



# Access to justice for children



## Country fact sheet: Spain<sup>1</sup>

### Overview

**Country size:** 505 990 km<sup>2</sup>

**General Population:** 48 million

**Number of Children:** 8,4 million (under 18)

**Date of ratification of the Convention on the Rights of the Child:** 1990

**Date of abolition of the death penalty:** the death penalty was abolished in Spain by the adoption of the Spanish Constitution of 1978, although it was reserved for military jurisdiction until 1995.

### Minimum ages

**Minimum age of criminal responsibility ("MACR"):** 14 years

**Age of imprisonment:** 18 years and in some circumstances 14 years (only in detention centres for children)

**Age until juvenile justice legislation is applied:** Up to 18 years

### Type of legal system

The Spanish legal system is based on a civil law system / continental law system.

### Specialisation of the system

Spain provides for several specialised institutions and professionals including:

- Child police units/station
- Child prosecution office / child prosecutors
- Child court / child judges
- Child legal aid / child lawyers and paralegals
- Child social work service / child social workers
- Child probation services / child probation officers

### Child-specific legislation

The [Spanish Constitution](#) contains several provisions regarding children's rights, including the right to education and protection of children. In addition, other child specific legislation includes:

- [Organic Law regulating the criminal responsibility of minors](#) – contains provisions on the criminal responsibility of children.
- [Organic Law on the Protection of Witnesses and Experts in Criminal Cases](#) – contains provisions on the protection of child victims and witnesses.
- [Organic Law on the Legal Protection of Minors](#) – contains provisions addressing children in need of protection and the other rights which are recognized by children. Establishes that children shall enjoy all the rights recognized in the Constitution, in the legal system, and in the Convention on the Rights of the Child.
- [Law 1/1996 on Free Legal Assistance](#) – contains provisions for legal assistance in proceedings.

The [Convention on the Rights of the Child](#) is directly applicable in Spain's justice system.

<sup>1</sup> The information used to compile this fact sheet is based on the responses to the questionnaire received in November 2019.

# Child suspects or accused in criminal proceedings

## Implementation of EU Directive 2016/800

The **EU Directive 2016/800** on procedural safeguards in criminal proceedings for children who are suspects or accused persons in criminal proceedings and **2016/1919** on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings have been transposed into Spain's legislation.

## Cross-cutting safeguards

- In Spain, children cannot be charged as adults. The accused's age is based on his or her age at the time of the commission of the offence.
- Children may receive free legal assistance at all stages of criminal proceedings. See *Law 1/1996 on Free Legal Assistance, Articles 2.g and 6.1* and *Organic Law regulating the criminal responsibility of minors, Article 17*.
- Children have the right to be informed of the charges against them, and their rights and obligations, in a manner that he/she can understand. See *Organic Law regulating the criminal responsibility of minors, Article 17.1*.
- Children have the right to effective participation during all stages of the proceedings. See *Organic Law regulating the criminal responsibility of minors, Article 22 c*.
- Children have the right to have their privacy fully respected during all stages of the proceeding. See *Organic Law regulating the criminal responsibility of minors, Articles 56.2 and 64*.
- Other safeguards available in Spain's legislation include: the right to have one's parents/legal guardians present during the proceedings, the right to have decision(s) based on the best interests of the child, and the right to appeal.

## Specific procedural measures

- An assessment of a child in conflict with the law is conducted by public prosecutors, judges, social workers, and psychologists (Technical Team). See *Organic Law regulating the criminal responsibility of minors, Article 27*.

- The final decision maker on whether a measure is necessary and will be applied to a child in conflict with the law is the public prosecutor or children's court judge. This will depend on (a) the seriousness of the crime alleged, (b) what kind of rights-restrictive measure may be imposed, and (c) the stage of the proceedings.
- When there are reasonable grounds for believing that a crime has been committed and there is a risk that the child will evade or obstruct justice or that the legal assets of the victim will be undermined, the court may take precautionary measures for the custody and defence of the child in question or for the proper protection of the victim. Such measures may consist of placement in a centre under an appropriate regime, probation, prohibition of approaching or communicating with the victim or with those of the victim's relatives or other persons determined by the judge. See *Organic Law regulating the criminal responsibility of minors, Article 28*.

## Diversion and alternatives to detention

- If a child is detained, he or she must be held at a children's detention centre. Pre-trial detention may not last longer than is necessary to conduct inquiries and clarify facts. The maximum period for pre-trial detention is 24-hours and the child must either be released or at the disposal of the public prosecutor (who can take 24 hours more to decide). See *Organic Law regulating the criminal responsibility of minors, Articles 17.4. and 17.5*.
- Spanish law provides for diversion for children in conflict with the law. Spain collects data on diversion, but data is only available for diversion by judges and public prosecutors.

# Child victims and witnesses in criminal proceedings

## Implementation of EU Directive 2012/29

Spain has transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime into national law.

## Cross-cutting safeguards

Safeguards available to child victims and witnesses in Spanish law include: the right to avoid contact with the offender, the right to be protected from hardship during the justice process, the right to reparation and to claim compensation from the offender, the right to raise objections in court; and the right to use a mediator.

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## Focus on status offences

Spain does not address behaviour which are typically deemed a status offence through the criminal justice sector. These include offences such as truancy, running away from home, curfew violations, and possession of alcohol or tobacco. Instead, such behaviour may be addressed through the social welfare or child protection sectors or through the community. As such, the behaviour of the child is not criminalized.

## Other relevant information

In Spain:

1. There is comprehensive protection of children through the public institutions of the State and Autonomous Communities.
2. "The best interests of the child" principle rules all aspects and fields of public administration.
3. There are institutions specialized in the protection of children and in criminal proceedings involving children.

Spain provides protection from discrimination for both child offenders and child victims and witnesses.