted that, on average, transport costs were 25€. Nevertheless, these costs also depend on the kind of establishment (UFRAMAG "Minors in prison...and the parents? dossier" Number 16, October 2012, p.14 "Prison establishments for minors, a new concept", justice ministry, DAP and DPJJ, September 2007).

The cost of a visit to a prison is typically around 20€, compared to the cost of a visit to a youth correctional facility which is 40€. This difference is due to the geographical location of the establishments. Prisons are often at the heart of, or near to, towns and cities, whereas youth offender institutes tend to be out of town. The cost of the visit also depends on how accessible the area is. Only 70% of establishments are easily accessed by public transport. Visits are therefore limited, depending on the location of the establishment and the financial means of the families. Marie Derain, a rights advocate from July 2011 to September 2014, noted that as well as making it harder to maintain family ties, this distance also presented a three-pronged challenge. Firstly, it undermined the education of the minor; then interrupted their educational monitoring by teams; and finally, made it difficult to prepare them for their release when they were far from their place of residence. The problem of geographical distance is particularly exacerbated in the case of young girls who have been imprisoned, since only three youth offender institutes can take them.

The situation of foreign minors who have no family in France is also very specific.

As regards the particular population of unaccompanied foreign minors, it would appear worthwhile to recall the specific position occupied by this group in French law when looking at the way they are treated under common law.

Where this specificity is combined with criminal proceedings which may lead to imprisonment, the difficulty of maintaining family ties is clear as regards “unaccompanied” and “imprisoned” minors, where not all administrative elements are readily available and where there are multiple challenges.

Common law on child protection is applicable to unaccompanied foreign minors as well as to nationals. However, in practice, unaccompanied foreign minors are likely to be subject to specific proceedings prior to coming under common law proceedings.

Whilst the conditions for access to judicial protection through direct referral to a children’s judge are identical for both nationals and foreign minors. A provision implemented by a Protocol dated 31 May 2013 relating to the protection, assessment and guidance of unaccompanied foreign minors as well as a Ministry of Justice circular, put in place a specific system for unaccompanied foreign minors in terms of their entry into child protection provisions.

This protocol, signed on the one hand by the Ministry of Justice, the Home Affairs Ministry and the Ministry for Social Affairs and Health and on the other hand by the Association of French Departments, has led to a sharing out of young newcomers between all French departments and suggests harmonising reception systems for unaccompanied foreign minors. To achieve this, the Protocol provides for both a procedure prior to the protection and assessment of the situation of those affected who fit the profile of an unaccompanied foreign minor, and a geographical sharing out of unaccompanied foreign minors among the different departments.

These minors can therefore find themselves in a different part of the country to the area they arrived in, and when accused of criminal acts they may be forced to change area again, depending on the facilities available to accommodate them. Maintaining family ties is therefore more complex when there are numerous possible places where the minor could be sent.

The status of minors who remain clearly unaccompanied therefore presents an added layer of difficulty.

Amongst other practical considerations which might prevent the effective maintaining of family ties, it is also important to consider the security restrictions linked with entering into a prison establishment. These restrictions can be keenly felt upon arrival at the establishment and until departure. First and foremost, it is best to be able to plan in advance when it comes to visiting hours. Depending on the place, families might have to wait outside, in a bus shelter, in a room or even in a shelter, if they are lucky. The supervisor in charge of visiting hours has to ensure the identity of individuals as well as the validity of their visiting permit, before they can allow visitors

through the security gates. They will also collect items to be given to inmates to ensure that these are allowed under the house rules. Families must then await the start of visiting hours in a special room intended for this very purpose. All these formalities prior to arrival at the visiting hours session therefore take time, often more than the visiting time itself. (Article D 406 of the Criminal procedure code).

As well as these security restrictions linked to entering the establishment, there are also security restrictions linked to the smooth running of visits. Two supervisors have to ensure the ongoing and direct surveillance of each visiting booth. All of these restrictions linked to the security of the establishment make the visiting process quite complex and can as a result curb or even discourage the number of visitors.

Whilst maintaining family ties can be restricted by practical considerations, it can also be withheld if in the interests of the minor.

4.1.3. FAMILY TIES RESTRICTED IN THE INTERESTS OF THE MINOR

The cases where it would seem advisable for the minor to keep their distance from their family during their imprisonment are somewhat different. These cases must remain exceptional, but they do nevertheless warrant mention.

Specialist family professionals unanimously recognise that problems within the family during a child's formative years are undeniably damaging to their mental and emotional development. These problems can have consequences of varying intensity and may, in some cases, lead to the adoption of deviant or even delinquent behaviour. Depending on the circumstances it may be desirable therefore to cut ties with the family.

The notion of joint parental authority has in fact replaced the concept of "parental authority" and has removed as a result the notion of head of family. The civil code also stipulates that a child should be involved in decisions which affect him or her.

During these developments, and specifically since the start of the 1990s, we have seen a shift in accountability towards the family of the young offender. Indeed, whilst in 1945 the young offender was seen as an individual in danger, who needed to be taken care of by the State, today they are perceived as an accountable being. Therefore, in the case of failure to comply with the law, sanctions must be brought. But similarly, it is also important not to downplay the role of parents, and of the family in general, in the crime committed.

Therefore a number of legal provisions today allow a family to maintain real contact if they so wish. However, there are situations where these ties are either distorted or even non-existent, due to imprisonment or a specific family background. Work to rebuild these ties between the minor

and his or her parents is therefore necessary, given the importance of the role that the latter play when the minor is released and, further down the line, in helping prevent re-offending.

4.2. EDUCATION, GUIDANCE AND TRAINING

Their educational monitoring is overseen by trainers from the legal protection for youth and minors service (Protection Judiciaire de la Jeunesse (PJJ) and national education system teachers. Sporting activities are organised by the prisons administration, with participation from PJJ professionals and trainers.

Cultural activities are also offered to detained minors (dance, theatre, music). They can regularly participate in cultural events.

Compulsory education only applies to minors aged under 16, but minors aged over 16 are strongly encouraged to continue with their education.

Training, whether it be general or professional, is one of the essential tools for rehabilitation.

Professional training in a prison environment is run in partnership between the Ministry for Justice and the Ministry for Employment, Training and Social Dialogue (Ministère de la Justice et Ministère du Travail, de l'Emploi, de la Formation professionnelle et du Dialogue social), and is part of the provisions for the guidance, training and development of lifelong skills, in line with the law on professional guidance and training n°2009-1437 of 24 November 2009 (LOI n° 2009-1437 du 24 novembre 2009 relative à l'orientation et à la formation professionnelle tout au long de la vie), leading to the implementation of support methods aimed at providing imprisoned individuals with opportunities identical to those offered in the outside world to highly disadvantaged individuals. As foreseen under prison law n°2009-1436 of 24 November 2009 (LOI n° 2009-1436 du 24 novembre 2009 pénitentiaire), France has transferred the organisation and funding of professional training to the Regions, as of 1 January 2011, for a duration of 4 years.

In spite of most being imprisoned for a very short period of time (the average imprisonment term for minors in 2010 was less than 3 months in both prison youth wings and young offenders institutes) more than 90% of detained minors participated over a year in educational activities for an average of 14 hours a week.

14% of the total support offered by education services is dedicated to minors, who make up around 1.1% of the prison population.

Upon arrival, all minors have to visit the teaching service to receive an educational assessment, and educational activities must make up the largest part of their activities.

4.3. MEDICAL CARE

4.3.1. LAW N° 94-43 OF 18 JANUARY 1994, (LOI N° 94-43 DU 18 JANVIER 1994 RELATIVE À LA SANTÉ PUBLIQUE ET À LA PROTECTION SOCIALE)

Law n° 94-43 of 18 January 1994 relating to public health and social protection established the principle of transferring healthcare for detainees to the Ministry of Health. This law notably laid down three fundamental principles:

- the compulsory registration of all detainees, from the moment of their imprisonment, in the general health insurance system. They thus receive, along with their beneficiaries, health insurance and maternity provisions offered under the general system;
- the creation in each prison establishment of a consultation and outpatient unit (unité de consultations et de soins ambulatoires - UCSA), a hospital unit attached to a larger healthcare establishment;
- payment by the Ministry of Justice of social contributions for these individuals to the central social security bodies agency (Agence centrale des organismes de sécurité sociale - ACOSS).

4.3.2. LAW N° 2009-879 OF 21 JULY 2009 REFORMING HOSPITALS AND RELATING TO PATIENTS, HEALTH AND TERRITORIES (HPST) (LOI N° 2009-879 DU 21 JUILLET 2009 PORTANT RÉFORME DE L'HÔPITAL ET RELATIVE AUX PATIENTS, À LA SANTÉ ET AUX TERRITOIRES)

The law reforming hospitals and relating to patients, health and territories (JO of 22 July 2009) includes four titles:

The reform presents major challenges:

- improved coordination of healthcare establishments to respond to population needs;
- fairer sharing of healthcare provisions throughout the country;
- development of a prevention and public health policy;
- definition of the missions and resources of regional health agencies (agences régionales de santé - ARS).

This law notably stipulates that the organisation of this healthcare clearly falls within the remit of the regional healthcare agencies, since the objectives and resources earmarked were set by the regional healthcare organisational plan in conjunction with the regional health project.

For twenty years, the ways in which detainees have been cared for have undergone far-reaching

and major change. Reforming the healthcare system in the prison environment, kick-started by the law of 18 January 1994 relating to public health and social protection, gave responsibility to the public hospitals service for all care. Individuals in detention must have access to a standard of healthcare equivalent to that offered to the general population: in this sense, the 1994 law represented a step in the right direction in terms of public health as well as considerable progress for the rights of a specific population. The principle was reiterated by the prisons law of 24 November 2009.

However, care for this group and the improvement thereof requires not only an awareness of their specific healthcare situation, but also an understanding of the prison system and its restrictions. These two cultures whose diversity requires recognition coexist on a daily basis. Stakeholders from these public services must work together, respecting one another's specific duties but also seeking to fulfil a common goal: improving the health of detainees. A multidisciplinary approach with mutual respect is therefore essential.

4.3.3. ORIENTATION AND PROGRAMMING LAW N°2002-1138 OF 9 SEPTEMBER 2002 FOR JUSTICE (LOI N° 2002-1138 DU 9 SEPTEMBRE 2002 D'ORIENTATION ET DE PROGRAMMATION POUR LA JUSTICE)

The prison population is characterised by a high prevalence of mental health disorders, and the proportion of detainees affected is on the rise. The orientation and programming law n° 2002-1138 of 9 September 2002 for justice, in Article 48, made significant changes to the Public Health Code with a view to improving the conditions of healthcare access for detainees suffering from mental health problems. These provisions rule out the possibility of full-time hospitalisation within a prison establishment. Patients must now be sent to hospital, primarily to units which are specially adapted to take detainees (unités hospitalières spécifiquement aménagées - UHSAs). These units have been created with a view to taking in hospitalised detainees with or without their consent, for an unspecified duration, where they do not require care from a unit for difficult patients. Decree n° 2010-507 of 18 May 2010 adopted for the application of the provisions of the orientation and programming law for justice, lays out the provisions for the custody, escort and conveyance of detainees to UHSAs. In the absence of an open UHSA in the area, the hospitalisation of detainees suffering from mental health disorders should continue to be overseen by an appropriate healthcare establishment.

For detainees the law also provides for the merging of enforced hospitalisation systems (involuntary confinement and hospitalisation at the request of a third party) into a single system based on the need for care. By passing this law, the legislator sought in particular to strengthen educational action for detained minors, on the one hand ensuring the ongoing intervention of trainers in legal protection for youth and minors (PJJ) within youth prison wings, and on the other by creating new prison establishments entirely dedicated to young offenders (EPMs).

4.3.4. PRISONS LAW N° 2009-1436 OF 24 NOVEMBER 2009 (LOI N° 2009-1436 DU 24 NOVEMBRE 2009 PÉNITENTIAIRE (1))

Prisons'law ensures access for detainees to preventive care and health education, as well as quality and continuity in healthcare to a standard equivalent to that enjoyed by the population as a whole.

It reiterates the right of detainees to doctor-patient confidentiality, including during consultations, and also grants the right to a narcotics, alcohol and tobacco assessment, to a medical check-up prior to release, to a caregiver should they suffer from a disability, and to the right to meet, away from prison staff, with support persons, adults accompanying minors or volunteers intervening to help terminally-ill patients.

CONCLUSIONS

France must attach paramount importance to education as a means of preventing delinquency and facilitating the social reintegration of minors have committed offenses and as a tool for inculcating values and promoting the personal development of children and equal opportunities.

According to the CIDE, the arrest, detention or imprisonment of a child must be in conformity with the law, be a measure of last resort, and be as short as possible. Unfortunately, France is struggling to set up effective prevention policies, diversion measures or alternatives to deprivation of liberty. The arrest, detention and imprisonment of children become “first resort” measures, often children in violent environments that are hardly compatible with the Educator, protector and promoter of the best interests of the child.

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France 



NATIONAL REPORT: **Portugal**

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1. PRE-TRIAL DETENTION DEFINITION

In Portugal, the application of pre-trial detention constitutes an extraordinary liberty depriving measure and is subject to very specific legal requirements. The legal basis of pre-trial detention is laid down in Articles 27 and 28 of the Portuguese Constitution. Article 27 states that “no one may be deprived of his or her freedom, in whole or in part, except as a result of judicial application of a security measure”. Given the safeguarding of the right to liberty stated by this Article, pre-detention is considered to be a last resort, after weighing up all other options and establishing that they are inappropriate and inadequate for the case in question (Cardoso, 2012); an exceptional measure which may not be imposed or continue “where it can be replaced by bail or by any other more favorable measure provided by law” (Portuguese Constitution, 1976, Art. 28). Thus, last resort is one of the main principles underlying the system of pre-trial detention in Portugal.

2. LEGAL FRAMEWORK: SCOPE OF APPLICATION OF PRE-TRIAL DETENTION

Since the establishment of the first Portuguese legislation concerning children in conflict with the law – The Childhood Protection Act (*Lei de Proteção à Infância*) (Decree-Law of 27th of May 1911) – Portugal has a special law regarding juvenile justice and there are separate justice systems for young people and adults (Carvalho, 2014). Children above 16 years old who had committed offences “were removed from the scope of criminal law and become subject to a specialized jurisdiction” (idem, p. 3). Although 16 years old is the minimum age for criminal responsibility, 18 is the age for civil responsibility in Portugal.

The Portuguese Juvenile Justice System combines 3 levels of intervention when a minor is suspected of having committed a crime, depending on his or her age:

[A] If the minor is aged below 12 years old, he or she is considered to be in need of protection, thus being the subject of the *Promotion and Protection Law for Children and Young in Danger* (Law n.º 149/99, of 1st of September).

[B] If the minor is aged between 12 and 16, he or she will be subject of the *Youth Justice Act* (Law n.º 166/99, of 14th of September).

[C] If the minor has reached the age of 16, the minimum age for criminal responsibility in Portugal, the *Criminal Procedure Code* must be applied. So, they are subjected to the general penal law and are judged as adults. Nevertheless, there is a *Young Adult's Special Penal Regime* (Decree-Law n.º 401/82, of 23th of September) applicable to youngsters aged between 16 and 21 years old.

Sections [A] and [B] fall within the scope of 2.1. *Juvenile Justice System*, whereas section [C] fall within the scope of 2.2. *Adult Justice System*. We will focus on sections [B] and [C], in which pre-trial detention measure can be applied. Under the current juvenile justice system it is considered that below 12 years old a children's psycho-biological development requires promotion and protection measures. Therefore, a child under 12 who has committed a crime is considered to be in danger, and receives the same treatment as any other children who are in danger: promotion and protection measures under the scope of the Promotion and Protection Law for Children and Youth in Danger (Carvalho, 2014).

As stated by Carvalho (2014) "Portugal has a strict model, which does not allow for exceptions in the enforcement of criminal laws and does not foresee the prosecution of juveniles for certain offences only. Below the age of 16, it is not possible to sentence children and youth in criminal or penal terms" (p.7).

2.1. JUVENILE JUSTICE SYSTEM (12-16 YEARS OLD)

The Youth Justice Act (Law n.º 166/99, of 14th of September) is applicable to youths, between 12 and 16 years old, who have committed an offence qualified by the penal law as crime, justifying a specific educational intervention (Article 1). The juvenile justice system focus on the respect for the younger's personality, ideological, cultural and religious freedom, and the measures applied do not have a punitive purpose. Furthermore, emphasizes the prevention of re-offending and the involvement of parents/legal guardians at each stage of the juvenile proceedings, court trial and during the enforcement of the judicial measures (Carvalho, 2014).

The principles underlying the application of precautionary measures (Silva, 2013):

[A] Suitability (Article 56) - according to the preventive and procedural demands of the case.

[B] Proportionality (Article 56) - according to the gravity of the offence committed and the identified educational needs.

[C] Tipicity (Article 57) – can only be applicable the precautionary measures stipulated by law.

[D] Need (Article 58) – the imposition of precautionary measures requires a strong evidence of the offences, the probability of the application of a precautionary measure, and the probability of absconding or commitment of further offences classified as a crime.

[E] Subsidiary (Article 57) – the most serious measures can only be applicable when other measures are insufficient or inadequate.

[F] Precariousness (Article 61) – precautionary measures must be automatically revised every 2 months.

The Youth Justice Act foresees a set of educational measures (Article 4) that can be executed until the age of 21 (Article 5), and aims the youth offender's socialization and education on the fundamental values for living in society (Article 2). The measures that can be ordered by the court are:

[A] Reprimand (Article 9).

[B] Suspension of driving license (Article 10).

[C] Reparation to the victim (Article 11).

[D] Payment of economic benefits or activities in favor of the community (Article 12).

[E] Imposition of conduct rules (Article 13).

[F] Imposition of obligations (Article 14).

[G] Frequency of training programs (Article 15).

[H] Educational monitoring (Article 16).

[I] Placement in an educational center (Article 11).

The Youth Justice Act comprises several liberty depriving measures (Article 145):

[A] Pre-trial detention (*medida cautelar de guarda*).

[B] Custodial measure to carry out the young offender's psychological assessment in a forensic context (*perícia sobre a personalidade*).

[C] Detention, if the young person has been caught in 'flagrant' (*detenção*).

[D] Custodial measure (*medida de internamento*).

DETENTION BY THE POLICE (PRE-CHARGE)

Regarding minor's detention by the police, and when it is not possible to present an identification document, authorities try to communicate immediately with youths' parents, legal representatives or guardians, and can only take the responsibility of identifying the juvenile, who cannot remain more than 3 hours in a police station for this purpose (Law n.º 166/99, of 14th of September, Article 50). Within 48 hours, the juvenile caught in flagrant must be presented to the judge for interrogation or application of a precautionary measure (Law n.º 166/99, of 14th of September, Article 51).

When the juvenile is caught in flagrant, the detention is only possible when he or she has committed (Article 52, n.º 2):

- an offence classified as a crime against people corresponding to a maximum
- prison sentence equal or higher than 3 years;
- an offence classified as a crime corresponding to a maximum prison sentence equal or higher than 5 years;
- two or more offences classified as crimes corresponding to a maximum prison sentence of more than 3 years.

If it is not possible to immediately present them to the judge, juveniles are firstly entrusted to their parents, legal representatives, guardians, or to the institution where they are placed (Law n.º 166/99, of 14th of September, Article 54, n.º 1). When this is insufficient to guarantee their presence before the judge or to ensure the detention purposes, the minor is placed in the closest educational center or in appropriate facilities of police authority. However, youths' detention in these facilities is a last resort, only if there is not an available educational center with semi-open or closed regime. In any case, shall be given medical, psychological and social assistance, according to their age, sex and individual conditions (Law n.º 166/99, of 14th of September, Article 54, n.º 2).

According to the Regulation of Detention Material Conditions in Police Facilities (2015) and the Regulation of Detention Conditions in Judiciary Police, Courts, and Public Prosecution Services Facilities (2009), during detention in these facilities, and until be presented to a judge, youths shall be treated with humanity and respect for their dignity, without any discrimination, including ascendance, gender, race, language, place of origin, religion, political or ideological convictions, education, economic status, social status or sexual orientation, and must receive a treatment appropriate to their status of unconvicted person and, whenever possible, be separated from prisoners in execution of a sentence.

Moreover, whenever possible, youths should be placed in individual compartments, be kept in sight, and their separation according to gender or due to contagious disease is guaranteed. The capacity of the cell should not be exceeded, and each youth has a single bed with appropriate clothing. Youths must be kept in sight when are arrested with warrant for attendance at a judicial act, and may not be placed in a cell when they are conducted to police facilities for coercive identification purposes.

In each police/judicial facility, a panel with information on the rights and duties of the arrested and the accused person should be posted on clearly visible places. Information on the rights to appoint a lawyer and to communicate with family, a person of their confidence, embassy, or consulate, as well as a leaflet containing a brief indication of their rights and duties, should be communicated in an understandable language, and requesting the presence of an interpreter if necessary. Youths must be allowed to immediately contact a lawyer or defender, to immediately inform a relative or person of confidence about their situation, and foreign detainees have the right to contact immediately with the consular authorities of their countries, the service responsible for the detention must provide a phone to detainees.

Regarding health needs, and notwithstanding the right to consult a doctor of their choice and at their own expense, youths can be subjected to medical examination under specific circumstances (e.g., injury, physical or mental illness). In case of specialised care, youths should be moved to an appropriate health facility or be ensured with the medication previously prescribed, adopting all measures to protect detainees' life and health.

PRE-TRIAL DETENTION (POST-CHARGE)

According to the Portuguese legislation, this measure can only be applied to youths aged between 12 and 16 years old that have committed an offence with a maximum prison sentence of more than five years, or when two or more committed offences are classified as crimes against people punishable by a maximum prison sentence in excess of three years (Carvalho, 2014).

Moreover, the law establishes that there are three pre-conditions that must be cumulatively fulfilled to impose the pre-trial detention (Law n.º 166/99, of 14th of September, Article 58), and when these conditions are no longer applicable the measure has to be extinguished (Law n.º 166/99, of 14th of September, Article 62):

- [A] Strong evidence of the offences.
- [B] Probability of the application of a precautionary measure.
- [C] Probability of the young person will abscond or commit further offences classified as crimes.

Pre-trial detention is applied by a judge, and only the public prosecutor can request the enforcement of this measure (Law n.º 166/99, of 14th of September, Article 59). Also, a panel composed of three judges (one professional and two social specialised judges) is required for this judicial decision (Law n.º 166/99, of 14th of September, Article 30). Pre-trial detention measure in an Educational Center has a maximum duration of 3 months, which can be extended until 6 months in the most complex cases (Article 60), and must be automatically revised every 2 months (Law n.º 166/99, of 14th of September, Article 61). Juvenile offenders' pre-trial detention constitutes the more restrictive and impactful measure, and must be used as a last resort, only applicable if other precautionary measures are insufficient or inadequate (compliance of Articles 10.º and 11.º of Directive (EU)2016/800).

Pre-trial detention consists in juveniles' placement in Educational Centers, state custodial facilities for youth offenders, in the closed or semi-open regimes, according to the level of deprivation of the youth's liberty, and organised into residential units with secure accommodations (Article 146):

[A] The semi-open regime (Law n.º 166/99, of 14th of September, Article 168) is applicable to juveniles that have committed an offence against people that corresponds to a prison sentence in excess of three years or two or more offences punished by a prison sentence in excess of three years. A young person is educated and attend educational, training, employment, sports and leisure activities inside the center, but may be allowed to attend them outside, and may be allowed to enjoy holidays with family as defined in the Personal Educational Project approved by the youth court. A semi-open residential unit accommodates the maximum of 12 juveniles. (Carvalho, 2014, p. 18).

[B] The closed regime (Law n.º 166/99, of 14th of September Article 169) is applicable to a young person at the age of 14 or older, who has committed an offence corresponding to a prison sentence of more than eight years or when the committed offences correspond to crimes against people, punished with prison sentences of more than five years. A psychological assessment in forensic context is required before the judicial decision is taken. Young people live, are educated and attend all the activities inside the center, and going outside is strictly limited to attend judicial duties or due to health needs or other equally ponderous and exceptional reasons, and always under surveillance. A closed residential unit accommodates the maximum of 10 juveniles. (Carvalho, 2014, p. 18).

Although the law does not envisage a specific therapeutically **custodial** measure, youth offenders with mental health issues that need to be therapeutically addressed, will receive psychiatric and/ or psychological treatment during detention (Bolieiro, 2010 cit. in Carvalho, 2014).

Regarding the quantitative evolution in the enforcement of liberty depriving measures, and accordingly to the General Directorate of Reintegration and Prisons' Services (DGRSP), Table 1 shows a progressive increasing in the number of youth offenders placed in Educational Centers

between 2008 (n = 181) and 2012 (n = 267). Since then, and particularly in 2015 (n = 151), we observe a significant reduction on the application of these type of measures. In 2015, most youths in Educational Centers were executing liberty depriving measures in a semi-open regime (66%), and most of them were aged between 15 and 18 years old (n = 122).

Specifically in respect to [pre-trial detention](#) we observed a gradual decrease in the application of this measure between 2008 (n = 31) and 2015 (n = 11), which is in compliance with national and international regulations on juvenile justice. In 2015, most juveniles were placed in semi-open regime (55%).

Table 1: Official data about liberty depriving and pre-trial detention measures

	2008 (Dec.)	2009 (Dec.)	2010 (Dec.)	2011 (March)	2012 (Oct.)	2013 (Dec.)	2014 (July)	2015 (Dec.)
Open Regime	17	27	23	28	33	36	29	27
Open Regime Pre-trial detention	-	-	-	-	-	-	-	-
Semi-open Regime	115	130	155	179	193	168	169	99
Semi-open Regime Pre-trial detention	15	21	16	22	15	4	10	6
Closed Regime	49	47	48	47	41	47	52	25
Closed Regime Pre-trial detention	16	12	13	5	8	10	11	5
Total	181	204	226	254	267	251	250	151
Total Pre-trial detention	31	33	29	27	23	14	21	11

Source: Own elaboration based on data provided by the Directorate General for Reintegration and Prison Services (DGRSP)

2.2. ADULT JUSTICE SYSTEM (16-18 YEARS OLD)

Despite in Portugal the age to reach civil majority is 18 years old, following the concept of child defined by the Committee on the Rights of the Child, youths above the age of 16 who commit offences fall under the general penal law and are regarded and judged as adults (Decreto-Lei n°400/82, of 23th of September, Penal Code, Art.19).

Nevertheless, the adult criminal justice system has a Young Adults' Special Penal Regime (Decree-Law n. ° 401/82, of 23th of September) applicable to youths aged from 16 to 21 years old. The preamble of the Young Adults' Special Penal Regime states that.

The necessity to find adequate measures to respond to young people's acts which are defined by law as being of criminal nature. The Criminal Law for young adults became a separate category, relating to a life cycle which corresponds to a phase of social latency and making delinquency a temporary and transitional phenomenon. (Decree-Law n.º 401/82, of 23th of September).

The Young Adults' Special Penal Regime foresees a special mitigation of the penal sentence if the judge considers that there are more advantages to young adult's social rehabilitation (Article 4). Also, a set of corrective measures can be applied as an alternative to a prison sentence lower than 2 years to youths between 18 and 21 years old at the time of the offence (Article 6):

- [A] admonition;
- [B] imposition of obligations;
- [C] fine;
- [D] detention in a detention center.

Concerning the last corrective measure – detention in a detention center – it is not possible to apply it given these facilities were never built. In 2007, house arrest (including electronic monitoring) was added as a measure eligible for application to young adult offenders (Dunkel & Pruin, 2012, cit. in Carvalho, 2014).

DETENTION BY THE POLICE (PRE-CHARGE)

Regarding detention by the police, and because there are no specific rules in the Portuguese Criminal Procedural Code (PCPC) for minors suspects of having committed a crime, general rules apply. At the moment of detention, the suspect should be treated as a defendant (*arguido*) (Article 58, n.º 1), and if during the inquiry, a justifiable suspicion is created that the suspect has committed a crime, the inquiry must be immediately suspended and the suspect must then be treated as a defendant (*arguido*) (Article 59, n.º 1).

When an individual is suspected of having committed a crime, the police may identify him or her, but only in the case they have good grounds to justify the request, and the suspect must be informed of the circumstances that lead to the identification procedure (Article 250, n.º 1 and 2). If a suspect is not able to provide identification, the police may take him or her to the police station for the time needed to obtain such identification, provided that does not exceed 6 hours (Article 250, n.º 6). The police may question the suspect to obtain information related to the crime (Article 250, n.º 8), and the suspect has the right to contact anyone he or she trusts (Article 250, n.º 9).

When a crime punishable by imprisonment is being committed, any police or judicial authority may detain the suspect and conduct him or her to the court within 48 hours (Articles 254, n.º 1, and Article 255, n.º 1). Once the defendant is in court, a trial may take place immediately, or a judicial hearing may take place in order to decide whether a cautionary measure should be applied to him/her (Article 254, n.º 1). Detention is also possible through a detention warrant or by police decision (without a warrant) in case (Article 257, n.º 2):

- [A] the suspect or *arguido* has committed a crime for which pre-trial detention is applicable by law;
- [B] there is risk of absconding;
- [C] it is not possible for a judicial authority to intervene due to the urgency and danger of the situation.

Also, whenever the police detain a suspect or *arguido*, they should immediately inform the judicial authority (Article 259), and whenever a detention does not respect the conditions mentioned above, the suspect must be immediately released (Article 261).

The rules established by the Regulation of Detention Conditions in Police Facilities (Despacho nº 5863/2015) and the Regulation of Detention Conditions in Judiciary Police, Courts, and Public Prosecution Services Facilities (Despacho nº 12786/2009), which were mentioned above, also apply to youths between 16 and 18 years old.

PRE-TRIAL DETENTION (POST-CHARGE)

General rules of the PCPC (Decree-Law nº 78/87,17 of February) are also applied to pre-trial detention of minors in criminal proceedings. This liberty depriving measure can only be imposed by a judge, and should only be applicable when all other measures are deemed insufficient or inadequate, and when there is a suspicion that the individual has committed one of the following crimes (Article 202, n.º 1):

- [A] crimes punishable by more than 5 years of imprisonment;
- [B] violent criminality;
- [C] crimes of terrorism, violent or highly organised criminality punishable by more than 3 years of imprisonment;
- [D] the defendant entered or remained illegally in national territory or a procedure of expulsion is pending.

Moreover, pre-trial detention must comply with principles of legality, need, suitability and proportionality, (Articles 191, 193), and should only be applied when a suspect already has the status of *arguido* (Article 192) and if there is (Article 204):

- [A] risk of absconding;
- [B] danger of damaging the evidence;
- [C] risk of commission of other crimes or disturbing public order.

The defendant has the right to appeal against this decision (Article 219), and the decision should be communicated immediately to a relative or person in a position of trust, designated by the defendant (Article 28, n.º 3 of the Portuguese Constitution) (compliance of article 5.º of Directive (EU)2016/800. Furthermore, this measure must be automatically revised every 3 months (Article 213, n.º 1), and pre-trial detention is extinguished after (Article 215, n.º 1):

- [A] four months without having been charged;
- [B] eight months without instructory decision;
- [C] one year and two months without conviction in 1st instance;
- [D] one year and six months without a final conviction.

These periods can be extended, respectively, for six months, ten months, a year and six months and two years, in cases of terrorism or violent or highly organised crime, or when a crime is punishable by a maximum prison sentence of more than eight years, or crimes as:

- vehicle theft or forgery of its documents or identifying elements;
- counterfeiting currency, credit securities, securities fraud, stamps and similar or their movement;
- fraud, fraudulent insolvency, damaging administration of public or cooperative sector, forgery, corruption, embezzlement or economic participating in business;
- illicit benefits from money laundering;
- fraud in obtaining or embezzlement of subsidies, grants or credit;
- crimes covered by convention on safety of air or sea navigation) (Article 215, n.º 2).

Moreover, these periods can be extended, respectively, for a year, a year and four months, two years and six months and three years and four months, when the procedure is for one of the crimes referred above, and reveals an exceptional complexity, in particular due to the number of defendants or offended or to the highly organised nature of the crime (Article 215, n.º 3).

The maximum length of pre-trial detention includes periods in which the defendant has been subject to house arrest (Article 215, n.º 8).

The duration of pre-trial detention measure applied to minors aged between 16 and 18 years old *does not seem to be completely in accordance with Article 10.º of Directive (EU)2016/800* of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings, it seems to greatly exceed the recommendation as a measure to be applicable for “the shortest appropriate period of time”.

Finally, since there are no rules preventing the detention of minors together with adults, one of the major problems that has been identified in the Portuguese justice system is that at the ages of 16 or 17 youths can be sent to prison and can be placed with adults in the same facilities (Muncie, 2008; Kilkely, 2011). In 2014 there were 88 minors between 16 and 18 years old in pre-trial detention placed in those facilities.

3. RIGHTS OF MINORS SUSPECTED OR ACCUSED IN CRIMINAL PROCEEDINGS

The Youth Justice Act (12-16 years old) and the PCPC (16-18 years old) establish several legal rights to protect minors suspected or accused in criminal proceedings. Youths can exercise these rights throughout all judicial procedures, from the moment they are arrested by the police or the judicial authority, to their placement in educational centers or prisons, depending on their age.

3.1. MINORS BETWEEN 12 AND 16 YEARS OLD

The Youth Justice Act also guarantees to the young person a specific set of rights through all legal proceedings (Article 45), which is in compliance with the Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings. Therefore, juvenile offenders have the right to:

- [A] Be heard on their own initiative or when requested by the judicial authority.
- [B] Not respond to questions asked by any entity about the facts or about the content of their statements.
- [C] Not answer about their conduct, their character or their personality.
- [D] Be assisted by an expert in psychiatry or psychology whenever required to evaluate the need for the application of an educational measure (compliance of Article 7.º of Directive (EU)2016/800).
- [E] Be assisted by the defence lawyer in all proceedings and, when arrested, communicate even in private with him (compliance of Article 6.º of Directive (EU)2016/800).
- [F] Be accompanied by their parents, legal representatives or guardians, excepting decision based on their interest or process needs.
- [G] Provide evidence and require diligences.
- [H] Be informed about their rights (compliance of Article 4.º of Directive (EU)2016/800).
- [I] Appeal, under this law, against adverse decisions.

The Portuguese legislation also takes into account youth offenders' needs and all the civil, political, social, economic, and cultural rights and guarantees that are legally granted and that are compatible with the deprivation of liberty.

According to the *Youth Justice Act* (Articles 171, 174, 175), and in compliance with the rights established in the Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings, during their placement in the Educational Center youths have the right:

- [A] that the center acts in the best interests of their life, physical integrity and health;
- [B] to attend school;
- [C] to preserve their dignity and privacy;
- [D] to contact, in private, the judge, the public prosecutor and the defence lawyer;
- [E] to maintain authorized contact with the outside world, by different means (letter, phone, visits);
- [F] to have hospital assistance whenever their health needs require (compliance of Article 8.º of Directive (EU)2016/800);
- [G] to be heard prior to the imposition of any disciplinary measure;
- [H] to be informed in a personal and appropriate manner;
- [I] to ideological and religious freedom.

Moreover, in compliance of Article 5.º of Directive (EU)2016/800, during youth's placement in the Educational Center parents, legal representatives or guardians maintain all the rights and responsibilities concerning the minor, since they are compatible with the measure applied. Moreover, parents, legal representatives or guardians have the right to be informed about all important issues regarding the minor's situation (Article 173).

Finally, for the imposition of pre-trial detention measure, the auxiliary body of the judiciary administration concerning the enforcement of juvenile justice measures (DGRSP) it is responsible for the elaboration of a youth social report (information about the young person personality, conduct, socio-economic, educational and family background), which has to include a psychological assessment in the case of semi-open regime, and a forensic psychological assessment is mandatory in the case of closed regime (Article 71) (compliance of Article 7.º of Directive 2016/800/EU).

3.2. MINORS BETWEEN 12 AND 16 YEARS OLD

Regarding the rights of minors suspected or accused in criminal proceedings, throughout all phases of judicial process youths between 16 and 18 years old have the right to (Article 61 of the PCPC):

- [A] Be present at the procedural acts that directly refer to them.
- [B] Be heard by the court or the judge whenever they should take any decision affecting them.
- [C] Be informed about the facts against them before making statements to any entity.
- [D] Not respond to questions asked by any entity about the facts or about the content of their statements.
- [E] Appoint a defence lawyer or require the appointment of a defender.
- [F] Be assisted by the defence lawyer in all proceedings and, when arrested, communicate even in private with him (compliance of Article 6.º of Directive (EU)2016/800).
- [G] Provide evidences and require diligences.
- [H] Be informed about their rights (compliance of Article 4.º of Directive (EU)2016/800).
- [I] Appeal, under the law, against adverse decisions.

According to the General Regulation of Prisons (Decree-Law n.º 51/2011, of 11th April), at the moment they enter into the prison defendants:

- are allowed to make a free call to a relative or a trustworthy person and to the lawyer (Article 8, n.º 1) (compliance of Article 5.º of Directive (EU)2016/800;
- are informed about their rights and duties, which are explained and translated, if necessary (Article 9, n.º 1) (compliance of Article 4.º of Directive (EU)2016/800;
- have the right to immediate medical care if necessary, as well as if they present pain or withdrawal effects of psychoactive substances or alcohol (Article 10, n.º 1) (compliance of Article 8.º of Directive (EU)2016/800;
- are assessed within 72 hours by the services responsible for monitoring the execution of the sentence and by the surveillance and security services, in order to identify specific needs and to obtain further information about the defendant's particular situation (Article 19, n.º 1) (compliance of Article 7.º of Directive (EU)2016/800.

4. RIGHT TO SPECIFIC TREATMENT IN CASE OF DEPRIVATION OF LIBERTY

4.1. MINORS BETWEEN 12 AND 16 YEARS OLD

The General and Disciplinary Regulation of the Educational Centers (Decree-Law n.º 323-D/2000, of 20th of December) establishes an important set of rules and procedures to be accomplished during youths' placement in Educational Centers, which are in compliance with Article 12.º of Directive (EU)2016/800. Therefore, "to fulfil the objectives of the judicial intervention, each educational center establishes partnerships with various institutions and agencies in the community (schools, health centers and hospitals, recreational, sports, and cultural associations, NGO, religious and local authorities, and others services)" (Carvalho, 2014, p. 19).

CONTACT WITH PARENTS/FAMILY/FRIENDS

Juveniles can have visits with their parents, legal representatives, guardians, or other meaningful persons during pre-trial detention (Article 39):

- Visits are authorized by the Director of the Educational Center and the information about each visitor is registered (e.g., identification, day/time/duration of the visits).
- With a periodicity never less than every 2 months, youths can have a special visit with an extended period of time or with more visitors than usual.
- Youths have visits at least once a week, and for a period not less than two hours a week (this time can be used in one or more than one visit).
- Each visit should not exceed one hour and may, in exceptional cases, be extended up to a maximum of two hours.
- They can receive the maximum of three visitors at the same time.
- Visits take place in a room or, whenever is possible, in a place outside with appropriate conditions of comfort and privacy.

Furthermore, youths are encouraged to maintain correspondence with family and friends, in order to strengthen the emotional and social ties and to promote the development of their communication skills (Article 43). In specific periods of the day and with a maximum duration established, youths can also make and receive telephone calls (Article 44).

EDUCATION/TRAINING

Youth offenders in pre-trial detention engage in a daily diversified program of activities, which aims the development of social skills and the satisfaction of physical and psychological development needs, according to their age level (Law N° 166/99, 14th September, Art.165). Particularly, the General and Disciplinary Regulation of the Educational Centers (Decree-Law N° 323-D/2000, 20th December) states that:

Youths have a daily set of mandatory training activities, which take into account their age, characteristics, and placement regime and purposes (Article 26).

The school training program aims to provide basic educational skills that allow them to continue their studies or the integration in working life (Article 27).

When youths' placement does not exceed 6 months, the attendance of the regular program of school education can be replaced by activities in a study room with individualized guidance, in articulation with other activities that best fit the duration of the intervention and its educational needs and of social inclusion (Article 27).

Socio-cultural activities and sports programs are a mandatory complement of school training programs, vocational guidance and professional training (is mandatory to attend at least two regular activities a week, with a minimum of 5 hours as a whole), focusing on diversified and attractive areas for youths, in order to stimulate their creativity and to develop their skills (Article 28).

Educational Centers develop vocational guidance and professional training programs to prepare youths to elicit or develop vocational options, acquire basic work habits, develop skills and competencies and to obtain qualification in professional areas, considering youths' interests and the needs and employment opportunities; youths attend activities at least 15 or 30 hours a week (Article 29).

When youths' placement does not exceed 6 months the attendance of professional training programs can be replaced by occupational activities and professional orientation that best fit the purpose and duration of the intervention and its training needs and of insertion social, in conjunction with school education (Article 29).

HEALTH CARE

During pre-trial detention youth offenders have the right to an appropriate hospital and medical care, including regular clinical supervision (Article 56):

- medical exams;
- medical treatments;

- medication;
- vaccination;
- screenings.

4.2. MINORS BETWEEN 16 AND 18 YEARS OLD

The General Regulation of Prisons (Decree-Law n.º 51/2011, of 11th April) also establishes an important set of rules and procedures to be accomplished during the enforcement of pre-trial detention measure, which are in compliance with Article 12.º of Directive (EU)2016/800.

CONTACT WITH PARENTS/FAMILY/FRIENDS

During the period of pre-trial detention young adults can have visits twice a week, preferentially at the weekend, for a period of one hour each visit, and can receive three visitors at the same time (this limit does not include children under 3 years) (Article 111, n.º 1 and 4). Visits take place in the parlor, always under direct visual control of the security services and, whenever possible, under video surveillance system (Article 114, n.º 1 and 3).

After six months in detention, inmates can have extended visits (two hours maximum and preferentially at the weekend) with family members and significant others, on an important day or for a particular human or religious motive (e.g., birthday) (Article 112, n.º 1, 2 and 5).

Inmates can receive conjugal visits if at the moment of incarceration they are married or maintain a stable affective relationship or similar to spouses with the person that regularly visit the inmate or keep regular correspondence with him (Article 120, n.º 1). Both inmate as the visitant must be older than 18, unless they are married with each other (Article 120, n.º 3), and they can benefit from a conjugal visit once a month with a maximum duration of three hours (Article 122, n.º 1 and 4). Conjugal visits take place in appropriate facilities, provided with furniture and suitable conditions, including privacy (Article 123, n.º 1).

According to specific rules, inmates can also send and receive correspondence (Article 126) and packages (Article 127), and can make a phone call a day, with a maximum duration of five minutes, and a phone call a day to their lawyer or solicitor, with the same duration, from cabins installed for this purpose, provided with electronic locking systems to allow inmates' access only to authorised contacts (Article 132, n.º 1 and 2).

Inmates are not allowed to have cell phones (Article 132, n.º 2), or to receive phone calls from the outside, exceptionally for reasons of particular human meaning, as in the case of serious illness or death of a close relative or a person with whom the inmate maintains a similar emotional bond, or to solve urgent professional issues (Article 134, n.º 1 and 2).

EDUCATION/TRAINING

During pre-trial detention, and according to specific rules, inmates can also benefit from:

- educational and training activities, vocational training actions, and professional activities (Articles 71, 74 and 78);
- occupational activities (crafts, intellectual, artistic) (Article 89);
- specific programs, which take into account the profile and characteristics of the inmates (e.g., promote the acquisition or strengthening of personal, social and emotional skills, promote changes in behavior and control of aggression) (Article 91);
- cultural and recreational activities (Article 93);
- to a reading service and a library (Article 94);
- sports activities (Article 95 and 96).

HEALTH CARE

Concerning health care and medical assistance, from the moment inmates enter into the prison they have the right to:

- immediate medical care is guaranteed if necessary, as well as if they present pain or withdrawal effects of psychoactive substances or alcohol (Article 10);
- be observed by a nurse within 24 hours, and to benefit from a medical assessment within 72 hours, giving particular attention to the presence of mental disorders, suicide risk factors, abstinence syndromes, signs of aggression or Physical/sexual violence, transmittable, contagious, or chronic diseases (Article 53, n.º 1, 3 and 4);
- receive information and counseling on health issues (Article 54);
- benefit from an elaborated plan to promote health and to prevent disease, with particular focus on the reduction of risk behaviors (Article 55);
- benefit from health care provided inside the prison and, whenever is necessary, in outside health facilities (Article 58, n.º 1);
- be observed according to the periodicity determined by the doctor and, at least, once a year (Article 58, n.º 4);
- pay themselves to be assisted in prison's clinical services by a doctor of their trust (Article 60, n.º 1 and 2).

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NATIONAL REPORT: **Spain**

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Throughout the following report, an analysis of the current legislation of Spain is presented, referring to the pre-trial measures that imply the deprivation of liberty within the context of juvenile justice systems. Additionally, an analysis is carried out on the application of the precepts contemplated in the Directive (EU)2016/800 on the procedural safeguards for children suspected or accused in criminal proceedings and their application in Spanish legislation. Specifically, the articles related to pre-trial detention are studied.

In order to achieve this purpose, it is necessary to begin with giving detailed information about the legislation that is applied in Spain to those who are younger than eighteen years old, and that can be held criminally responsible for their possible involvement in a criminal act and to apply a precautionary measure implying deprivation of liberty.

Spain has a specific normative which regulates minors' criminal responsibility, which does of course not correspond to the criteria and principles that are applied to adults, in order to adapt these to the best interest of the child and the rest of principles and the norms contemplated in the international instruments in matter of juvenile justice, establishing a system of penalizing educational response directed to the purposes of re-education and reintegration of the minor.

This normative is essentially formed by the Organic law 5/2000, January 12th, Regulating the Criminal Responsibility of Minors (*Ley Orgánica 5/2000, de 12 de enero, Reguladora de Responsabilidad Penal de los Menores*; from now on will be cited as LORPM) and its regulation of the development of Royal Decree 1774/2004, July 30th (*Real Decreto 1774/2004, de 30 de julio*). Nevertheless, in order to deal with certain issues, the LORPM derives from the general regulation established for adults. For this reason, regulation for adults will also be taken into account in this report. Additionally, the existing jurisprudence and the circulars issued by the State Prosecutor's Office will be taken into account, which contribute to a better interpretation and application of the existing legislation.

Thus, the applicable normative is:

Spanish Constitution of 1978 (*Constitución Española de 1978 [CE]*)

Organic Law 1/2015, of March 30, which modifies the Organic Law 10/1995, of November 23rd, of Criminal Code (*Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*).

Royal Decree of September 14th, 1882 which approved the Criminal Indictment Law and its corresponding legislative reforms (*El Real decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal y sus respectivas reformas legislativas [LECrim]*).

Organic Law 8/2015, of July 22nd, regarding the modification of systems of protection of infancy and adolescence.

Organic Law 5/2000, of January 12th, Regulator of the Criminal Responsibility of Minors (*Ley Orgánica 5/2000, de 12 de enero, Reguladora de la Responsabilidad Penal de los Menores* [LORPM]), modified by the Organic Law 7/2000, of December 22nd, by the Organic Law 15/2003, of November 25th, and by the Organic Law 8/2006 of December 4th.

Royal Decree 177/2004, of July 30st, which approves the Regulation of the Organic Law 5/2000, of January 12th, Regulator of the Criminal Responsibility of Minors (*Real Decreto 177/2004, de 30 de julio, por el que se aprueba el Reglamento de la Ley Orgánica 5/2000, de 12 de enero, reguladora de la responsabilidad penal de los menores* [RLORPM]).

As indicated above, in addition to the already mentioned juridical norms, it is also necessary to consider those documents which, depending on the issuing institution (State Prosecutor's Office), have to be permanently considered when interpreting the current legislation:

Circular 3/2013, of March 13th, regarding the criteria of the application of therapeutic detention measures in the juvenile justice system.

Circular 9/2011, of November 16th, regarding the criteria for the standards in the specialized action of the Public Prosecutor concerning minors' reform.

Circular 1/2007, of November 23rd, regarding the interpretative criteria after the 2006 reform of juvenile criminal legislation.

1. PRE-TRIAL DETENTION: DEFINITION

It is important to point out that in Spain it is possible to have two situations of pre-trial detention: *arrest (pre-charge stage)* and *cautionary internment measure (post-charge stage)*. Although both situations imply a temporary restriction of the fundamental right of liberty, as stated in Article 17 of the Spanish Constitution, they serve different purposes, and call for different application premises, making it necessary to analyse each of them separately.

Thus, starting with *arrest (pre-charge stage)*, it is important to point out that its regulation is different from that of adults, defining as minors those who are more than 14 years and under 18 years old, and could have participated in committing a criminal act.

Minors can be arrested under two circumstances: the first one, when the minor escapes from the house of the person exercising parental authority to make it available to them or, if appropriate, under the supervision of the institutions of protection if the minor is in a situation of helplessness. The second, derived from the possible commission of a criminal offense. Nevertheless, let us limit the analysis only to the second case, since the aim of the project of which this report is a part focuses on minors suspected or accused in criminal proceedings.

There are two situations that can imply a pre-trial detention of minors during a criminal process:

ARREST (PRE-CHARGE STAGE)

CAUTIONARY INTERNMENT MEASURE (POST-CHARGE STAGE)

The *arrest* is a personal cautionary measure that consists in a short deprivation of liberty, temporarily limited, with the aim of making the person under arrest available to the disposition of the judicial authorities, which will have to decide, respecting legal conditions, on their personal situation, either prolonging the period of deprivation of liberty (cautionary internment measure), adopting a less cumbersome cautionary measure, or re-establishing the right of liberty in its natural meaning, in case of missing requirements that regulate the personal cautionary legal custody (Montero, Gómez, Montón, & Barona, 2013, p.469).

However, *cautionary internment measure* consists in the temporary deprivation of liberty of a minor when rational evidence of the commission of the crime exists and also a risk of evading or obstructing the action of justice by the minor or of threatening the legally protected interests of the victim. The adoption of a pre-trial cautionary interment measure will be imposed by the

judicial authority according to the seriousness of the facts, the personal and social circumstances of the minor, the risk of absconding and, in particular, if a crime of the same nature has been committed by the minor before.

The cautionary measures of internment serve a triple purpose in accordance with Art. 28 of the LORPM: first, to guarantee the success of the judicial process and of the effective compliance of the sentence; second, for the custody and defence of the minor; third, to protect of the victim.

As reflected by the State Prosecutor's Office in Circular 1/2007 regarding the interpretative criteria after the reform of criminal legislation, the principles that regulate pre-trial detention are exceptionality, subsidiarity, provisionality and proportionality.

Thus, the principle of exceptionality reminds the judges that minors have to be at liberty during the trial and that cautionary internment measure can only be used when the exceptional circumstances described below occur.

To the principle of exceptionality that of subsidiarity must be added. The latter refers to the fact that, in addition to the fulfilment of the requirements to impose the pre-trial detention, it has to be ensured that no other less grave option for the minor can be possible.

The third principle is that of provisionality, meant as the obligation to make a constant evaluation of the assumptions and the aims of the measure, in order to ensure that when these assumptions and aims are not present, the cautionary measure cease.

At last, the State Prosecutor's Office states that cautionary measures have to be regulated also by the principle of proportionality. Once accepted the necessity of imposing a measure of cautionary internment, its regime and its time have to be proportionated to the final purpose and gravity of the investigated facts.

Also, it is important to mention other principles that regulate the imposition of this type of measures, such as the principle of jurisdictionality, instrumentality and homogeneity (Noya, 2012).

Thus, the principle of jurisdictionality states that it can only be adopted by the competent judicial authority and, exceptionally, the arrest can be carried out by different authorities, but immediately noticed to the judicial authority.

On the other hand, the principle of instrumentality refers to the fact that this kind of measures do not have a purpose per se, rather they are instruments of the criminal proceeding, and therefore can be adopted only when the main trial is being carried out and have to be left without effect when the main proceeding is concluded. In this regard, Varela and Ramírez (2010) claim that "the

legitimacy of preventive detentions¹ lies in its instrumental nature of the criminal proceeding”, in the sense that when “police officers make an arrest under these precepts, they do not do it for a supposed administrative legal authority, but they do it as officers of the judicial police, as a consequence of the commission of a punishable act and according to the establishment of a subsequent criminal proceeding” (p.210). Therefore, the officers fulfil the function of auxiliary authority of criminal jurisdiction.

The principle of homogeneity means that some kind of relation has to exist between the cautionary measure and the punishment that corresponds to the crime allegedly committed by the minor.

All of these principles have to be taken into account when imposing this kind of measures, without forgetting that the main principle regulating the Spanish Juvenile Justice System is the best interest of the minor, as reflected in the explanatory memorandum of LORPM and in many of the precepts that integrate it.

¹ Preventive detention is the term used by the authors to refer to the deprivation of liberty carried out by authorities and police forces (arrest).

2. LEGAL FRAMEWORK. SCOPE OF APPLICATION OF PRE-TRIAL DETENTION

2.1. MINIMUM AND MAXIMUM AGE OF APPLICATION

Following the suggested distinction between police arrest and cautionary internment it is necessary to point out the following requirements regarding the maximum and the minimum age for the application.

In relation to the *police arrest*, in Spain the legal system does not establish the maximum and the minimum age for the application, therefore every person can be arrested regardless the age if there is evidence for his/her participation in the commission of a crime and she/he is susceptible to be criminally responsible in accordance to the LORPM (minors) and the Criminal Code (adults). A priori the absence of a minimum limit of age for the arrest does not concur with the age limits established in Spain for the criminal responsibility of the minors, which is placed at 14² years old. Nevertheless, this discrepancy between the minimum age of detention and the minimum age of criminal responsibility corresponds to the purpose of detention, which will vary if the minor is younger or older than 14 years old. Thus, when it is about a person that is over 14 years old and under 18, the final purpose of detention will be, on one hand, to clarify the criminal offences, and, on the other hand, its appearing before the competent judicial authority in order for it to adopt appropriate measures.

Conversely, when the detained person is younger than 14 years old, even when derived from the commission of a crime, the purpose will be making them available to the legal representatives (mother or father, in case of their missing, legal guardian) or to the protection system if considered necessary. In this respect, Article 3 of the LORPM establishes that when the crimes are committed by children younger than 14 years old, they will not be held responsible as accorded to LORPM, rather the norms of protection of the minors will be applied. Therefore, the Prosecutor's Office will have to refer to the public entity of minors' protection in order to evaluate their situation to adopt the appropriate protection measures.

² The maximum and the minimum age limit of the criminal responsibility of minors in Spain are fixed on 14 and 17 years old, respectively (age referred to the commission of a crime as indicated in Article 1 of the LORPM). That is, only those minors who committed a crime between 14 and 17 years old will be criminally responsible. Thus, it is important to point out that within this age range, the attributed responsibility is not the same for the minors that are 14 or 15 years old, at the time of committing a crime, and those who are 16 and 17 years old, because in the latter case (16 or 17), the criminal consequences will be more severe. Also it is noteworthy the fact that it is possible that a young person older than 18 years old can be treated as a minor (that is to say, the received criminal treatment will be in accordance with the LORPM assumptions), as long as the crime had been committed before reaching the legal age.

Regarding the *cautionary internment*, taking into account LORPM application and its jurisdiction criteria, it will be applied to those who are older than 14 years old and younger than 18 that at the time of committing a presumed crime will find themselves in this age range. Thus, in accordance with these age limits, the application of the cautionary internment will only be possible if the minor is older than 14 years old, given that if the crime is committed before this age, there will be no criminal responsibility and therefore a cautionary measure of this nature will not be applied.

However, the cautionary measure may be applied to a young person over 18 years old, provided that that kind of measure is applied for a crime committed before reaching the legal age and, therefore, it will be demanded the responsibility in agreement with the LORPM.

2.2. PREMISES OF APPLICATION OF PRE-TRIAL DETENTION

In this case of *arrest*, the Judicial Police can detain a minor when situations indicated in Art. 492 of the Criminal Procedure Code concur and when these situations are related to Art. 490 of the same Code and given the particularities of our system of minors' criminal responsibility demand:

To those who try to commit a crime, at the time of committing it.

To the criminal caught in the act of committing a crime.

To those who would abscond from the centre in which she/he was waiting to be moved to the penal centre or the place in which s/he has to serve the sentence imposed by a final judgement.

To those who would abscond while being moved to the penal centre or the previously mentioned place.

To those who would abscond being detained or interned with pending pause.

To those who are accused or convicted and trying to rebel.

Regarding the *cautionary internment*, in Article 28 LORPM establishes, as general rules to impose a cautionary measure, that there is rational evidence of a commission of a crime and the risk of evading and obstructing the action of justice by the minor or of threatening the legally protected interests of the victim. In addition, in order to adopt a cautionary internment the following aspects are taken into consideration (Art. 28.2 LORPM):

The gravity of the facts.

Personal and social circumstances of the minor.

Existence of the risk of absconding.

And, in particular, whether the minor has already committed or not some other serious facts of the same nature.

2.3. FORMS OF CAUTIONARY INTERNMENT

Article 28.1 of the LORPM establishes that, between the cautionary measures that can be imposed, it is possible to find the internment in a centre. The legislation points out that it will be carried out in the “appropriate regime”. In this sense, the LORPM establishes four types of interment regimes (Article 7.1 LORM) and these are:

[A] Internment in a closed centre. This measure implies that minors stay in a centre during the time established by the judge where all the educational, training, working and leisure activities will be carried out. This is the most serious measure that follows the Law since it implies a complete deprivation of liberty (Bueno, Legaz, Periago, & Salinas, 2008), although there is an exceptional possibility that the minor can leave the centre following the conditions established by the regulations of LORPM (RLORPM).

[B] Internment in semi-open centre. People subjected to this measure will stay in the centre, but they will be able to perform outside some of the educational, training, working and leisure activities established in the individual program of execution of the measure. The fulfilment of the activities outside the centre will be conditioned to the evolution of the person and the achievement of the planned aims. The Judge will be able to suspend these activities for a specific period of time, establishing that all of them should be completed inside the centre.

[C] Internment in an open centre. People subjected to this measure will complete all the activities of the educational project with the surrounding standardised services, residing in the centre which will be considered the habitual residence, with subjection to its program and rules.

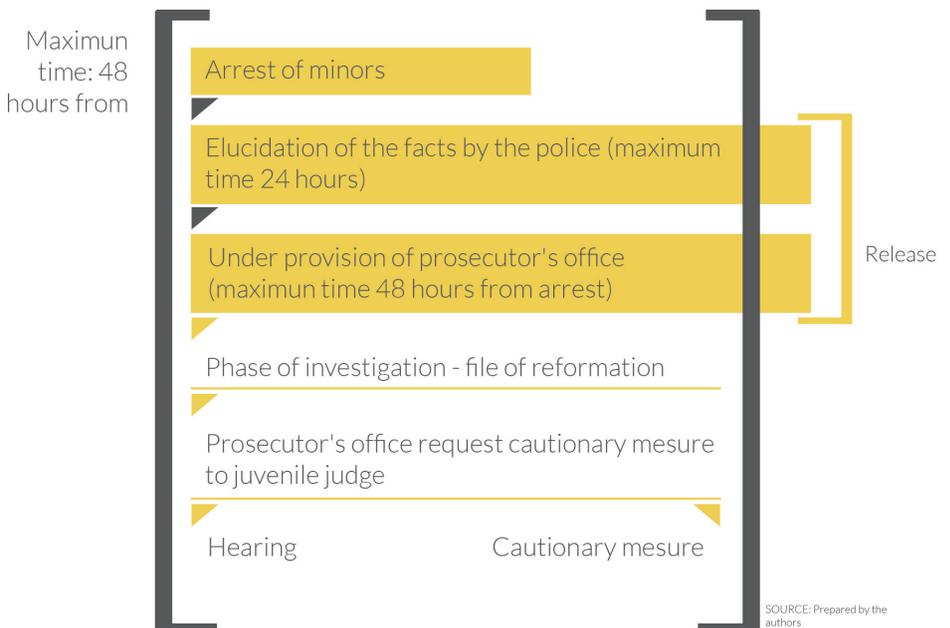
[D] Therapeutic internment in a closed, semi-open and open centre. In this type of centres a specialised educational attention will be given or a specific treatment addressed for people who suffer from anomalies and psychical alterations, addiction to alcoholic beverages, toxic drugs or psychotropic substances, or alterations in the perception that determine a serious alteration of awareness of reality. This measure shall be applied by itself or as a supplement of another measure established in this article. If the subject rejects the treatment of detoxication, the judge will have to apply another measure appropriate for the circumstances.

2.4. DURATION OF THE MEASURES

The *arrest*, as established in Article 17.4 of the LORPM, cannot last more than the strict necessary for the fulfilment of enquiries designed for the clarification of the facts, in accordance with the Spanish Constitution (CE) and the rest of the legal system, especially Article 520 and 520bis of the LECrim.

Nevertheless, the norm establishes that before 24 hours pass, the minor will be made available to disposition of the Prosecutor's Office (Art. 17.4 LORPM). After this, Prosecutor's Office will decide within 48 hours of the arrest whether the minor should be released or, alternative, decide to initiate the procedure in which case the minor will be made available to judicial authorities (the minor will pass to the judicial disposition). In addition, if it is considered convenient to apply a cautionary measure, the Prosecutor's Office will have to request it to the Juvenile Judge. Thus, taking into account the deadlines, the minor could be detained in police stations for a maximum period of 48 hours.

Graph 1: Duration of the arrest



3. RIGHTS OF SUSPECTED OR ACCUSED MINORS IN CRIMINAL PROCEEDINGS

There are different laws regulating the rights of minors when they are arrested or cautionary interned in Spain: Organic Law 5/2000, January 12, regulating minors' criminal liability (LORPM); Regulation of Organic Law 5/2000, January 12, regulating minors' criminal liability, approved by Royal decree 1774/2004, July 30 (RLORPM); and Criminal Procedure Code (LECrIm).

Conversely, as a result of the EU interest in establishing a series of common rules for all the member countries regarding juvenile justice, the Directive of the European Parliament and of the Council, on procedural safeguards for children who are suspected or accused in criminal proceedings was recently published.

In this sense, following is an analysis of the rights of minors suspected or accused in criminal proceedings in Spain, taking into account the current legislation and beginning from the provisions stipulated in the Directive already mentioned in the previous paragraph. All of this with the aim to observe if there is an adjustment adjustment between what is stipulated by the Spanish law and what is stated by the Directive.

During the *police arrest*, the minors will have to be guarded in suitable premises which are separated from the ones that are used for the elderly. They will receive health care, protection and the social, psychological, medical and physical assistance they need, in view of their age, gender and individual characteristics.

[A] Right to be informed (Art. 4)

Both LORPM and its regulation (RLORPM) clearly state that the authorities and functionaries that intervene on arrest must inform the minor by using a clear, understandable, direct language about the offences with which the accused has been charged, the reasons of his/her arrest and the rights to which the minor is entitled, which are referred to in LORPM, reflected in Art. 520 of the LECrIm³ (Art. 17.1 LORPM y Art. 3 RLORPM).

³ "The Authorities and functionaries that intervene on the detention of a minor will have to perform it in the least harmful way for the minor and they will have to inform him/her by using a clear, understandable, direct language about the offences with which the accused has been charged, the reasons of his/her detention and the rights to which the minor is entitled, especially those recognised in Art. 520 of the Criminal Procedure Law, as well as their guaranteed observance".

In LECrim, in the section destined to detainees and prisoners, it is again underlined that every detainee will be informed of the facts attributed to him/her and the reasons for the deprivation of liberty, as well as his/her rights including, differently from what is written in LORPM, that it will have to be written in a simple, accessible and understandable language (Art. 520.2 LECrim).

Recently, this last article has been modified by the Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty. The Spanish legislator has introduced a new article (Art. 520.2 bis LECrim) to highlight what means a “clear and accessible language” when communicating with the arrestee. Thus, since November 1, 2015, detainees in Spain will be informed through a language that will be adapted to “his/her age, maturity level, disability and any other personal circumstance limiting the understanding of the provided information”.

Therefore, the rights to which minor arrestees in Spain are entitled are the following (Art. 520.2 LECrim):

Right to be silent, not to make any statement, and/or not to answer a question or all the questions he/she is made, and right to state that he/she will make a statement before the judge.

Right not to make any statement against yourself and not to plead guilty.

Right to nominate a lawyer.

Right of access to elements of proceedings that are essential to challenge the lawfulness of the detention or deprivation of liberty.

Right to inform his/her family members or another chosen person, without undue delay, about his/her deprivation of liberty and the custody place in every moment. Foreign nationals will have the right to have all the previous circumstances communicated to his/her home country consular office.

Right to call, without undue delay, with a third party of his/her choice. This communication will be held in the presence of a police officer or, where appropriate, in the presence of a police officer appointed by the judge or prosecutor.

Right to be visited by the consular authorities of his/her home country, to communicate and correspond with them.

Right to free assistance of an interpreter, in case of foreign national who does not understand or speak Spanish or the official language of the action in question, or deaf and hard of hearing people, as well as other individuals with language difficulties. Right to be recognised by a forensic doctor or his/her legal substitute or in his/her absence by a legal substitute of the institution she/he finds him/herself in, or by any other State or Public Administration employee.

Right to apply for free legal aid, the procedure for doing so and the conditions to obtain it.

Furthermore, Spanish legislation includes other rights regarding the information provided to the detainees:

The detainee must be informed of the maximum period of detention and the procedure she/he can follow to challenge the legality of detention (Art. 520.2 2nd LECrim).

With respect to foreign nationals, when she/he does not hold a declaration of rights in the language the detainee understands, an interpreter will be looked for to inform him/her of his/her rights. Subsequently, without unduly delaying it, she/he will receive a written declaration of his/her rights in a language she/he can understand (Art. 520.2 3rd LECrim).

Furthermore, the detainee may retain a written declaration of rights throughout the period of detention (Art. 520.2 4th LECrim).

The same right to information takes into account that the minor has to be informed of the possibility to require a habeas corpus procedure if the minor or any other person recognised by the legislation considers that the minor has illegally been deprived of liberty.

Thus, the minors who are serving under a *cautionary internment measure* in a Centre for minors have the right to information as well.

In addition, the minor has the right to receive personal and up to date information about the following aspects (Art. 56.2 I LORPM):

His/her personal situation.

His/her judicial situation.

The detention centre rules.

The concrete procedures to make these rights effective, in particular in order to make requests, complaints and recourses.

Furthermore, Art. 36.2 of the RLORPM states that at the time of entering one of the centres, the minors have the right to receive written information about:

His/her own rights and obligations

The detention regime

General organization issues

Centre internal rules.

Disciplinary rules.

The means to make requests, complaints and recourses.

[B] Right to information of the holder of parental responsibility (Art. 5)

When minors are arrested, the legal representatives must be notified about the detention and its place. Moreover, when the detainee is a foreign national, the consular authorities will be notified as well (Art. 17.1 LORPM and Art. 3.1 RLOPMP).

Additionally, the arrestee's declaration will be done in presence of his/her lawyer and of "those who hold the minor's parental authority or his/her guardianship"⁴. There is an exception to this point which is literally stated by the law "when the circumstances suggest to do otherwise" (Art. 17.2 LORPM and Art. 3.2 RLOPMP). This exception is particularly expected in case of mistreatment in the family context or when the minor's representative is involved in the crime (Circular 9/2011; p. 27).

The jurisprudence as well includes two more situations in which the arrestee can give up on this right. The first concerns emancipated minors⁵. The second, when it concerns arrestees over 18 years of age for a crime they committed before turning 18 years old.

Likewise, it is important to take into account that the right for the parents, guardians or keepers to be present is uniquely restricted to the minor's statement-taking. In the rest of the situations the presence will have to be authorised by the judge, in agreement with Art. 22.1 e) of LORPM (Circular 9/2011).

With respect to *cautionary internment*, the legal representatives have the right to be informed about the minor's situation and as well as his/her rights (Art. 55.2 m LORPM). In addition, RLOPMP states that the members of the family have the right to be informed about:

the entry of the minor in a centre (Art. 32.3 RLOPMP),

the warrant of liberty of the minor in order for them to take care of him/her (Art. 36.3 RLOPMP),

the medical intervention and health status of the detained minor (Art. 39.3 and 5 RLOPMP),

4 It refers to biological or adoptive parents, holders of parental authority (Art. 154 CC), legal guardians (civil – Art. 215- or administrative –Art. 172 CC-), hosts (in their various forms of simple, permanent or preadoptive hosting –Art. 173 bis of CC) and the keepers (in law –Art. 172 CC- or in fact –Art. 303 CC) (Circular 9/2011).

5 It is necessary to highlight at this point that among the different forms of emancipation contemplated in the Civil Code, there is one which cannot be included in the exceptions. Specifically, among the forms of emancipation there are: legal age, marriage, judicial granting and concession by those who hold the parental authority (Art. 316 CC). It is precisely this last case, tacit emancipation, that is referred to the child who is older than 16 years old and prior consent from the parents to live independently of them (Art. 319 CC), which does not exonerate the parents' from providing the necessary assistance to the declaration of their detained minor children (Circular 9/2011).

the situation and development of the minor (Art. 56.2 RLORPM),

the rights to which they are entitled as legal representatives (Art. 56.2 RLORPM),

illnesses, accidents or any other important circumstances that have an immediate effect on the minor (Art. 56.3 RLORPM).

[c] Right to the assistance of a lawyer (Art. 6)

Spanish legislation states that in case of an arrested minor, the declaration will always be made in the presence of his/her lawyer (Art. 17.2 LORPM). Additionally, the minor will be able to discuss with his/her lawyer privately before and after the statement-taking.

Likewise, the Spanish legislation establishes the rule that, before adopting this cautionary interment measure, the judge will have to consult the minor's lawyer (Art. 28.1 LORPM).

On the other hand, the LECrim establishes that the arrestee will freely assign a lawyer, except in those cases of incommunicado detention of Article 527 LECrim (where a free legal aid lawyer will be assigned), and if she/he does not, she/he will be assisted by a free legal aid lawyer (Art. 520.5 LECrim). As a matter of fact, the authority detaining the minor will have to immediately inform the Official Lawyers' Society about the lawyer appointed by the arrestee, or if she/he does not have legal assistance, about the request to appoint a legal aid lawyer. In addition, the legislation indicates that the lawyer will have to attend in the shortest time possible and if time exceeds 3 hours the Lawyer's Society will assign a new lawyer.

The lawyer's functions in agreement with Art. 520.6 of the LECrim are:

Request to inform the detainee about his/her rights.

Request medical check up.

Intervene in the procedures of declaration, acknowledgement and reconstruction of the facts. Afterwards, she/he can ask the judge for the declaration or extension of the points that are considered useful, as well as put on record any incidence that may have occurred.

Inform the detainee of the consequences of the submission or denial of consent to the performance of the requested procedures.

Privately consult with the detainee.

Moreover, the article includes that the communication between the respondent or the accused will be confidential (Art. 520.7 LECrim).

With respect to the possibility to reject the lawyers assistance, the Criminal Procedure Law (LECrim) states that it can only be agreed in case of crimes against traffic security (Art. 520.8 LECrim). However, the State Prosecutor's Office by means of Circular 9/2011 about the standards of specialised actions of Public Prosecutors concerning juvenile reform, decided that it is not necessary to apply this exception when minors are involved (p.21), giving more importance to the specific minor's legislation (Art. 17.2. LORPM: "any detainee's declaration will be performed before his/her lawyer"), in line with the international standards⁶.

On the other hand, for those minors serving a *cautionary internment measure* in a reform centre, the Law envisages the right to be assisted by a lawyer. Specifically, minors have the right to privately communicate with their lawyers (Art. 56.2 i LORPM). That is to say, the minor may communicate with his/her lawyer without being supervised or visually, aurally or electronically controlled/observed, and additionally, the communication will be held in an appropriate place (Art. 41.1 RLOORPM). The minor may ask to speak with his/her lawyer, directly addressing him/her by written paper or asking the centre manager verbally or by written paper, who will immediately have it delivered to its recipient, and always within 24 hours (Art. 41. 4 RLOORPM).

[D] Right to individual evaluation (Art. 7)

The minor's right to individual evaluation to assess the minor's particular needs regarding protection, education, professional training and social re-integration, is not expressly included in the juvenile legal system. However, the right is indirectly included in various provisions of the legislation and it has to be applied when the judicial procedures begin.

Accordingly, it is necessary to refer to Art. 4.1 RLOORPM which determines how technical staff must act. The first function assigned to them is to provide technical assistance to minor's judges and Public Prosecutors through creating reports. This means that the moment the minor's judicial file begins to be compiled for his/her supposed participation in a crime, the Technical Staff, composed by psychologists, social workers and social educators will evaluate the minors and will issue a report on different aspects such as: maturative development, intellectual performance, public attitude, disorders, cognitive deficits, substance use, basic social and educational needs, family situation, peer group, etc.

Similarly, when the *cautionary internment measure* is implemented, and the minor enters the centre, in the first place a first evaluation is carried out by means of family or child protection institution interviews, besides conducting an analysis about familiar, social, educational, health and any other situation that is considered as interesting. All the information collected during this first

⁶ Art. 7.1 Beijing Guidelines section III.8 Recommendation no. 87 (20) of the Committee of Ministers of the Council of Europe.

evaluation will be useful in order to develop a “customised intervention model” which consists in planning the activities that will be carried out with the minor according to the identified needs⁷.

[E] Right to medical assistance (Art. 8)

The right to receive medical assistance during the *arrest* is included among the rights that are communicated to the arrestee (Art. 520.2. i. “Right to be assisted by a forensic doctor or his/her legal substitute and when not present, by a doctor from the institution where the detainee is held or any other doctor from a government or public institution”).

Likewise, if the minor is serving a *cautionary internment* measure in a centre, the minor must have free healthcare assistance guaranteed as fundamental right included into the Spanish Constitution (Art. 15 and 43 CE). In agreement with the Spanish Constitution, the LORPM states in Art. 56.2 “the right according to which the Public Entity on which the centre depends will take care of the detainee’s life, physical integrity and health...”. Specifically, in section f) of the same Article, the detainee’s free medical assistance is recognised. Nevertheless, Art. 32.5 RLORPM states that the right, after the detainee enters the centre, to be visited by a doctor in the shortest time possible and in any case before the first 24 hours.

Furthermore, it is safe to say that when the preventive detection has a therapeutic character due to mental health reasons, the Public Entity in charge of the performance of such measure must provide for specific treatment.

In practice, first medical assistance is provided on the centre premises. When specialised attention is required, minors are moved to Public healthcare resources of the territory, except in case of psychiatric care for therapeutic internment, which will be provided in his/her centre by the psychiatric medical staff of the same centre (Bueno, Legaz, Periago, & Salinas, 2008).

In case of foreign minors, four situations are distinguished (Bueno, Legaz, Periago, & Salinas, 2008):

Foreign nationals recorded in the municipal register have the right to receive the same medical assistance as Spanish citizens.

In case of foreign in irregular situation, they have the right to receive emergency medical assistance in the event of serious illness or accident, whatever the cause.

Foreign minors are also entitled to medical assistance as Spanish citizens.

⁷ The obligation to realise the “Individualized intervention model” is included in Art. 29.2 in RLORPM

Foreign pregnant women are entitled to medical assistance during pregnancy, delivery and postpartum.

4. RIGHT TO A SPECIFIC TREATMENT IN CASE OF DEPRIVATION OF LIBERTY

4.1. ENFORCEMENT OF RIGHTS UNDER ARTICLE 12 (PARAGRAPH 48)

Article 12 of the Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings, refers to the specific treatment to be provided to children in case of *cautionary internment*, and in particular to the rights they should have in this context. Hereafter, the adjustment between the rights contained in that article and the Spanish legislation can be observed.

4.1.1. MAINTAIN REGULAR AND MEANINGFUL CONTACT WITH PARENTS, FAMILY AND FRIENDS. RESTRICTIONS ON THIS RIGHT SHOULD NEVER BE USED AS PUNISHMENT

In all internment regimes, the possibility of contact of the child with the outside in order to advance in the process of rehabilitation is envisaged. Specifically, “the minor will enjoy numerous contacts with the outside world through communication and *vis a vis* visits, phone calls and postcards, and may leave the centre during certain time periods through the enjoyment of permits and leaves in terms that are regulated in Articles 45 to 47 of RLORPM” (Bueno, Legaz, Periago, & Salinas, 2008; p. 360).

Three types of communications that children can do with their family and friends are distinguished: oral communications or visits, family life visits and intimate communication. All of them will take place without bringing any physical barrier, or in other words, with physical, oral and visual contact. In turn, it is necessary to point out that it is considered a right rather than an obligation, therefore the child can waive that right. Furthermore, each one of them has specific characteristics that will be analysed below:

Oral communications or visits. Minors may communicate or receive visits from relatives (proving kinship with the minor), from their legal representatives and relatives (in the latter

case, if authorised by the director of the centre). Article 40 of the RLORPM sets a minimum of two visits per week of 40 minutes that can be accumulated in one.

Family life visits. This kind of visits aims to maintain and develop family relationships, therefore it only takes place with members of the family (parents, siblings, grandparents, family, children...). The legislation establishes that at least one three hours' visit per month will be held.

Intimate communication. This type of communication is conceived as a right of the minors to a free development of personality, to foster partner relationships and the satisfaction of sexual needs. For the minor to request the enjoyment of this right it is necessary that she/he has not benefited from ordinary permits or weekend leaves for at least one month. This type of communication can only be held with a partner or a person related to the minor by a similar emotional relation. They can request one communication session per month which lasts at least one hour. Furthermore, they will be held in appropriate premises respecting the communicators' intimacy at most.

Yet, there are limitations to this right when it is considered as necessary due to educational purposes or security and peaceful coexistence.

4.1.2. RECEIVING AN APPROPRIATE EDUCATION, GUIDANCE AND TRAINING

The right to receive education and training is included in different norms (CE, LORPM, RLORPM y la LOE⁸). Specifically, Art. 56.2 LORPM states the "right of the underage civilian to receive a thorough education and training in every field". Similarly, Art. 57 LORPM states that detained minors will have to "(b) receive compulsory basic education they are legally entitled to" and "(h) participate in training, educational and working activities provided according to the minors' personal situation with the aim to prepare his/her future life in freedom".

In accordance with the legislation, internment centres must take appropriate action in order to guarantee the minors' right to receive compulsory basic education⁹. Likewise, the centres must provide easy access to other non-formal types of education that contribute to the minor's personal development and are adequate with respect to the circumstances (Art. 37 RLORPM).

As a general rule, if the type of preventive measures allows it, minors can receive education in public education centres in the neighbourhood. When it is not possible for them to leave the centre due to preventive measures, the necessary means will be provided so as to let the minors receive their education inside the centre. Thus, sticking to the regulations the following

⁸ Organic Law 2/2006, May 3, in Education.

⁹ Minors in Spain are required to receive education until they turn 16.

assumptions will be given:

In *closed internment centres* the minor will receive the compulsory basic education in the centre itself.

In *semi-open internment centres* the minor will have the possibility to receive an education in the centre or through external educational resources depending on the evolution in the achievement of the expected objectives included in his/her measure execution programme.

In *open internment centres* the minor will always receive compulsory education outside of the centre, in the educational centres of the area.

The biggest drawback of this right in case of internment is that the responsibility of education in Spain is not borne by the Ministry of Education, rather it is transferred to the 17 autonomous communities. As a consequence, the quality and the type of education the minors receive can differ depending on financial and material resources provided with by the territory where the centre is located.

Independently of the financial resources at disposal, it is safe to say that the regulations oblige the centres where classrooms, furniture and the necessary material are available to provide this type of assistance (Art. 37.3 and 4 RLORPM). Moreover, study areas will be made available in the minors' private rooms and common areas. Additionally, they will be able to rely on qualified professors who will test and evaluate the minors' at the moment of admission and will provide them with the adequate education. Minors who have special educational needs (illiterate or non-proficient in the language) will have to be prioritised. Professors will encourage those ones who have completed their compulsory studies to continue with their education by helping their access to it (Bueno, Legaz, Periago, & Salinas, 2008).

4.1.3. RECEIVING MEDICAL CARE

Concerning the medical care that a interned minor has to receive, besides what previously mentioned about the right the minors have to be examined by a doctor during the first 24 hours of his/her detention (Art. 32.5 RLORPM), the current legislation does not regulate neither how it works nor how frequent it should be. However, as shown below, both in the LORPM and in its regulation explicit reference about the right the minors have to receive medical assistance is made:

“the public entity and the organisation that have the responsibility in their respective territory will adopt the appropriate measures in order to guaranty the right to detained minors to have free medical assistance recognised by the law” (Art. 38 RLORMP).

Although the law does not specify how health care has to be provided, it is general practice to provide first health care in the centre where the minor is detained by medical staff, whereas specialised care is provided through the public health system of the area. In the latter case, it is implied that when minors require it they will be moved to nearby medical centres, independently of their regime of detention.

A different case is represented by the specialised care which is specific to the therapeutic detention due to mental health reasons, where the medical psychiatric care will be provided to the minor in the same detention centre by specialised professionals.

5. CONCLUSIONS

In this report, as already said in the previous paragraphs, a detailed analysis about the main characteristics of pre-trial detention in the Spanish juvenile justice system has been carried out. First of all, a definition, scope of application and rights have been provided. Finally, we have been carried out an analysis of the adjustment among European Directive on procedural safeguards for children suspected or accused in criminal proceedings and Spanish legislation regarding the right to a specific treatment in case of deprivation of liberty.

One of the main conclusions obtained in this sense is that Spanish legislation adjusts itself in all respects to the current international norms and recommendations concerning minors' pre-trial detention. Similarly, with respect to minors' rights, it can be observed that the aspects that are mentioned in the European Parliament Directive and of the Council concerning procedural safeguards for children suspected or accused in criminal proceedings are taken into account in the Spanish legislation. This way, Spanish legislation should not undergo alterations in order to adapt itself to what agreed in the Directive on procedural safeguards.

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CHAPTER 3:

Reality of minors' pre-trial detention comparative analysis

3.1. INTRODUCTION

Among the specific objectives that are intended to reach with the development of MIPREDET project we can find the one related to analyze whether, in practice, when the minor' pre-trial detention takes place, it is done according to the national legislation (specifically in Spain, Portugal, France and Italy) as well as it is pointed out in the Directive (EU) 2016/800 on procedural safeguards for youths suspected or accused in criminal proceedings.

Thus, after analyzing the agreement between the national legislation of each country and the European Directive (EU) 2016/800, we proceed to reach the objective previously mentioned in a second stage through the development of a qualitative study and carrying out seminars where debates among experts from a multidisciplinary points of view were encouraged.

Because of the variety that the minors' pre-trial detention situations imply, we chose to focus the analysis in some concrete aspects such as the age of the minors, the length of the measure and minors' rights, especially the minors' right to information, the parents or legal representatives' right to be informed, right to a lawyer, to an individual assessment and to a specific treatment in case of deprivation of liberty.

3.2. METHODOLOGY

In order to know how minors' pre-trial detention comes about in practice, it was considered more appropriate to adopt a qualitative methodology. In particular, we opted for interviewing experts who, due to their professional activity and experience, owned an in-depth knowledge about the subject to be explored. Therefore, each partner country requested collaboration to several entities in order to conduct interviews with professionals from three different areas (courts, police authorities and detention centers or prisons) participating in the process of applying cautionary measures.

After obtaining the necessary approvals, partners proceeded to the collection of the interviews between May 2016 and March 2017. In total, 40 professionals from Spain, Portugal, Italy and France participated in MIPREDET project. Concerning their work realm, the sample was composed of 11 court professionals (magistrates and prosecutors), 9 professionals from law enforcement authorities and 20 professionals from detention centers or prisons.

Different interview modalities were conducted according to the approvals obtained and the experts' availability. Thus, some of them were conducted face to face at their workplace whereas others were conducted by phone or by e-mail.

Aiming to gather information on the same aspects in all the interviews conducted in all the countries, an Interview Protocol was elaborated which content was previously agreed by all the partners of the project. Three interviews were elaborated from this Protocol, one for each of the group of professionals who were interviewed (magistrates and prosecutors, police authorities and staff in detention centers or prisons), to cover all the conditions and procedures involved in the minors' precautionary measures. Thus, aspects such as the detention (e.g. conditions of the detention in police facilities), judicial proceeding for the application of the precautionary measure of minor's deprivation of liberty (e.g. the information provided during the procedure) as well as the conditions of the minors in centers or prisons to comply with their pre-trial measure (e.g. to analyse the minors' contact with their relatives, training activities in which they take part, etc.) were included.

All the participants were informed of the aim of the study and of the project goals before being interviewed. Their anonymity was guarantee as well. After getting their informed consent, interviews were conducted according to the modality previously agreed with the participants. Both telephone interviews and face to face ones were transcribed.

In order to analyse all the information, two types of content analysis grids were developed taking into account the issues included in the interview guides. The *Institutional Grid* was intended to include a synthesis of the information that was gotten in the interviews about the practices

and legal proceedings of the pre-trial detention. Besides, an *Institutional Grid* was developed for each of the interviewed professional groups (police officers, magistrates, prosecutors and staff in detention centers or prisons). So, each country in the study filled out three *Institutional Grids*.

On the other hand, *Participant's Grid* was developed to include only extracts of the experts' speech in which experiences and opinions about minors' pre-trial detention proceedings (e.g. circumstances in which minors' rights were not guaranteed, pre-trial detention advantages and disadvantages, participants' knowledge of the Directive (EU) 2016/800) were reflected. Each country that participated in the project filled one *Participants' Grid*.

After an in-depth analysis of the information contained in the *Grids*, we proceeded to carry out a comparison among the realities of the minors' pre-trial detention in the different countries taking part in the study. The main results are described below.

3.3. RESULTS

3.3.1. PRE-TRIAL DETENTION: CIRCUMSTANCES IN WHICH MINORS' RIGHTS MAY NOT BE ENSURED

[A] Detention procedures of youths under the age of 18 by police authorities

Concerning both Spanish and Italian realities, throughout participants' interviews were not reported any circumstances in which minors' rights could not be ensured during their detention by police.

"They are always guaranteed." (SP_Police_01)

"Even with limited resources, minors' rights are guaranteed." (SP_Police_02)

In the Portuguese context were reported the following circumstances in which minors' rights may not be fully ensured during detention procedures: police facilities do not have documents available in certain languages (e.g., braille) and the fact that the Portuguese law establishes that only Portuguese documents can be used in the judicial proceedings under penalty of being considered null, which places constraints when a foreign individual is detained and to whom must be delivered in his language the document with the constitution of defendant (e.g., legal rights, motive for detention, what is going to happen).

"Violated or ensured? They have always to be ensured. They can be violated for, for the inability to put them into practice and I will give you an example. He is deaf-mute, but he can read Braille, there is not a single document in the police facility translated into Braille, he does not even know why he is detained. ...But we are talking about more basic things, ok? A deaf-mute who can read Braille and cannot...So, then we have a problem." (PT_Police_01)

[B] Identification procedures of youths under the age of 18 by police authorities

In Spain, according to the current legislation it is essential to identify the accused in a reliable way by an accrediting document (Article 368 LECrim), which it is usually the ID, Foreigners' Identity Number (NIE) or passport (in the case of foreigners minors). If they have no document, the police file (in case they have been identified on a previous occasion) or the holders of parental responsibility verify their identity. There is also the possibility to go to the Civil Registry and, if necessary to know the exact age, use radiological tests (Article 375 LECrim). Children waiting to be fully identified remain in a police station accompanied by a policeman, staying the minimum

essential time (a few hours at most). Nevertheless, if the identity is difficult to prove, the time spent in police custody would be extended, therefore, this was the only identified circumstance in which minors' rights may not be fully guaranteed during identification procedures by police authorities.

"Should the identity be difficult to prove, the time spent in police custody would be extended. Their rights would still be guaranteed, but without the desired immediacy." (SP_Police_02)

Similarly, in Portugal, some interviewees have mentioned specific circumstances in which minors' rights may not be fully ensured during identification procedures, stressing that these are unintentional and justified situations. Therefore, although Portuguese law establishes maximum time periods for minors to stay in police facilities for the purpose of identification – 3 hours for minors aged 12 to 16 (Article 50, Youth Justice Act) and 6 hours for youths aged 16 to 18 (Article 250, Criminal Procedure Code) – there are circumstances posing some constraints to law enforcement authorities, for example:

- Difficulty in establishing contact with the adult responsible for the minor.
- If there is no family member or an adult who is responsible for the minor – in this case police will have to find an institution to place him.
- Difficulty in establishing youths' age (under or above 16 years old) when they do not have any identification document or someone with them who confirms their identity.

"(...) But, for example, in this situation of children under 12 years of age, which has happened, hum, to prepare the dossier, to communicate to the parents, or a family that comes for them, sometimes exceeds two, three or four hours, because people sometimes are not available, the person, but this is justified, is not it? (...)" (PT_Police_02)

Italian experts did not mention any circumstance in which minors' rights could not be ensured during identification procedures by police authorities.

[C] Conditions of minors' detention in police facilities

Spanish national legislation states that minors must be detained into a specific place for them and be separated by age, gender and type of the offense, usually accompanied only by a policeman and always separated from adults. It is rare that two minors are arrested at the same time for different reasons, but if the infringement was committed by several minors who are arrested at the same time, they remain together, but they cannot interact and an agent will always be with

them. Concerning possible circumstances in which minors' rights may not be ensured during their detention in police facilities, it was mentioned that there are police stations that do not have enough resources and minors have to wait under police supervision at the same waiting room as other citizens. Nevertheless, when the situation requires, they may remain in other rooms for internal use. Police investigations are carried out into a room similar to an office, usually in the office of the policeman who does the police investigations.

"Minors are in waiting rooms while waiting to start police investigations. There are police stations that do not have enough resources and minors have to wait under police supervision at the same waiting room as other citizens who are making other arrangements. When the situation requires (e.g., in sensitive situations) they may remain in other rooms for internal use (e.g., the dining room or rooms in empty police units when policemen are patrolling)." (SP_Police_02)

Also in Portugal, although national regulations may suggest some special care with young people while waiting in police facilities to be presented to a judge (e.g., youths should be placed in individual compartments, be kept in sight, and their separation according to gender or due to contagious disease is guaranteed, the capacity of the cell should not be exceeded and each youth has a single bed with appropriate clothing, all measures should be adopted to protect their life and health, youths must be allowed to immediately contact a lawyer or defender, to immediately inform a relative or person of confidence about their situation, must be kept in sight when are arrested with warrant for attendance at a judicial act, and may not be placed in a cell when they are conducted to police facilities for coercive identification purposes) some participants seem to consider that detention conditions in these facilities may not always be the most adequate: minors do not have special facilities for them, they can spend 48 hours without a bath or without resting appropriately and when there are situations in which all cells are occupied and youths have to be placed together.

"Hum, when we can we always put them alone. For example, in a situation where we have detained two individuals in the same situation, we try to put one in each cell. Why? First there is no exchange of information, and secondly, there is not something that, argues, some aggression or some more serious situation inside a cell between them, is not it? Because they were in the same crime. When this is not possible, of course if we have the cells all filled we have to put, because the cells are intended for two detainees. If there is a possibility to separate them we separate, if there is no possibility of separating them clearly we have to put them together." (PT_Police_02)

"During the 48 hours, if it is the PSP to make the arrest, they stay at PSP's facilities. But I am not aware that there are any special facilities for children, for, for children under 18, therefore, between 16 and 18 and, and, and for, and for adults, over 18 years. I have no knowledge. If it's from the PJ they stay at the PJ's facilities until they come here." (PT_Judge_01)

[D] Judicial proceedings for the imposition of a pre-trial detention measure to minors

In Spain, the experts interviewed did not report any circumstances in which minors' right could not be ensured regarding on this topic.

"The adoption of precautionary measures into the Organic Law 5/2000 comes with a procedure that effectively guarantees such rights, making cases which might result in their violation unlikely (such as hearings, legal assistance, technical advice, etc.). In addition, once detained, minors have the right to apply to the habeas corpus act regulated by the Organic Law 6/1984, 24 May, by which the examining (criminal) magistrate of the territory where the detention centre is located can review the detainment should they or any other interested parties deem it to be illegal. In addition to the above should be considered the various institutions and professionals responsible for monitoring and supervising minors in detention: juvenile judges and prosecutors, ombudsmen, detention centre inspection services and the detainees' own lawyers." (SP_Detention Centre_06)

In Portuguese judicial reality the imposition of a pre-trial detention measure consists of a judicial procedure in which are explained to youths' their duties and rights, the facts justifying their presentation to a judge, the reasons for the application of that measure and other information the judge may consider relevant. However, concerning the circumstances in which minors' rights may not be ensured during judicial proceedings, some participants have reported gaps related to the information provided to youths between 12 and 16 years old during the imposition of a pre-trial detention measure: lack of information provided to minors about the right to be accompanied by parents or legal representatives during judicial proceedings, lack of information provided to minors about the right to appeal against the decision, and lack of information about the place where they will be detained.

"(...) There is not, as I say, they also did not ask me to be, but if, also maybe it is something that was also important in the future to explain to them that they can ask to be present the mother or father, ready, and at the time also I think I did not explain and maybe it was important to explain that to them, they also did not ask me, maybe not too, did not know that, that they could ask for, right, and has logic, I was now imagining it. But if I was asked, I also think that, also acce ... I would certainly accept her in the room, I think that would also be an important issue to explain to them. (...)" (PT_Judge_03)

REALITY OF MINORS' PRE-TRIAL DETENTION COMPARATIVE ANALYSIS

"(...) There are situations when youths are not very closely followed and, and they do not understand very well what happened in court, this happens, sometimes the young person does not understand very well what happened in court. Okay, hum, and then, hum, when he enters into the Centre realize that he is in a closed institution, right? Sometimes they do not have this idea, sometimes they are told that they go to a place with a college and such, that they even have weekends and everything and get here "ah, ah, this was nothing of what they told me. (...)" (PT_Educational Center_04)

In Italy, when applying the measure of pre-trial detention the Judge take into consideration the principles of adequacy and proportionality, criteria that, within the juvenile penal procedure, must always consider the personality of the minor and family and social background. During the pre-trial phase, the child can be heard by the police who can ask for the support of experts and psychologists during the hearing. In case of foreign minors a key issue is the communication with the child that could be not able to understand what police is explaining and asking preventing this way a full comprehension of his/her situation by the same minor.

The experts interviewed highlighted that in case of foreign minors in some circumstances their rights may not be ensured due to the lack of communication with the consulate or to whom has parental responsibility and also because of the lack of a domicile and/or family network.

"As for foreign minors, when imprisoned, a formal communication to the consulate or to the guardian or to whom has the parental responsibility should be done. Often, such communication is not effected and such person are not appointed". (IT_Judge_01)

"There are not specific circumstances where minors' rights are not guaranteed even if, in case of foreign minors, there are still some weaknesses to be faced with due to the lack of a prompt intervention by intercultural mediator making difficult, in the short period, the draft of ad hoc and tailored treatment programs. Such programs should consider individual, family, cultural and relational peculiarities and aim to the social re-inclusion. Such aspect, often, penalizes the rehabilitative pathway given the lack of a domicile and of a family network able to support them once out from the penal circuit. For this reason, being equal the sentence, the times of permanence of foreign minors in IPM (Juvenile Penal Institution) are longer given that it is not possible to make use of measures such as the permanence at home and/or the other available alternatives due to the lack of a certified domicile". ". (IT_Judge_02)

In France for example the prison administration guarantees the detained minors respect for the fundamental rights of the child at any time. Decisions concerning the organisation of detention and individual accompaniment shall be taken into consideration for the age and personality of the minor.

[E] Conditions of detention in Detention Centers and Prison

In Spain were not reported any circumstances in which minors' rights could not be ensured during their detention in Detention Centers.

"It is practically impossible for minors' rights not to be ensured, given the numerous interventions of different professionals and the functions assigned to them (judges, the minors' lawyers, juvenile prosecutors, ombudsman, representatives of public bodies, technical team of courts and detention centre professionals), as well as the existing detailed regulations regarding precautionary detention measures, both in terms of the procedure for their adoption (referred to from Article 28 onwards of the Organic Law 5/2000 governing the criminal liability of minors - hereinafter LORPM) and their implementation (LORPM regulation)." (SP_Detention Centre_07)

In Portugal, however, concerning circumstances in which minors' rights may not be ensured in respect to their daily routines and conditions of detention, as well as relevant information provided at the moment they are placed in detention facilities (e.g., rights and duties during detention, visits, health care, access to activities, daily routines), throughout the interviews some participants reported the existence of long periods that youths between 16 and 18 years old may spend without the visit of their lawyers, the lack of judicial support to request economic aid to ensure the costs of legal proceedings, and also the excessive time they may be locked in their cells.

"(...) Many times they do not have, spend much time here, in fact, without the visit of a lawyer. Official, official, unofficial in this case. This is one of those rights in fact that they often feel wronged, because they do not have access, right, to that right. Let's say, formally, but in informal terms and in practical terms (...) feeling that someone is defending them, in fact they do not feel that much. That's why they see our role as technicians or someone who can defend them. That is from the facts of, of the problems that in fact they feel the most, complain. (...)" (PT_Prison_01)

"(...) Hum, the, hum, therefore, hum, the time they are closed, hum, this is also one of the constraints and that they often tell us because, but they are "I am, I am, I am preventive and I am closed the same hours as a condemned (...)" (PT_Prison_06)

In Italy, during the last year, even if a lot of work has still to be done, the concept of total closure of the juvenile penal institution has been overcome due to the need to support the youth to exit from the reality of detention. The treatment can be efficacy only if the system is able to work in synergy with all other key actors. The opportunity to have special permission to attend school, training or other activities outside could give to the youth the opportunity to experiment himself outside promoting this way the responsabilisation and the harmonic growth of the same. In this way detention becomes an opportunity a source and not a mere deprivation.

However, throughout the interviews some participants reported some gaps related to minors with psychiatric disorders as it is not possible to implement adequate interventions due to the type of structure.

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"The main treatment difficulties are related to minors with psychiatric disorders where, despite guaranteeing ad hoc external assistance by local health unit, it is not possible to implement adequate intervention due to the type of structure that is not appropriate to such users". (IT_Detention Centre_01)

"The main difficulties are related to minors with psychiatric disorders destabilizing the rest of the group. In despite of an ad hoc external assistance by local health unit is guaranteed, it is not possible to implement adequate intervention due to the type of structure that is not appropriate to such users. This is a common case where minors' rights may not be ensured". (IT_Detention Centre_04)

In France, during the last 12 years the Closed Educational Centers have been deployed on the national territory. These centers have been provided by law in order to better guarantee the representation of minors during criminal proceedings (particularly in the case of pretrial). These centers are both binding (obligations to respect and deprivation of liberty) and educational. Professionals recall that this is an educational placement and not a condemnation. But they also point out that this placement is part of a criminal procedure.

The conditions of this placement are fixed by a Judge, thus, there are minimum conditions to be met in order to justify the placement of a minor in a center.

Nevertheless, some professionals stated that these conditions are not always respected and that some minors are in closed centers when they should not be due to health and judicial reasons.

[F] Minors' contacts with parents/family/friends

In Spain were not reported circumstances in which minors' rights may not be ensured in respect to regular contacts with significant persons during detention period.

"I cannot think of any circumstance in which these rights are not guaranteed; the policy of the Fundación Diagrama centres is not simply to abide by the minimum regulatory standards, but rather to extend the rights of minors and, in any case, to ensure that the rights recognised by the current legislation are scrupulously abided by." (SP_Detention centre_06)

In Portugal, minors' right to contact significant persons during pre-trial detention (personal, written, telephone calls) is considered to be a key factor for the young person's adaptive course and emotional stability during detention, and it is important to keep in touch with family members who will receive young people when they return to their environment. Moreover, in Educational Center, young people who are executing the pre-trial detention measure in semi-open regime may have exit licenses if they reach phase 2 (e.g., Christmas holidays, summer holidays), depending on their behavior and receptivity and conditions of the family to receive them. Therefore, the right to contact with significant others may not be ensured only in exceptional circumstances, some participants' have reported the following: disciplinary reasons related to youth's behavior, security reasons (e.g., if a visitor attempts to introduce illicit substances), geographical distance

associated with the economic precariousness of visitors, inhibition of parental authority by the court, and priority given to direct relatives (friends are avoided when it is not known whether they can be associated with the same or other judicial process).

"(...) if there is conf..., offenders from now cannot visit, so this is out of question, it is not, no, no, if there is, if there are offenders in the same process cannot come, even if they are siblings, this is more, stays, it is more limited, it does not mean that in the long term it does not come, but in the initial phase do not, because the process is still under investigation, and therefore, finally, there are some legal mechanisms, it is not because, the precautionary measure presupposes instruction of the process, therefore, presupposes that everything is known, still presupposes instruction and such and such, ready. (...)" (PT_Educational Centre_02)

"Hum, not this one, which means, assured is always. Only if there is, for example it has already happened is situations in which a family member is caught up with anything that cannot enter and therefore there is no entry. Now assured is, as long as he has authorization, has the visitor card, hum, no problem at all, without, without any embarrassment, he visits the inmate." (PT_Prison_06)

Likewise in Italy, the right to maintain contacts with parents, family and friends is regulated by the Penitentiary regulation in the section related to the execution of the sentence and the relation with the family. Such law recognises the importance of the maintenance of contacts with the family and relevant person duly authorised. The youth in pretrial detention can have access to meeting with loved ones only through formal request to competent Judge. In some cases minors cannot maintain contact with their parents, family and friends as either they live far from the institution or they are not at the same country such as is the case with foreign minors.

"Minors with families residing far from the Institution for which could be difficult to come and visit the child due as well to economic problems". (IT_Detention Centre_03).

"As highlighted foreign minors have not a family and social network able to support them and this could penalise their penal pathway both in terms of opportunities to have access to alternatives and in terms of support needed in such delicate situation. The right to be supported by the family and to maintain the contacts with the parents is hence a fundamental one but in some cases, unfortunately it cannot be guaranteed." (IT_Detention Centre_05)

Similarly in France, the law provides for the maintenance of family ties as an essential element of the welfare of the minor. In accordance with the provisions of the Civil Code, subject to judicial requirements and if the assessment of the minor's situation permits to involve the holders of parental authority in the educational work carried out with the minor. Holders of parental authority are informed of the progress of the care of the minor, both in its positive aspects and during difficulties. Holders of parental authority continue to exercise all of their attributes within the scope and within the limits set out in the placement order.

All professionals believe that the law is respected even if this sometimes represents a lot of administrative constraints. However, in some cases, the judge may limit them because of the investigation but also for parents who are “toxic” for their children. Geographical distance and financial difficulties make sometimes visits between parents and children complicated. The links with families and the work to be done with them is determined by family realities that are often difficult.

[G] Minors' education/training/guidance activities

In Spanish judicial system activities developed by minors are planned individually according to their skills, as well as their needs and preferences, decided upon after an evaluation conducted by the technical and educational-training team. Educative activities regulated and pre-labor/labor are always implemented by specialised professionals (activities can be developed both outside and inside the centre depending on the internment regime).

There are usually three types of activities: regulated training conducted in accordance with the current Spanish educational system (mandatory for children under 16 years old and voluntary for those who are over the age of 16); occupational/non-formal training system, which includes workshops aimed at developing general skills targeted at future employment (group work, time management, motivation, etc.) and the skills of children in different areas (e.g., values, education, social skills, etc.); and finally the pre-labor/labor training, which comprises workshops aimed at improving employability (gardening, mechanical, leather, etc.), courses outside the Centre, professional practices in companies, etc.

Concerning possible circumstances in which this right may not be ensured during the execution of pre-trial detention, some participants have mentioned a greater difficulty to find job opportunities for these young people, and situations in which the detention centre lacks the appropriate resources to provide official education.

“Strictly speaking, minors' rights are always guaranteed; that being said, given the current economic crisis it is particularly difficult to find job opportunities for young people who exhibit such characteristics and shortcomings.” (SP_Detention centre_06)

“Generally speaking, such situations do not tend to arise. The only way a problem could arise is if the detention centre lacked the appropriate educational resources in order to provide official education.” (SP_Detention centre_07)

In Portugal, during the execution of pre-trial detention measure in the Educational Center attendance at school education or vocational training is compulsory, daily and occupies a significant part of the structured routines of young people. At the same time, young people complying with the pre-trial detention measure also attend intervention programs, especially on-time activities or short-term programs (e.g., daily life skills training, ironing, cooking, counseling, music, reading, play activities). They also perform daily sports activities.

For young people who are executing the pre-trial detention measure in Prison, the frequency of available activities is optional, with preventive prisoners following the principle of minimum intervention, that is, they can only intervene with the explicit authorisation of young people. With regard to the frequency of activities available, most young people in pre-trial detention are not included in school education or in longer vocational training courses. Preventive young people are more involved in activities that are not structured in programs or courses and can integrate, as an alternative, modular training of short duration. In prison are available school and training activities, activities conducted by Technicians (e.g., individual follow-up sessions, Entered Group – emotional stabilization program and adaptation to the prison environment, Safe Road program for the prevention of road crimes), sports activities (e.g., football, physical activities with the accompaniment of a physical education teacher, recreation in the courtyards of the pavilions) and recreational activities and activities conducted by volunteers and trainees (e.g., organized activities in the library, religious activities, “Opera in Prison” project in partnership with a music school, painting and writing workshops, educational projects).

Despite the aforementioned activities, throughout the interviews with experts were also reported the following circumstances in which minors’ right to attend activities may not be ensured during pre-trial detention, both in Educational Center and in Prison:

- compliance with a disciplinary measure;
- behavioral reasons (e.g., relational problems with other youths);
- difficulties in integrating youths in pre-trial detention into internal work activities due to the high risk of escape – lack of prison conditions and human resources in some areas;
- lack of some infrastructures (e.g., a covered pavilion to carry out activities when it rains);
- priority given to convicted prisoners in the attendance of education and training activities;
- reduced range of activities available for youths in pre-trial detention;
- impossibility to ensure the opening of classes of all school levels when they have a very small number of youths (e.g., illiterate youths);
- multiple visits to court due to their involvement in court proceedings.

“(..) Of course, they are always situations that are, that are, they are not enough, they are, they are occupations that are never enough, even because they are young and need to be always ... as busy as possible. Especially at the level of sport, I think we have one here, a great need here and now, and let’s get back to what you said, we talked a lot about the needs of, of equipments and, and of all of that, we needed here one, one, a sports center that was important for them, a gym so they could also get a little worn out that, that liveliness they have and, and if we had that, half of the, of the disciplinary problems that we have disappeared, completely. (...)” (PT_Prison_05)

“(..) training is therefore compulsory, therefore, either goes to school or goes to school. But the other

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programs, is compliant, usually do not integrate, because we do not know what will happen, the tutorials yes, are with, also integrate, the rest not, because he can, imagine, the court decree that he will leave and will not leave a program in the middle, right, because these programs have all around 12 sessions, 10 sessions, are always programs, GPS has 25 sessions, are programs designed to have some continuity and have some effect on, about the young. Therefore, when they are in pre-trial detention measure, the training do, the rest do not." (PT_Educational Center_01)

In Italy, treatment is part of the daily life of the youths, hence it is fundamental to occupy their time and offer them different a wide range of activities during the whole day. Each one, in fact, according to their treatment-educational programme draft by the staff and authorised by competent judicial authorities, attend school and other important activities such as training, work, workshops, leisure time and sport and so on in order to guarantee the correct execution of judicial provisions and minor's physical-psychological wellbeing.

Throughout the interviews, participants stated that in some cases minors stay in their rooms due to the lack of activities and minors' rights may not be ensured.

"Slowness of bureaucracy in evaluating the efficacy of different tailored educational project and in authorising the implementation and develop of the same, led to an increase of the same even if the proposed activities does not forecast any extra cost for the administration. Aims and objectives of such projects had hence to be revised and timing for their develop reduced with negative impact both on the duration of the project and youths' participation and involvement. In this sense, the rights of minors' may not be ensured as obliged to stay in their room due to the lack of activities. Some Juvenile penal institutions, furthermore, are not able to guarantee the right to education to young detainees as school has never been duly organized by the competent education agency. Such aspect should be definitely regulated at national level". (IT_Detention Centre_2)

"Lack of economical sources does not allow to enhance the range of activities offered to the minor; and a closest cooperation with territorial educational and training service should be promoted to fully guarantee such right for the minor". (IT_Detention Centre_05)

In France, professionals believe that minors can benefit from education and adapted activities. For Closed Educative Centres, the management team ensures the organisation of school activities, especially for minors between the ages of 13 and 16 who are compulsory. The director is responsible for adapting the activities to the minors. This program of supported activities constitutes one of the indispensable tools for a quality educational relationship and contributes to the structuring of the day and to the establishment of a secure and therefore containing framework. The evaluation of each minor makes it possible to best identify their needs in this field and to develop suitable proposals likely to develop the potentialities of the adolescent.

Professionals highlighted that it is necessary to assess the volume and type of educational activities according to the time of placement (activities exclusively in-centre at the beginning of

placement, externally as far as possible at the end Placement) and the individual project of the minor.

[H] Minors' health care

According to experts in Spanish judicial context, medical care is guaranteed to minors throughout the internment. General medical and psychiatric cares (in case of therapeutic internment) are carried out within the Centre. Whenever the intervention of a medical specialist is necessary, minors are referred to external medical resources (Public Health Network). Foreign minors living illegally in Spain benefit the same health care, however, upon reaching adulthood, and despite general medical care still being provided by detention centre's doctors, they may only receive emergency care in cases of serious illness or accident, as well as assistance for pregnant women, although some regions have decided to grant these groups the same health care as the rest of the population.

"The biggest problem we encounter is with the detention of foreign minors living illegally in Spain. While they are under 18 years old, they enjoy the same health care as the rest of the detainees aforementioned. Upon reaching adulthood, however, despite general medical care still being provided by detention centre doctors, current immigration law states that they may only receive emergency care in cases of serious illness or accident, as well as assistance for pregnant women (albeit that some regions have decided to grant these groups the same health care as the rest of the population)." (SP_Detention Centre_06)

In Portugal, both Educational Center and Prison have protocols with the Portuguese National Health System to ensure that the youths conduct all necessary medical examinations and clinical analyses throughout the period of pre-trial detention.

When youths enter into the Prison, all young people are observed and examined by a nurse and a doctor. Subsequently, they are examined according to their needs – the prison has a nurse (e.g., assisted medication) and a psychologist daily and a doctor and psychiatrist several days a week – and all the necessary examinations are made available (e.g., screening, clinical examinations, specialty appointments, surgeries, hospitalisation) – and according to the availability of the National Health System. Medical examinations are performed in the public hospital, in the prison hospital located in another establishment, and the prison has also a specific pavilion for clinical services with several offices (e.g., clinical analyses are carried out in prison by an external laboratory).

In the Educational Center young people are also observed by a nurse at the time of entry and in the first month they are examined by the family doctor. Subsequently, the nurse performed a monthly assessment to each young person to define their follow-up and whether it is necessary to refer them to the family doctor or other clinical service. All types of examinations required are available through the National Health System (e.g., pedopsychiatry, stomatology, orthopedics,

speech therapy), with the provision of health care usually taking place in the public hospital, other examinations are performed in clinics or laboratories that provide them and blood tests are carried out in Educational Center.

The right of minors to health care and medical assistance during the period of pre-trial detention is considered by professionals to be absolutely essential. Therefore, has only been mentioned as circumstances in which this right may possibly not be ensured the reduced number of programs targeting specific health problems and the possible overlap of medical appointments and court proceedings – for young people executing this measure in prison.

"The right to, to access to healthcare? It is as I tell you, we are very dependent on, on what is the supply, what is the supply from abroad. Right? Therefore, we articulate with the public services. Apart from this and the delays sometimes in the appointments and ... Sometimes we have some difficulty is in the con ..., in appointments, for example, if we have many diligences in court there may be some appointment left behind and, in that sense, we're talking about an assault on the prisoner's right to go to ... Ready. Then there may be such situations. There have been. There have been. But apart from that, I do not see another circumstance." (PT_Prison_04)

In Italy, the experts interviewed did not report any circumstances in which minors' rights could not be ensured regarding on this topic. All children are submitted to health check up by the internal health staff by 24 hours from the entrance in the Juvenile penal institution. Once obtained the needed permits children make the necessary blood exams and the other ones requested to assess the absence of infectious disease. The health service is guaranteed by the National Health Service present in the facility with a daily medical device. Furthermore a doctor is available for 3 hours a day.

The doctor provides first aid support, when he/she is not in turn the service is guaranteed by the local health service. Nursing staff is available for 11 hours per day together with part of the state run health care odontologist. The nurses are equipped with commonly used drugs appropriately safeguarded.

In France, the "health and well-being" of minors is tackled in a holistic way by working on the determinants of health, including mental health, accessible during the care process.

It is based on the mobilisation of all the staff of the institution, the development of a partnership with health facilities and includes the participation of minors and holders of parental authority. A health check is carried out with minors as soon as possible after their arrival at the Centre and in any event during the reception phase.

It makes it possible to define the modalities of the use of care and prevention according to the identified needs. The steps to be taken are formalised in the file of the minor which contains a collection of information about his/her health. Thus, any minor confronted with addictive behaviors

in connection with psychoactive products, is offered appropriate accompaniment. Information, awareness-raising and health education activities are offered to minors.

The majority of institutions hire psychologists and nurses who are involved in both mental health and the overall health of minors.

Professionals also noted that minors most in need of psychiatric care are often denied care, refusing to accept their "psychic fragility". The institution must then show subtlety and precision in the accompaniment, in such a way that the relationship of trust develops and the minor accepts to use the psychiatric care for his / her best being.

Participants declared that they organise preventive measures enabling minors to work on their addiction and the effects generated on their integration, on relations with their families.

[I] Global perspective of minors' pre-trial detention

[I.1] Global perspective

Participants were also asked about their opinion regarding the imposition of a pre-trial detention measure to youths under 18 years old. In Portugal participants have mentioned the following:

Youths between 12 and 16 years old:

- On the one hand, if applied early can prevent an increase in the number of judicial processes against the young person; on the other hand, if it is a one-off situation, the application of this measure must be well considered.
- This measure can have a positive effect, in order to sensitize youths to their situation and to the need to stop their behavior.

"In this, in the pre-trial detention measure at this age, it often makes the difference between the young person arriving here with 20 lawsuits for judging or arriving here with 50. (...) Let us say, if it is one, a punctual situation, it will have to be carefully considered to apply a pre-trial detention measure soon, but generally when, when these cases appear it is not so, so punctual, is not it, there are already several complaints in, in, in the police, are already referenced in the CPCJ, ready, long ago ... And if, if, it may seem premature, but if there was between ... there had been an intervention the first time, they would not get us here with so many cases after for ju..., for, then for, for trial, is not it?" (PT_Educational Center_01)

"Hum, is the impact, for, deprivation of liberty as is the detention measure except that it has a different duration. Although a young person who comes to a precautionary measure of custody,

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he knows that there will be a strong probability to come to fulfill an internment measure. Hum, if he came to the pre-trial detention it is because, hum, his situation is problematic because the courts do not, do not apply the precautionary measures so lightly, have to comply with those requirements, so if he came to pre-trial detention is because it is a case that justifies it. That's the idea I have."

(PT_Educational Center_03)

Youths between 16 and 18 years old:

- The need to avoid pre-trial detention.
- It should only be applied when there are very strong grounds.
- It should only be applied as a measure of last resort and when all other measures have been attempted or at least reflected and weighted.
- Young people should be penalized and corrected for their delinquent behavior, even if this implies deprivation of liberty, but not in an adult prison.
- Excessive time that youths are locked in cells – 18h/20h if they are not attending activities.
- To avoid the imposition of pre-trial detention to youths that have committed a single crime, but who are not delinquents, do not have a delinquent course – it is important to understand if it was a one-time deviation or if the young person is a repeated offender.
- Excessive duration of pre-trial detention.
- The need to provide a differentiated treatment between young people and adults to avoid the negative influence that may aggravate their behavior and contribute to recidivism.
- To avoid mixing youths in pre-trial detention with convicted prisoners.
- The need to implement house arrest with electronic surveillance whenever is possible instead of a pre-trial detention measure executed in prison.
- It is a measure with a developmental and emotional impact, a negative measure for youths.
- The main issue is to know if the legal requirements for its application are met, regardless of the age.
- Some professionals understand the need and adequacy of pre-trial detention in cases of serious crimes or youths with heavy criminal paths.
- It has a dual retributive purpose: persuading youths and forcing them to stop in time.

"(...) Of course there are many, and I think that's a good measure, there are many who, who are here some time in pre-trial detention, but then leave immediately for other alternative measures to prison, such as the electronic surveillance bracelet. Ready. And then it ends up by, by, by relieving a bit the burden of prison, of course they are also detained, but they are in other circumstances, they are not

in a prison and, therefore, it relieves a bit that pressure of, of, of imprisonment. Ready. But generally their situation ba..., it goes around a year or so, which is clearly a long time. A long time. Because I think they should be, because, on top of that, we are talking about young people and they are, and it is an, an age group that has to be treated otherwise than not, than not adults. (...)" (PT_Prison_05)

"(...) If you ask me my personal opinion if for, if a bi..., bi..., a bigger than 16 and 18 go already to an adult prison, I do not agree, no, do not agree. I agree that it should be, that he should, could be penalized and should be, that he is going to comply with a, a kind of punishment and, and be, to have his freedom prohibited in terms of crimes more, right, se..., severe, it should be prohibited, but I think he should be detained, or should wait for the trial in, in a prison, or in a correctional center, no, it's not a prison, you can call it another name, wherever there was, there was no connection with, with the biggest of, of, of, of the world of crime. Or in a wing, to exist a specific wing in a prison (...) I think this is bad influence, cannot correct their behavior, I think it still aggravates more." (PT_Police_05)

In Italy, given the principle of minimum offensiveness, stating the need to consider eventual risk to the harmonic growth of the minor once entered in the juvenile justice system and the risk of marginalisation and labeling (for which the Judges try to avoid as much as possible the entrance in the juvenile justice system imposing alternative measures allowing them to continue the ongoing educational pathways) however, permit to the minor to stop and revise their behavioural schemes and life style.

Penitentiary regulation forecast in any case a wide range of tools making detention the extrema ratio (last resort). Despite this, when pretrial detention is imposed, the temporary removal of society protect the same society and, at the same time, protect the minor especially if at risk of recidivism.

However, the juvenile penal institution is still considered as a place where to execute the sentence giving low space to introspection and rehabilitation. The complexity of life in these institutions and the cohabitation with other problematic youths can cause tensions, mutual intolerances and difficulties in the sharing of common spaces. Such phenomenon must be constantly monitored and are part of the treatment. Such measure should be hence more rehabilitative and forecast the active participation of the minor also in view of a possible reparation of the damages caused by the crime event, the reconciliation among parties and the enhance of collective sense of security.

It is fundamental to involve the youth in activities allowing him to develop and acquire empathic skills for a real process of resposabilisation, recognise of the victim and acquire socially recognised values. Within such restorative pathway, the participation of community is fundamental in order to provide to the youth further spaces of meeting and exchange and reduce the eventual social alarm causing labeling and marginalisation. The juvenile justice system should be hence considered part of the civil society not something parallel or far from it.

In case of France, pre-trial detention is very exceptionally used for minors. The most common form of deprivation of liberty is placement in a Closed Educational Center. The law establishes a monitoring procedure to avoid the provisional detention of the minor concerned. This minor must be subject to educational or supervised measures appropriate to his or her situation upon release.

Provisional detention raises questions because of the interests involved. There is, therefore, a conflict between the interests of society and that of the individual. From a social perspective, pre-trial detention is an anticipatory repressive instrument, which gives the community a sense of protection and security. This is necessary for various reasons:

- [1] To guarantee the execution of the judgment by preventing the accused from absconding.
- [2] To facilitate the search for the truth, in the sense that the accused, kept under the hand of justice, presents himself to all the proceedings in the proceedings (interrogation, confrontation, reconstruction).
- [3] It prevents the renewal of the infringement and re-establishes the public order disturbed by the defendant's action.
- [4] Pre-trial deprivation of liberty helps, if necessary, the application of appropriate treatment to the accused.
- [5] Finally, it protects the accused from possible reprisals.

[1.2] Advantages and disadvantages

Throughout data collection process experts were also asked about their opinion regarding the imposition of a pre-trial detention measure to youths who are under 18 years old, more specifically were asked about the advantages and disadvantages associated with the imposition of this measure.

Spanish participants have highlighted as advantages the protection of both the minors and any possible victims; minors' protection from adults' influence in criminal proceedings, as well as from any possible contamination in police facilities; the perfect coordination between all the judiciary practitioners involved; minors' learning about how to adapt to regulations; to allow a prompt intervention in cases in which minors have initiated a dangerous descent into delinquency; and, finally, the possibility to work in circumstances in which minors do not have the appropriate support through protection systems.

"An advantage is that the minor is protected from the influence of adults in criminal proceedings, as well as from any possible contamination that could occur in police stations." (SP_Police_02)

"They learn to follow rules and above all to choose their own path in life; we do not, of course, aim to

indoctrinate the minor, but rather to teach them how to resolve conflict situations and thus construct their own future, little by little." (SP_Prosecutor_05)

"In terms of advantages, its proper use allows for rapid intervention in cases where minors have initiated a dangerous descent into delinquency; it also makes it possible to work in circumstances in which minors do not have the right support through protection systems. In addition to the above, the rapidity with which cases are processed is an advantage. This could, however, be a disadvantage when the adoption of a serious decision regarding the liberty of a minor is required in the very early stages of an investigation." (SP_Judge_08)

In Portugal, more specifically, experts were asked about the advantages and disadvantages associated with the imposition of a pre-trial detention measure to youths under the age of 18. Concerning youths between 12 and 16 years old who are executing this measure in an Educational Center, participants have identified as advantages the fact that it may protect young people from the accumulation of legal proceedings over time; it can protect society from youth's antisocial behavior; it can act as a brake, preventing the aggravation of crimes committed and the subsequent youths' contact with the penal system; it can establish structured daily routines with schedules and rules, and help youths recover some important things for their growth process (e.g., education, training); may prevent youths' criminal course if it is applied as a measure of last resort; and also the advantage of non-overcrowding as it happens in prisons.

"Maybe one of the main advantages would be for young man himself not to continue to commit those facts and then not having to, to be, usually, is not it, then go to 2, 3, 4, 5 trials or else is made a, are made cumulus, in which that in a trial go there, go 17 crimes, 18, maybe the advantage would be to protect himself from continuing to, to do, to accumulate so many crimes. That's the, the, the difference, is not it?" (PT_Educational Center_01)

"Look, the measure precau..., the precautionary and ..., therefore, if we go by, by, by the educational precautionary, right, I think these measures very well, because they have to be corrected, have to be corrected, someone to accompany them and, and, and, and, and try to direct them toward of, of, of, of not being delinquent and stop to commit certain offenses. (...)" (PT_Police_03)

Regarding youths between 16 and 18 years old who are executing the pre-trial detention measure in Prison, participants have identified the following advantages: to protect society from youths' harmfulness, avoiding the social alarm caused by some types of crimes; to promote youths' emotional stability, reflection and awareness of the severity of their behavior; to contribute to young people's emotional maturity and to create the need for change; to act as a brake; to promote more structured routines; to protect youths from society when they have committed crimes in the place where they live; to avoid the danger of continuing criminal activity, the danger of escape, and the disturbance of the investigation; and the possibility for youths to be more closely monitored in prison than they were outside in familiar context (e.g., health care, nutrition, clothing).

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"Advantages I only see one, because all the rest are disadvantages, ready. The advantage is just the intimidating issue, that is, they are sometimes in a climb 'so,' so great that only when they have notion that, in fact, the, the, the, only the prison sometimes gives them notion of the gravity of what they were doing. And, and, therefore, there is this, this cut, this, this stop, especially for those whose families were not properly very concerned about the situation for one, for, for a variety of reasons. But, therefore, the advantage is only this, it stopped, this course ended here and now there is time to, to, to, to rethink life. (...)" (PT_Prison_03)

"Preventive, detention pre...? The precautionary custody is, is, is, right, I do not know. I think that preve..., the advantages of a preventive, there may be when there are, when there are certain young people who do not, who no longer accept the opinion of, of people, no longer, already have a behavior, come from unstructured families, already have a history since 10/11 years old, problems in school, miss school, so there is, wi..., will have to have a, no longer go with a much simpler measure, it has to be a more aggressive measure, but not a pre-trial detention in a normal prison, but a pre-trial detention in a correctional facility. (...)" (PT_Police_05)

In France, participants have highlighted as advantages that the judicial placement in the Close Educative Center provides guarantees for the smooth running of the judicial process:

- Guarantee of representation: The minor will be accompanied and present at the hearings held during the placement.
- Public Security Guarantee: Even if it is easier to escape from a closed Educational Center than to escape from a detention center, minors placed in CEF are always accompanied by adults when they are traveling. Weekend permits are only conditional, minimizing the risk of public disorder.
- Other conditions attached to judicial supervision are correctly applied and followed (prohibition of communication with co-perpetrators and / or victims, obligations of care ...).
- The magistrate can then support his judgment decision on the reports and educational reports written by the institution.

The educational dimension of placement ensures respect for fundamental rights in the light of the European circular on procedural safeguards:

- An individualised project adapted to the needs evaluated with the minor at the beginning of his placement.
- A sustained education and training program.
- A close association of minors' families.
- A daily concern for the health of minors welcomed.

On the other hand, Spanish participants have considered as main disadvantages of the imposition of pre-trial detention the fact that it could be shocking for first-time offenders, despite of the precautionary measures adopted, and if an illegal detention has occurred for an act not committed by the minor. Portuguese experts have also emphasised the risk of depriving youths from their family in cases in which they have committed a single or a minor offense and the fact that some youths may be negatively influenced by the behavior of others.

"Even if precautionary measures are taken, it can be a shock for first-time offenders. The social circumstances of the minor and any possible contact other members of the family may have had with the police play an important role." (SP_Police_01)

"The only disadvantage I can think of is if an illegal detention has occurred for an act not committed by the minor; this would be the only scenario." (SP_Prosecutor_05)

As disadvantages Portuguese experts have also mentioned the following: to execute the pre-trial detention measure in an adult prison; the fact that pre-trial detention does not contribute to youths' resocialization because it is a measure of short-term; less intervention and investment with youths during pre-trial detention; the duration of pre-trial detention; to increase the feeling of revolt, hindering their future social reintegration; the impossibility of young people to design their lives during detention – it is a period of great uncertainty, there are no time frames defined; the impact of being deprived of liberty; the contact with other young offenders; to uproot youths from the environment where they were inserted, with greater impact for those with a structured life, family accompaniment and employment – separation from a normative life project; the loss of family and social ties - unstable relationships may become nonexistent; and the fact that this measure is particularly problematic for young people who, despite having committed a crime, are not delinquents, they can be negatively influenced by deviant behaviors of other youths (e.g., the language and delinquent behavior of prison context).

"The mai ... the main disadvantages are often that when one begins to follow a very right path, often afterwards they also end up with kids that can ..., that was only punctually, to be included in the same, or else the gravity of that event is not so great and end up being deprived of the family or withdrawn to the family without, in which there would be no need, would it? (...) there are youths with 12 years old who already have a history of, of, of very, very great offenses and there are some youths with 12 year olds that was the first time that, that they committed, I'm talking about 12, 14 years, usually the band that appears to us the most is, it is the 14. (...)" (PT_Educational Center_01)

"(...) but any measure of resocialization is foreseen for effective prisons, it is not foreseen for, for pre-trial detentions. Therefore, they are processes that are usually long in time, is not, and, and this resocialization presupposes a long term prison, what does not happen with pre-trial detentions, therefore. In terms of youths, pre-trial detention will not resocialize almost anything. (...)" (PT_Judge_02)

REALITY OF MINORS' PRE-TRIAL DETENTION COMPARATIVE ANALYSIS

"Identify, identify... Pre-trial detention? A disadvantage is, is, is, is he getting even more revolted by the situation (...). A time that he is deprived, 1 year, or a half year, or 1 year or 2, when he reintegrates be more difficult he, to reintegrate him into society. That may be one, one of the biggest disadvantages." (PT_Police_05)

In France, the placement must be supported by the minor in order to bear all of these effects. However professionals see that minors can often be opposed to the principle of forced judicial placement and oppose its proper functioning. Some recent studies reveal the occurrence of numerous incidents within these establishments. The vast majority of these incidents remain of minor gravity, but it seems that this type of establishment does not allow all minors to stop risky behavior that is often contrary to the law.

[1.3] Impact on youths' lives

Concerning the potential impact of a pre-trial detention measure on youths' lives, participants have identified both negative and positive aspects associated with the experience of deprivation of liberty.

According to Spanish experts, pre-trial detention has a minimal impact due to the specific conditions in place, however, it was mentioned the repercussion that first arrest could have for minors.

"Minimal, due to the specific conditions in place." (SP_Police_01)

"The first arrest has a big impact on the minor, although the extent of this impact depends on the structure of their care environment." (SP_Police_02)

Portuguese participants, on the one hand, in relation to the execution of pre-trial detention in an Educational Center recognise the possibility, in some cases, that the young person may resume an adjusted social life; as a general rule, when there are no major setbacks in the early days in terms of social behavior, the young person has effectively gains; professionals notice that young people care about their future promote youths' reflection and to promote norms and rules are associated to a potential positive impact; recognize the positive evolution associated with the activities developed in the Educational Center, the positive effect of rules, and also the impact related to the duration of imprisonment – the longer they are detained, the greater the impact on the awareness of the damage caused.

"Generally, for them it is always a great learning, there are, there are young people who come in pre-trial detention measure, they are not applied internment measure, but rather tasks, or else obligation to attend training and they comply. And they comply, is not it? Whereas, usually the yo ..., there are other young people who bring many, many that, many crimes already, usually remain always for, in internment measure, therefore, one does not realize very well what is the, the impact, is not it?" (PT_Educational Center_01)

On the other hand, participants recognise that there is a part in which it is difficult to come to a normal life and that it is difficult to balance the positive evolution that the young person makes at the Educational Center and his subsequent return to his environment, to the influences of their area of residence – some young people eventually leave their zone of residence and move to other areas where they are looking for a socially adjusted life.

“(…) We have here young people, for example, that intervention in protection begins at age 8, they arrive at the Center for medi ..., for compliance with guardianship measure at 17, it is not possible, it means, it means, we are talking about, it is possible, of course it is possible, the law says it can enter, what we are talking about is intervention, intervention is a more complex thing (...) we have done the intervention we had to do, the result, we always hope that the result is the best, is not it, but we also know that this causes limitations in the growth of whoever it is, it is not worth having any illusions, it is not, this has limitations, adjustments that we do not have and that are not socially dominant and when they are not social ... socially dominant we are at greater risk, ready, it happens. (...)” (PT_Educational Center_02)

Regarding the execution of pre-trial detention in a Prison, participants associate to a negative impact the following aspects: a great impact – youths realise the consequences of that kind of conduct; the impact will be dramatic, especially if it is the first time that youths will experience imprisonment (e.g., the sound of closing the cell, the handcuffs, the loss of control over their life); the impact caused by the contact with the justice system itself; separation of a life project that still could be amended or be normative by its own means; detrimental impact related to the criminological character of the contact with prison reality; higher impact on the life of a youth under 18 years associated with the loss of education, training, family life; a very painful and very negative initial impact; for young people aged 16 and 17 may represent the loss of their youth in prison; may be a factor of instability for youths – may instigate situations of revolt and incomprehension; painful experience, especially for those who do not have their personality fully constituted, lack of maturity to deal with certain situations; emotional and psychological pressure exerted by confinement of individual accommodation and because they are locked; and also may exacerbate a pre-existing mental disorder.

The impact seems to be also related to the length of imprisonment: the longer the detention time the greater the impact on the young person's life and the awareness of the damage caused; the shorter the duration of imprisonment the less awareness of reality and the less regretful – there is a work of maturation, growth, and personal development.

“One impact is that, this, this has to do with, if the, if the minor is, is there a year in pre-trial detention and is not tried, and the tried, then passes to a suspended sentence, is a situation. When there is an effective imprisonment it is totally different because people, and if these minors are integrated into courses and training within the institution is one thing. If minors are not integrated into this they are only learning to be more, learning other illicit activities, others, committing other crimes when

they come out, have no specific training to continue or exercise a new life outside, or exercise a new activity. (...)" (PT_Police_02)

"I think that, somehow, this always makes them think a bit. This always makes them think a bit. Therefore, it does not seem to me that in the overwhelming majority of cases it is misapplied and that it is, and that it would end a life very, or, or, or that this interruption would be detrimental to a school course or a professional course. (...)" (PT_Prison_03)

[J] Perspectives on current national legislation

In respect to participants' perspectives on current national legislations, Spanish interviewees have identified a set of main limitations, namely the fact that the prosecution is currently carried out by different jurisdictions at different times, thus it would be desirable to improve the procedure when the offence has been committed by both minors and adults; the absence of a catalogue of crimes punishable by detention, facilitating the application of restorative measures; and the fact that its implementation has been left in the hands of the regional governments, so there are differences in interpretation – some regions are committed to the plight of minors and try to provide all necessary resources for the law to operate at maximum efficiency, but this does not happen in other regions.

"The lack of staffing and shortage of police resources." (SP_Police_02)

"There are some issues that have been debated among experts but are yet to be reflected in legislative reform bills. Specifically, situations in which one offences has involved both minors and adults, each of which is tried by the respective jurisdiction, juvenile and adult. In such cases, the possibility of conflicting judgments is a problem that occurs in both jurisdictions, as is the capacity in which each person can participate in the other's proceedings (i.e., how an accused or convicted minor participates and testifies in an "adult" procedure, and vice versa)." (SP_Detention centre_06)

"It cannot be said that there are defects within juvenile criminal law, but there are some failings regarding legislative changes that have been made to adult proceedings which have not been reflected in juvenile proceedings." (SP_Prosecutor_03)

Portuguese participants have also identified limitations in current national legislation concerning judicial intervention with youths under the age of 18 who have committed facts qualified as crimes, for example, the excessive time periods that detainees in pre-trial detention are locked in cells; the lack of mechanisms to effectively implement alternative measures for the reintegration of young people (e.g., more community work accompanied and supervised by a multidisciplinary team); a lengthy judicial system; the fact that the Youth Justice Act – 12/16 years old – is still very rooted in criminal process; the scarce applicability and the outdatedness of the Special Criminal Regime for Young Adults (16-21 years); the lack of professionals' engagement; the existence of

only one prison specifically designed for young people aged 16 to 21 years; to judge and convict juveniles under the age of 18 in criminal court and place them in adults' prisons; and to apply the same legislation to 16/17 year olds and adults.

"I know there is a special law for young people from 16 to 18 which is often not applied. I have not heard about applying this law, that's all (...)" (PT_Police_04)

"(...) In an adult establishment when a minor comes in, hum, maybe he should be separated, he should be physically separated from, hum, from, from the others, hum, which is not the case, and I think that separation would be important because the minor is always more fragile, is not it? (...)" (PT_Prison_07)

"That justice was faster, that it was not so slow. No, a good suggestion because we have young people that, that arriving here who committed a crime at the age of 14, I am not saying of more or less gravity, but they committed crimes at the age of 14 and, and they arrive here with 17 to comply with the detention order. So, this is, this is a very big gap in, in, in justice, is not it? When they get here, it's often been so long ago that the reflection, the effect of the internment does exactly the opposite, does not it? Some of them were already, they already have their lives, they go, for example, to school, they have the school straight, did not commit anything again, so it is not often understood how slow they are treated." (PT_Educational Center_01)

Despite the shortcomings mentioned above, professionals have also identified some potentialities in Portuguese legislation both in adults' justice system (e.g., the Portuguese law is very protective and full of guarantees of defense for defendants, the existence of a specific prison for young people), as in juvenile justice system (e.g., the Youth Justice Act comprises everything that is necessary, Portugal has made a great improvement process in the area of juvenile justice, and there are currently many studies and research in this area, there is a greater knowledge and dissemination on certain types of practices).

"But our law, I think it is very protective of the defendants. And therefore I do not think that any minor is impaired by, with the law that we have. If it is well applied, it is not." (PT_Judge_02)

"(...) These were things that we already, already have identified, which was the question of compliance with measures of internment at the weekend. The possibility of, hum, they might fulfill the, part of the measure, hum, outside the educational center, hum, these questions have already been, have been revised, so there has been an update to, to the law, not so long ago, and this has been revised. Therefore, it is generally a very, very good law, so I do not identify it like that." (PT_Educational Center_03)

Italian legislation seems to respond quite well to youth offenders' needs despite some gaps related to bureaucracy and the short time available to work with the child. A recent reform give the opportunity to youths who committed the offence when under age to remain within the juvenile justice system till 25 years and this could be. All participants highlighted once more the need to provide tailored and individualised intervention based on an holistic and multidisciplinary approach.

"The law in force forecast the presence of young adults within the Juvenile justice system till 25 years if the crime has been committed before 18 years. This could create some gaps linked to the age as we can have in the same structure minors aged 14 and an adult aged 25. Given this, intervention should be tailored according to the age but at moment this is quite difficult". (IT_Detention Center_01)

"The law in force forecasting the presence of young adults within the Juvenile justice system till 25 years could create some imbalances due to the age of the users. Different needs, often, creates specific criticism i.e. we could have in the same group youths aged 25 who are already fathers and youths aged 14 lacking of any sense of responsibility". (IT_Detention Center_04)

"The short time available to intervene and bureaucracy are the main weaknesses". (IT_Detention Center_05)

[K] Future recommendations

In Spain the interviewees have also proposed several recommendations and suggestions, specifically to provide more resources to police; to increase specialized training for judges, prosecutors and lawyers, allowing for a more complete and up-to-date knowledge of criminal typologies that have appeared or increased in recent years; to continue to use the different pathways and resources in order to resolve the conflict between the accused minor and the complaint through the extrajudicial solutions established; to promote a greater coordination between all relevant legal staff for the effective implementation of the judicial police units assigned to the prosecutors' offices; to look probation to be more thoroughly looked into; and to promote a greater judicial control over the powers assigned to the public prosecutor for the achieving and withdrawal of its actions.

"Legal provisions should be accompanied by a corresponding budget for their adoption." (SP_Police_02)

"Given the different scope of results produced, it would be positive to continue making use of the different pathways and resources which seek a solution to conflict between the accused minor and the complainant through the extrajudicial solutions established in our system which demand the accountability of minors in contact with law." (SP_Detention Centre_07)

"It has already been mentioned that coordination between all relevant legal staff is necessary for the effective implementation of the judicial police units assigned to the prosecutors' offices. Also, a relaxation of cases of extreme severity, taking into account the circumstances of the minor, would perhaps make an aggressive intervention, such as placement in a closed detention centre, unnecessary." (SP_Prosecutor_04)

"I would like to see greater judicial control over the powers attributed to the public prosecutor for the archiving and withdrawal of its actions." (SP_Judge_08)

Likewise, in the Portuguese context, participants have suggested some important future recommendations concerning judicial intervention with these youths, such as: to elaborate documents with norms and legal rights in more languages (e.g., Braille) for police facilities; to create a more specific regime for young people and with more appropriate measures and solutions for them (e.g., creation of specific and appropriate detention facilities where they are accompanied by specialized professionals); to update de Special Criminal Regime for Young Adults (the updated version is from 1982); to consider age as a factor when applying these measures; to implement, whenever possible, the electronic surveillance measure instead of pre-trial detention in prison; to implement, in less serious cases, the provisional suspension of the process (youths must comply with standards of conduct established by the Public Prosecution) as a privileged measure, avoiding the contagion of the prison system; to raise the minimum age for criminal responsibility to 18 years instead of 16; to be mandatory the attendance of specific training during the period of pre-trial detention, avoiding contact with other inmates; to provide specific training to judges on the impact of the justice system and measures applied to youths (e.g., to explore the study of feasible alternative measures).

"(...) I think they could put a prison just for young people, have a school, have everything and not, be, be a more, maybe, school environment, a family environment, could be deprived of freedom, but have an environment more, so that he can be reintegrated into society again." (PT_Police_05)

"(...) There may be a more specific regime for young people with more adequate measures for them or ... and with, and with more specific solutions for young people. Yes, if, maybe we could have." (PT_Judge_02)

"(...) Now, as I have just said, no, I do not know if there will be, it would have to be one, something of, more thought, if there is a need at this moment to consider age as a factor of, determinant of additional assumptions or requirements in application of, of, of coercion measures (...)" (PT_Judge_04)

"(...) but I think, I think the investment in, in, in alternative measures has to be more, more channeled to this. And, and try, and try to use pre-trial detention for less time." (PT_Prison_05)

Similarly, in Italy participants have made some future recommendations and suggestions in order to reply to the needs of minors such as the implementation of internal workshops on restorative justice, the use of alternatives to detention and the cooperation among agencies working in the field of juvenile justice.

"It could be useful to implement internal workshop on restorative justice issues as often youths are not aware of the damage they caused to the victim". (IT_Detention Centre_01)

"In my opinion, the idea that juvenile penal institutions are a self sufficient replies to the needs of the same and of the society make the system closed, I think that the use of alternative could promote the concept of a shared responsibility and a necessary cooperation for a positive social reinclusion of the minor. The rehabilitation of the same must be supported by the justice system but also by all key agencies competent for the take in charge of the minor (family, school, local health agencies, key institutions and organization and third sector).

The recourse to restorative justice could help to make concrete the pact of responsibility tying the youth and the society. This could be done enhancing the mediation activities as often the offender is not aware of the sufferance caused to the victim and this experience could be useful for him in this sense. Concluding, I think that the treatment must become an opportunity able to orient and guide the youth towards values such as legality and coexistence not as imposition of behaviours and values." (IT_Detention Centre_02)

"A multi-disciplinary and holistic approach is needed to implement efficacy intervention. The IPM alone can't be the solution, a close cooperation with the local community and competent agencies working in the field is fundamental". ". (IT_Detention Centre_05)

[L] Directive (EU)2016/800

Finally, concerning participants' perspectives about the European Directive 2016/800, in Spain all participants agreed that Spanish legislation accomplishes all the requirements established in the new Directive and there is no discrepancy to be highlighted. The only aspect to be included in practice is the audiovisual recording of interrogations and the need to strengthen the training of professionals involved in the procedure.

"To my understanding, it is perfectly in line with the practices that were already taking place, although I see some measures that can improve the current situation, such as the recommendation that interrogations be recorded. The other measures and developments related to minors' contact with the police, as well as their potential arrest, may be understood to be simple variations." (SP_Police_01)

"I was able to see the preparatory work and drafts of this document; it is precisely because of this

survey that I learned of its approval. As such, I have not yet had the opportunity to evaluate its implementation by the Spanish juvenile justice system." (SP_Detention_Centre_06)

"Yes, however, the document in question only acts to reinforce the current Spanish regulation, without any discrepancy worthy of note." (SP_Prosecutor_04)

"The developments supposed by Directive 2016/800 are an adaptation of the audio-visual recording of interrogations, as well as a reinforcement of the training aspect for participants in proceedings." (SP_Judge_08)

Similarly, in the Portuguese context, according to participants' interviews, the current national legislation globally provides conditions to implement the Directive, despite some limitations due to economic crisis and lack of resources. Most of the rights covered by the Directive 2016/800 seem to be considered in Portuguese legislation for minors between 12 and 16 years old (e.g., right to information, right to medical assistance, right to a lawyer, right to education/training), however some rights are not foreseen for youths with 16 and 17 years old because they are treated and judged as adults (e.g., their parents cannot be present during judicial proceedings).

"(...) For example, the right to information, it is not, they, ready, have the necessary information of the process for that phase, but then, as also in the 61º, they also have the right to, to be informed during the whole process, the state of the proceedings and they must always have a lawyer, they must always have the lawyer who informs them of everything, this is the right, for example, to, to information. Here the right of a lawyer also have, they have to have always, but be under 18, or older, they must always have lawyer, have, always have the right to be informed. This is already in our 61º, this is already in our 61º ... Here is the right to information, responsibility ... Well ... here is no longer with us. Here it may be more for another family court or ..., here in this perspective it will no longer be with us, no, it will not be here so much with us. This one already have. Here, here it is ... To, yes ... Right, here, notice, even in terms of coercion measures, if they need some treatments or medical appointments there are also here in the 200º, I'll show you how to get there. (...)" (PT_Judge_01)

"Well, some are just like ours, are not they? Right to information. This one of parents may be a little bit different, we do not have this planned for parents. Here the parents, the employees will say something, it is not, no, information is not expressly foreseen for parents. Right to a lawyer is the same. Right to a doctor, hum. (...)" (PT_Judge_02)

Likewise, in Italy according to participants (knowing the Directive), key rights highlighted by the Directive 2016/800 are duly taken into consideration within the national legislation in force (i.e. right to information, right to medical assistance, right to a lawyer, right to education/training...). Concluding, the Directive is not so well known (in fact, some of interviewed affirmed they do not know it). More training and information should be provided in order to better align the indications given by the same and the daily intervention practices.

In France also, the latest legislation on juvenile justice (Circulaire du 13 décembre 2016 de politique pénale et éducative relative à la justice des mineurs, NOR: JUSD1636978C) incorporates many of the provisions of the European Directive (EU) 2016/800 to recall and/or strengthen existing provisions in national law such as:

- Reaffirm the specialization of the actors.
- Promote the involvement of judicial actors within the framework of partnership bodies and the coordination with other actors in the judicial process.
- Promote the individualization of punishment.
- Promote effective enforcement of sentences.
- Recall the essential role of lawyers.

3.3.2. NATIONAL SEMINARS

SPAIN

The Spanish National Seminar of the project MIPREDET took place in Alicante, on 26th of October 2016, and was attended by 36 participants. Relevant stakeholders at regional and national level and professionals that work in direct assistance in the field of juvenile justice participated in the Seminar. This facilitated the discussion with a multidisciplinary vision and the exchange of knowledge, encouraging the internalisation of the contents.

The job profiles of the participants in the Seminar were the following:

prosecutors of minors;

judges of minors;

lawyer of courts / prosecution of minors;

responsible of public administration in the field of juvenile justice;

responsible of public administration in the field of education;

groups of specialized police in children;

direct assistant professionals in the field of juvenile justice such as center managers, psychologists, social workers, social educators, etc.

Seminar's main objective consisted in promoting a meeting and reflection space for professionals working on the Juvenile Justice System to analyse the implementation in Spain of the European Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings. To accomplish this objective were invited several experts: Prof. Juan José Periago Morant (Lawyer in the Juvenile detention centre "Pi Gros" in Castellón - Fundación Diagrama, Associate professor of Penal Law at the University Jaime I - Castellón), D. Enrique Martínez Piera (Chief of the Department of Child Protection - Public Administration), D. Vicente Rafael Romero Sáez (Chief Inspector of GRUME - specialized police group for minors), Ilma. Sra. D^a. Margarita Campos Pozuelo (Coordinator of Juvenile Prosecutor Office of Alicante), D^a. Adelaida Conde Vega (Technician of the Department of Child Protection - Public Administration), and D. Antonio García García (Manager of the Detention Center «Els Reiets»).

Throughout the Seminal were discussed the following topics:

[1] Introduction of the MIPREDET project.

[2] Analysis of the Directive (EU)2016/800 of the European Parliament and of the Council

on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

[3] Debate about the compliance in Spain of the European legislation on juvenile justice system in all phases of judicial proceedings that minors go through:

- [3.1.] Detention.
- [3.2.] Initiation of judicial proceedings.
- [3.3.] Cautionary Internment.
- [3.4.] Juvenile detention center.

Seminar's main conclusions are the following:

Detention

Detention can be practiced by different police bodies (CNP, PL, GC) and not all police bodies have specific groups in intervening with minors and minors sometimes are arrested by police that is not specialised in minors.

Police questionings are not recorded.

Proceeding is different if minor is arrested while they are committing the crime as when they are called to make a statement.

There is a lack of coordination between entities and public bodies.

Minors sometimes receive too much information from different people and they do not understand what is being said.

Transfer policies should always be without labels on their cars and police accompaniment should also be with police wearing plainclothes.

When police take a statement to minors within juvenile detention centers, professionals from the center accompany to minors instead of their parents.

Judicial proceedings

The initial evaluation of Technical Team fails as there is a lack of rigor and consistency in order to provide the right answer to minors' needs from the judicial system. It should be verified if minors understand what is explained to them.

It is necessary to have more specialised trainings for lawyers working with minors in contact with the law.

There are too many cases and a lack of technicians to provide a good service in order to assess minors' needs and to attend them.

According to the seminars, Spanish Legislation is fully implemented in practice.

Spanish legislation is adapted to the needs of the minors.

In trial, there are too many people (judge, secretary, prosecutor, lawyers, technicians, juvenile detention center staff, relatives), so right of privacy is not fully accomplished.

It is necessary to provide more information to minors in a simple language adapted to their developmental stages and to make sure they understand the information properly.

It is important for minors to have the same lawyer from the beginning to the end of the judicial proceeding.

Sentences are public and even if the name of minors is not reflected in the sentence, in some small regions is possible to identify the minor, so sentences should always be confidential and in no case be disseminated.

When minors commit a felony, they are in direct contact with more professionals as they are normally in cautionary internment and they spend more time within the judicial system and because of this they receive more information from different people than minors that perpetuate a misdemeanor.

Juvenile Detention Center

Internment measures are descended.

It sometimes exists a lack of information for minors about their sentence since judges sometimes do not explain it to minors and either lawyers or professionals.

Working in juvenile detention centers are who explain the sentences to minors. In some juvenile detention centers, there are lawyers working that support minors and resolve their doubts.

Minors sometimes receive too much information in a short space of time and it would be desirable to set up deadlines to give minors the information once being them more settled in order to make the information more understandable, however, this fact cannot always be given.

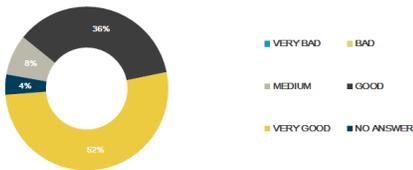
It is important to work on the improvement of the prevention and coordination among professionals working with minors in contact with the law.

Participants have also completed Evaluation Forms, which results are presented below.

REALITY OF MINORS' PRE-TRIAL
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[1] Usefulness of seminar's content

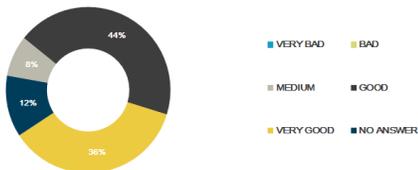
In a rating scale ranging from 1 (Very bad) to 5 (Very good), the majority of participants (52%) classified the usefulness of Seminar's contents as *Very good*. Also, 36% evaluated as *Good* Seminar's contents. Only one participant did not provide this information.



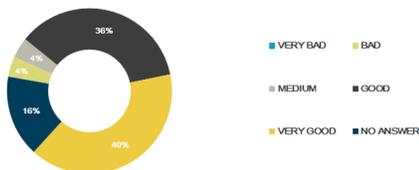
[2] Evaluation of presentation's and debate's content

Concerning the content of Presentation 1, 44% of participants rated it as *Good*, with 36% rating it as *Very good* (3 participants did not provide this evaluation). Regarding Debate's content, 40% of participants have considered it was *Very good*, with 36% rating it as *Good* (4 participants did not provide the evaluation).

CONTENT PRESENTATION 1



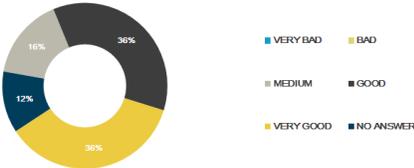
CONTENT DEBATE



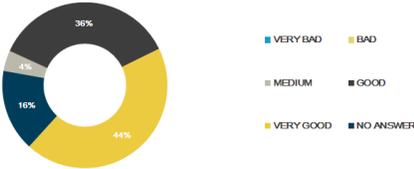
[3] Evaluation of clarity of presentation and debate

Concerning the clarity of the contents exposed in Presentation 1, 36% of participants rated it as *Very good*, with 36% rating it as *Good* (3 participants did not provide this information). Regarding Debate's clarity, 44% of participants considered it was *Very good*, and 36% as *Good* (4 participants did not evaluate this topic).

CLARITY PRESENTATION 1



CLARITY DEBATE



[4] Evaluation of duration of presentation 1 and debate

Regarding the duration of the Presentation 1, 44% of participants rated it as *Very appropriate* the duration of Presentation 1, with 40% of participants rating it as *Appropriate* (3 participants did not provide this evaluation). As for Debate, 48% of participants evaluated its duration as *Appropriate*, and 36% rated it as *Very appropriate* (3 participants did not provide this evaluation).

REALITY OF MINORS' PRE-TRIAL
DETENTION COMPARATIVE ANALYSIS

DURATION PRESENTATION 1



DURATION DEBATE



[5] Evaluation of seminar's total duration

Concerning the total duration of the Seminar, the majority of participants (56%) have considered it was *Appropriate*, and 36% of participants have considered it was *Very appropriate*.

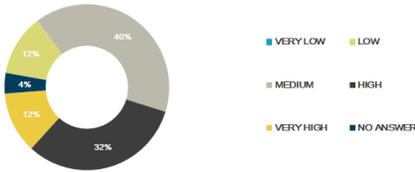
SEMINAR'S TOTAL DURATION



[6] Current knowledge level about the topics presented

With respect to their current knowledge level about the topics presented throughout the Seminar, 40% of participants considered it is *Medium* and 32% have considered it is *High* (1 participant did not provide this information).

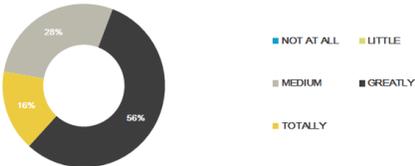
CURRENT KNOWLEDGE LEVEL OF TOPICS PRESENTED



[7] Expectations about the seminar

As for participants' expectations about the Seminar, the majority (56%) considered that the Seminar *Greatly* met their expectations, 36% have considered that was *Medium* and the remaining 16% considered it *Totally* met their expectations.

EXPECTATIONS ABOUT SEMINAR



PORTUGAL

The Portuguese National Seminar of the project MIPREDET took place in Oporto, on 27th of October 2016, and was attended by 31 participants (15 Evaluation Forms have been returned). Seminar's main objective consisted in promoting the discussion with a multidisciplinary vision and the exchange of knowledge between professionals working on the Portuguese Judicial System. Participants have a heterogeneous academic background (e.g., Social Work, Psychology, Sociology and Criminology), and have also reported heterogeneous professional activities, such as Investigation/Teaching, Prison's Administrator, Criminologist, Reeducation Technician, students.

To accomplish the Seminar's main objective were invited 2 experts.

The first presentation was focused on detention conditions in a special prison in Portugal, specifically targeted for youths under 18 years old:

5 youths under 18 years old (one with 16 and four with 17).

Prison's physical structures.

Prison's Staff.

Accommodation.

Training activities (School education from 9th to 12th grade; Professional training – modular and double certification with equivalence to the 9th and 12th grades, in the areas of gardening, agricultural operator, hotel maintenance, electricity, construction and computer programmer).

Job (organized by prison – agricultural brigade, construction, gardening, cleaning and maintenance; organized by prison in association with external entities).

Intervention programs.

Volunteer projects.

Agricultural activity: horticultural and wine production.

During the second presentation an expert of the Law and academic field have mainly focused on the legal framework regarding youths under 18 years old who commit facts qualified as crimes, differences between youths aged 12-16 (Educational Law) and 16-18 (Penal Law), and some guidelines regarding a child friendly justice were mentioned (Convention on the Rights of the Child; Beijing Rules; Havana Rules; Tokyo Rules; Riyadh Principles; Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings).

Some current problems for youths between 16-18 years were identified, such as the fact that the justice system does not take into account the needs and vulnerabilities of the young person (parental monitoring is not foreseen, as well as interviews' recording), in prisons young people are not separated from adults (it only happens in Leiria's Special Prison for Young People – 16/21 years), and technicians do not have adequate training to deal with these youths.

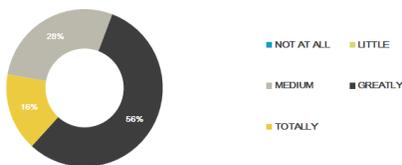
As future suggestions were proposed the following: to raise from 16 to 18 years old the age of criminal responsibility (harmonising with the age for civil majority), to create detention centers to separate young people up to the age of 21 from adults, to adequately prepare the technicians who work with this population, and to consider parental accompaniment of youths and interviews' recording.

In the second part of the Seminar there was a debate, in which the two invited experts also participated. Throughout the multidisciplinary debate we had the opportunity to discuss some issues related to the judicial treatment of youths aged between 12 and 16, and youths aged between 16 and 18, particularly differences regarding pre-trial detention measure between these two age groups. As main conclusions and reflection topics resulted the following:

- [1] Importance of detention centers specifically targeted at young people under 18 years - concern about the conditions of separation of detainees.
- [2] Possibility of raising the age of criminal responsibility from 16 to 18 years, equaling the age of civil responsibility in Portugal and taking into account the definition of child proposed by the Convention on the Rights of the Child.
- [3] To promote a more child friendly justice system for youths with 16 and 17 years, allowing them to receive a more appropriate treatment during detention.
- [4] To better understand practitioners' perspectives on implementing alternative measures to deprivation of liberty.

[1] Usefulness of seminar's content

In a rating scale ranging from 1 (Weak) to 5 (Excellent), the majority of participants (54%) classified the usefulness of Seminar's contents as 4. Also, 33% evaluated as *Excellent* Seminar's contents.



[2] Evaluation of presentations' content

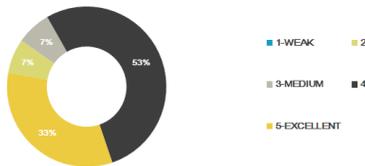
Most of participants (60%) rated as Excellent the content of Presentation 1. Regarding Presentation 2, most of participants (53%) rated its content as 4, with only 1 participant (7%) rating it as 2.

REALITY OF MINORS' PRE-TRIAL
DETENTION COMPARATIVE ANALYSIS

CONTENT PRESENTATION 1



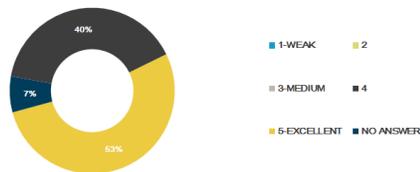
CONTENT PRESENTATION 2



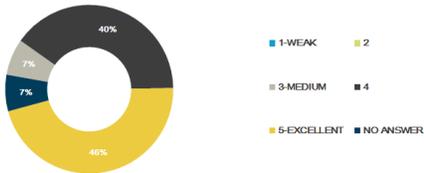
[3] Evaluation of presentations' clarity

Concerning the clarity of the contents exposed, the majority of participants (53%) rated as *Excellent* the Presentation 1, with 40% of participants rating it as 4. Regarding Presentation 2, 46% of participants evaluated its clarity as *Excellent*, and 40% as 4. Only one participant did not provide this evaluation.

CLARITY PRESENTATION 1



CLARITY PRESENTATION 2



[4] Evaluation of presentations' duration

Regarding the duration of the presentations, the vast majority of participants (73%) rated as *Totally appropriate* the duration of Presentation 1, with 21% of participants rating it as *Appropriate* (one participant did not provide this evaluation). 40% of the participants evaluated the duration of Presentation 2 as *Appropriate*, and 40% rated it as *Totally appropriate* (3 participants did not provide this evaluation).

DURATION PRESENTATION 1



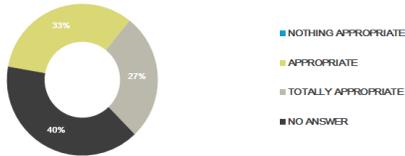
DURATION PRESENTATION 2



[5] Evaluation of debate's content

Concerning Debate's content, 33% of participants have considered it as *Appropriate*, and 27% as *Totally appropriate* (6 participants did not provide this evaluation).

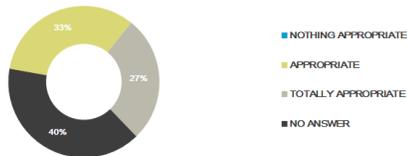
DEBATE'S CONTENT



[6] Evaluation of debate's duration

Similarly, 33% of participants have also considered Debate's duration as *Appropriate*, and 27% as *Totally appropriate* (6 participants did not provide this evaluation).

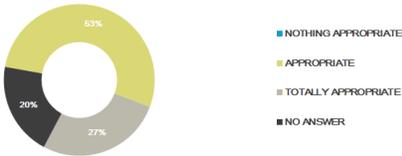
DEBATE'S DURATION



[7] Evaluation of seminar's total duration

Regarding the total duration of the Seminar, the majority of participants (53%) have considered it was *Appropriate*, and 27% of participants have considered it was *Totally appropriate* (3 participants did not provide this evaluation).

SEMINAR'S TOTAL DURATION



[8] Current knowledge level about the topics presented

Concerning their current knowledge level about the topics presented, almost half of participants (47%) considered it is *Good*, 33% have considered it is *Medium* and only 1 participant reported an *Excellent* knowledge level about the topics presented (2 participants did not provide this information).

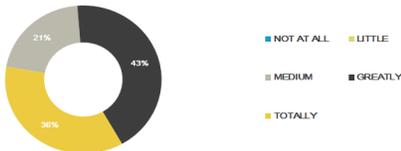
CURRENT KNOWLEDGE LEVEL OF TOPICS PRESENTED



[9] Expectations about the seminar

As for participants' expectations about the Seminar, 43% considered that the Seminar *Greatly* met their expectations, 36% have considered that *Totally* met their expectations, and the remaining 21% considered it was *Medium* (one participant did not provide this information).

EXPECTATIONS ABOUT SEMINAR



ITALY

Italian National Seminar took place on 2nd November 2016, involving 25 professionals working in the field. The Italian framework in the field of juvenile justice sees the presence of 126 juveniles in pre-trial detention on a total youth prison population of n.511 (Department for Juvenile Justice and Communities, data at 15th September 2016).

Throughout the Seminar:

Silvio Masin (Coordinator, Istituto Don Calabria – Casa San Benedetto) opened the meeting welcoming participants and giving an overview of the workday;

Alessandra Minesso (Project Manager, Istituto Don Calabria) introduced MIPREDET initiative (key topic, aims and objectives, expected results and deliverables);

Then, it was introduced the topic “Procedures and status of youth offenders in pretrial detention: the Italian context” by Mr. Alessandro Padovani, Director of Istituto Don Calabria and Honorary Judge by the Appeal Court of the Juvenile Session of Venice from 2005 to 2010 – the application of pre-trial detention in juvenile penal institution is applied in case of intentional crimes for which the law forecast life sentence or reclusion not less than a maximum of 9 years (Art. 23 (1)) or, apart from such cases, when we proceed for one of the crimes specifically listed by the law. The law in force for minors specifies that the terms of pre-trial detention forecast for adults are reduced in consideration of the child’s age: of the half if under 18 years and two thirds if under 16 years. Given that the application of precautionary measures causes a certain limitation of personal freedom, the same are adopted in the full respect of the following principles and conditions: principle of legality; principle of adequacy; principle of proportionality; principle of gradualness and principle of rights’ protection.

Precautionary measures addressed to minors can be custodial or noncustodial. The first ones are: permanence at home; placement in community and pretrial detention while the second ones refers to prescriptions (prescrizione). The application of Art. 23 D.P.R. 448/88 defines a series of parameters (objectives and subjectives) allowing to the Judge to decide the application or not of pretrial detention. In fact, the Judge must consider the minor’s personality and the family and social background. Last but not the least, pretrial detention should not interrupt the ongoing educational pathways. Local authorities directly manage most of the available services in juvenile detention centers, and the available services in the community for juveniles in conflict with the law inserted in the juvenile justice system. Healthcare has been managed until 2008 directly by the Ministry of Justice. Actually the Department for Juvenile Justice and communities of the Ministry of Justice is still responsible of the respect of the rights of juveniles under criminal measures, but the above mentioned services are now provided by the national healthcare systems (managed at regional level). Education and vocational training are both under the responsibility of public services. The juvenile justice staff is responsible to coordinating activities in juvenile penal institutions, and direct youths towards the most appropriate educational paths. In specific, Ministry of Education’s

personnel provides educational services, vocational training and guidance are indeed under the responsibility of local authorities, generally provided for by private contractors. A wide range of other activities is then available thanks to the intervention of third sector, such activities are carried out on a voluntary base, or with resources provided for by local authorities. As for social services (managed at the municipality level), they are responsible for the social welfare of all citizens, including juveniles under a criminal measure. For this reason, a close cooperation between these two systems should be promoted.

Mr. Ciappi (criminologist cooperating for many years with Istituto Don Calabria) gave an overview on the new Directive on procedural safeguards for children suspected or accused in criminal proceedings – the new *Directive on procedural safeguards for children suspected or accused in criminal proceedings* comes under the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings adopted by the Council on 30 November 2009. The roadmap was based in a step by step approach and included a list of measures relative to translation and interpretation, information on rights and information about the charges, legal advice and legal aid, communication with relatives, employers and consular authorities, special safeguards for suspected or accused persons who are vulnerable, and a green paper on pre-trial detention.

The Directive forms part of the EU Agenda for the Rights of the Child and seeks to promote children's rights with reference to other instruments, such as the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice and the United Nations Convention on the Rights of the Child. Indeed, those instruments do not have the binding force of EU legislation, and as a result the safeguards they provide are not fully and uniformly applied in all the Member States. It is in this context that the Commission presented its proposal for a directive in 2013, with the aim to lay down a limited but properly structured catalogue of rights for children suspected or accused in criminal proceedings (or subject to European arrest warrant proceedings) based on a package of minimum, interconnected standards geared to meeting the specific needs of children at all stages of the judicial proceedings.

The main safeguards provided in the Directive are the following:

The mandatory right to be assisted by a lawyer and the right to free legal aid.

The right to an individual assessment.

The compulsory special training for judges, law enforcement authorities and prison staff, lawyers and others who come into contact with children in their work.

The provisions on detention, under which children should be held on remand only where there is no alternative, and in such cases, it must be ensured that the children are held separately from adults, except where it is in their best interests not to do so.

The new Directive contains several provisions regulating the detention of children, in specific Article 10(1) implements the 'last resort and shortest period' principle regarding pre-trial detention, providing that: "Member States shall ensure that children are deprived of liberty before their conviction only as a measure of last resort and for the shortest appropriate period of time. Due account shall be taken of the age and individual situation of the child". Similar provisions already exist in many EU Member States, but the lack of available alternatives to detention leads to a very high number of children placed in detention. The adoption of the Directive will give those safeguards a basis in law and not only in practice, with monitoring mechanisms in place. It will also have the effect that safeguards provided by International Human Rights texts will be implemented in EU legislation, making them binding obligations on Member States under EU law.

The seminar concluded with a profitable debate moderated by Ms. Barbara Santagata (Project Manager, Istituto Don Calabria). The main outputs emerged by such discussion are the following:

Pretrial detention shall be used as last resort in criminal proceedings, with due regard for the investigation of the alleged offense and for the protection of society and the victim;

Alternatives to pretrial detention shall be employed at as early stage as possible.

Pretrial detention shall last no longer than necessary and shall be administered humanely and with respect for the dignity of the minor.

As regard aftercare and reintegration after detention, to be highlighted that it is very unlikely that a minor/youth will serve his/her sentence entirely in prison, in fact, detention in Italy is used as *extrema ratio*. The use of detention is more frequent as a pretrial measure. Once the sentence is final, indeed, a community measure is usually ordered. As for foreign minors, pretrial detention is largely and commonly used due to the lack of a family and social network able to support these youngsters. This makes juvenile penal institutions places where to contain these juveniles' marginalisation and precariousness.

Concluding, what emerged from the debate is that most of the juvenile offenders in Italy do not have a final sentence and the average time spent in juvenile penal institutions by the same is very short (around two months), hence, in Italy, reintegration do not take place after detention, but "instead" of detention. The juvenile justice system is in charge of this process, but, of course, this must be carried out in close cooperation and with the support of the other competent public and private services. All participants agreed in defining the status of juvenile under pretrial detention quite satisfying in terms of fundamental rights' respect (with some gaps related to foreign minors as already highlighted) however, a lot of work still remains to be done.

[1] Usefulness of seminar's content

The majority of participants (56%) classified the usefulness of Seminar's contents as good (4). Also, 40% evaluated them as in the average (3) and the remaining 4% evaluated the same as very good (5).



[2] Evaluation of presentations' contents

As for Presentations' contents participants gave the following rates:

Presentation N.1

68% of participants rated them as Good (4);
28% of participants rated them as Average (3);
4% of participants rated them as Very good (5).



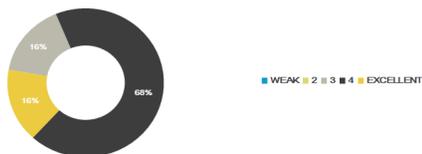
Presentation N.2

68% of participants rated them as Good (4);
28% of participants rated them as Average (3);
4% of participants rated them as Very good (5).



Presentation N.3

68% of participants rated them as Good (4);
16% of participants rated them as Average (3);
16% rating it as Very good (5).



[3] Concerning the clarity of the contents exposed in presentations

Concerning the clarity of the contents exposed in presentations:

Presentation N.1

68% of participants rated them as Good (4);
20% of participants rated them as Average (3);
12% of participants rated them as Very good (5).



Presentation N.2

60% of participants rated them as Good (4);
24% of participants rated them as Average (3);
16% of participants rated them as Very good (5).



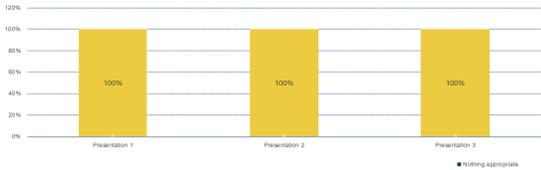
Presentation N.3

80% of participants rated them as Good (4);
16% rating it as Very good (5);
4% of participants rated them as Average (3).



[4] Evaluation of duration of presentations

As for the duration of the presentations 100% of participants considered it as *appropriate* for all the N.3 presentations.



[5] Evaluation of seminar's total duration

As for the duration of the presentations, also in this case, 100% of participants considered it as appropriate.



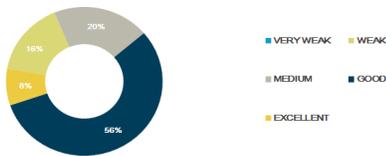
REALITY OF MINORS' PRE-TRIAL
DETENTION COMPARATIVE ANALYSIS

[6] Current knowledge level about the topics presented

Considering the level of knowledge about Seminar's faced topics:

- 56% of participants declared to have a good knowledge of faced topics;
- 20% of participants declared to have an average knowledge of faced topics;
- 16% of participants declared to have a poor knowledge of faced topics;
- 8% of participants declared to have an excellent knowledge of faced topics.

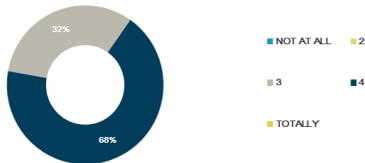
CURRENT KNOWLWDGE LEVEL ABOUT THE TOPICS PRESENTED



[7] Expectations about the seminar

The majority of participants (68%) considered that the Seminar fully met their expectations (range 4), the remaining 32% considered that the same satisfied their expectation in average (range 3).

EXPECTATIONS ABOUT SEMINAR



[8] Final comments/suggestions to improve

Participants seemed to find the seminar very interesting, in specific the main *strengths* (28%) signaled were the following:

- European dimension of the initiative (8%);
- Opportunity to exchange with other professionals working in the field (8%);
- Opportunity to update knowledge on the faced topic (12%).

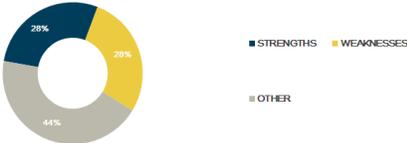
The main *weaknesses* (28%) individuated by participants were indeed:

- The specificity of the topic (20%);
- There was the need to go deeper on psychological aspects (4%);
- There was the need to give more space to the exchange among stakeholders (4%).

Other (44%)

- No particular comments 12%
- Not available 28%
- Project staff (participants seemed interested and participated actively to the work session) 4%

FINAL COMMENTS/SUGGESTIONS





CHAPTER 4:

Conclusions and recomendations

CONCLUSIONS AND RECOMMENDATIONS



Before going ahead and detailing the different conclusions and the recommendations derived from these ones, we should point out the case of Portugal wherein, although it has been verified the implementation of the Directive (EU) 2016/800, it is only applicable until reaching the age of 16 due to the fact that at this age, minors are under the adult's penal law. In this sense, it would be advisable to increase the age of criminal liability from the age of 16 to the age of 18, making it equal to the age of public liability in the already mentioned country and also taking into account the definition proposed by the Convention on the Rights of the Child.

Conclusion 1

In Spain, the right to information is included in its national regulations in terms of what it is specified in the Directive (Art. 4 Directive (EU) 2016/800, 11th May). Nevertheless, experts point out that, in real practice, the observance of this right varies depending on the seriousness of the offence. When it comes to serious crimes (and also repeat offenders), the information received by the minors is more abundant and also it is given by several actors: police authorities during the detention, the defence lawyer, the prosecutor, the technical team of the public prosecutor's office (mainly psychologists and social workers), the services responsible for the execution of the judicial measures when it is valued to impose a cautionary measure of freedom deprive and the staff of the young offenders' institution.

To receive a lot of information by several people in a short period of time, even though it is done in a plain and appropriate language, may be repetitive and even it can produce the contrary effect from the one intended. Besides, we should keep in mind that people need time to process the information, especially if it is about stressful situations such as police detention and being brought before the judge. Facing this situation, which is the least common, we usually find minors who commit petty offences which generally tend to be their first offence. Therefore, their first contact with juvenile justice system is much shorter and, in many cases, limited to an interview with the prosecutor, the technical team of the public prosecutor's office and the hearing, so the information which is provided to the minor is lower.

Recommendation 1

With regard to prevent minors to receive information from many sources, it would be advisable that an adequately trained professional was designated, being responsible for accompanying the minor during all the process and helping him or her to understand all the information. Likewise, in those cases where the contact with the justice system is limited to a certain times, it would be also appealing that minors count on the same figure to set out as many doubts as they have, not only when he or she is in court but also during waiting times amongst interventions.

Conclusion 2

Regarding the right to information (Art. 4 Directive (EU) 2016/800, 11th May), we could conclude that its observance also varies depending on whether the police intervention is carried out at the moment when the minor is committing the offence (in flagrante delicto) or not. In this way, the minors' contact with the authorities usually happens when they are set to declare within a police inquiry. In these situations, police agents that are participating belong to a team specialised in minors, so they have been trained to provide them the information as it is established in the Directive. However, when the detention happens in a flagrante delicto situation, the agents who take part in it do not need to be specifically trained on the dealing with minors. Consequently, although the information is also provided as it is established in the law, it is not given in the same way as if they were specialized police officers. In Spain, for instance, not all the areas are filled by agents specialised in the treatment of minors and, in those areas where this kind of agents are present, they are not enough to cover all the interventions.

Recommendation 2

It should be advisable to increase the number of agents specialised in the treatment of minors within the police staff. In addition, all the agents that might intervene with minors at any time in their career, should be specifically trained so that the most suitable intervention with minors was ensured.

Conclusion 3

It is guaranteed the right to the assistance by a lawyer stipulated in the Article 6 of the Directive (EU) 2016/800, both from a legal point of view and in practice. So, a duty lawyer is designated without delay to every minor in case of the lack of his or her own resources to get a private one. Children are assisted during police questioning, they can meet privately with their lawyer before the questioning and also they can be present during each investigative or evidence-gathering act and when they have to appear before a court. However, consulted experts consider that many of the lawyers who assist the minors, also those who work as a duty lawyers, lack the needed training and, as a result, their intervention could be improvable. Concerning duty lawyers who assist minors, they must have previously attended a course, however it is a short duration training in which basic aspects are addressed, what is not enough to carry out a correct intervention. Besides, criminal law of minors is not a compulsory subject in Law Degree curriculum at University.

Recommendation 3

It would be advisable to improve the training of the lawyers with regards to the juvenile system. To this aim, the curriculum of Law Degree at University could be broadened. More extensive courses should be also offered by public administrations and professional associations. Finally, to have

an appropriate and specialised training should be a requirement to assist minors for both private and duty lawyers.

Conclusion 4

Regarding the lawyer assistance, it has also been pointed out that if a minor must be tried in several occasions owing to having committed several offences, he or she does not always count on the same duty lawyer.

Recommendation 4

It should be advisable to try that, when a minor must be tried for several crimes, he or she should be assisted by the same lawyer in every proceeding.

Conclusion 5

With respect to the right to an individual assessment contemplated in the Article 7 of the Directive (EU) 2016/800, it should be pointed out that it is considered in the different national legislations which have been examined in this project. Moreover, they are put into practise since technical teams from the minors' prosecutor offices always carry out an assessment of the minors when the judicial proceeding begins. However, these professionals have exposed that they have an important work load which causes that, in many occasions, they do not have enough time to carry out the assessments as deeply as they should be done.

Recommendation 5

It would be necessary to allocate more resources to increase the staff so as to technicians at the minors' prosecutor's offices can spend more time doing more thorough assessments.

Conclusion 6

According to the (EU) 2016/800, we have been noticed that minors kept in police custody are held in appropriate places and separately from adults. However, experts have exposed that not always police offices have enough rooms to fulfil this right.

Recommendation 6

It would be advisable that, in police offices where infrastructures limit the compliment of this regulation, convenient changes should be done in order to treat the minors as it is established in the law.

Conclusion 7

In every moment, minors usually are accompanied by their holder of parental responsibility during all the proceeding. Likewise, it is guarantee that minors who cannot leave the centre because of their precautionary measures, exercise their right to family life. Nevertheless, these rights can be limited when their holder of parental responsibility, despite wishing to be present in judicial acts or to visit their minors in the centres, do not have enough economic means to travel by themselves.

Recommendation 7

It should be advisable to establish the mechanics needed to solve the situations in which minors do not exercise their rights due to their parental responsibility holders' lack of economic means.

Conclusion 8

Occasionally, especially when it comes to a serious crimes, the period of provisional detention can exceed six months, what contributes to the minors' emotional instability, making impossible their participation in the long term activities because of the unpredictability of their judicial situation.

Recommendation 8

It would be advisable to speed up the judicial proceeding or take other measures (if and when it is allowed by the legislation), as well as to use the privation of liberty as the last resource and during the shortest period of time, accomplishing what is established in Beijing Rules (United Nations General Assembly, 1985) and the Havana Rules (United Nations General Assembly, 1990).

Conclusion 9

When it comes to the right to privacy considered in the Article 14 of the Directive (EU) 2016/800, experts have claimed that, in some occasions, it can be barely fulfil when many people have to act (judge, judicial secretary, prosecutor, lawyers, witnesses, technical teams, staff in the centres, relatives, etc.).

Recommendation 9

It would be advisable to guarantee that only the essential people are present during the judicial proceeding.

Conclusion 10

It has been noticed that in some countries, for instance Spain, the different regions or Autonomous Communities are responsible for the implementation of precautionary measures having available different resources. Even though all of them fulfil the minimum established in the Directive, in practice it is observed that minors can have more or less resources depending on the Region where their measure is executed.

Recommendation 10

It would be advisable that all Autonomous Communities had the same resources, so that the treatment received by all the minors were equivalent, regardless of the place where the cautionary measure was executed.

