

The Spanish system for child protection.

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Introducción:

Good afternoon everyone

Sorry to have to speak by Skype. I wish I could be there with you. I hope you can understand me from there. In this moment, we have an electric storm I hope that the connection go on.

I want to thank Ruby Harrold-Claesson very much for the invitation to participate in this Symposium.

I will try to explain the Spanish system for child protection.

I will try to explain it in an easy way. Maybe simplify it. But I think it's the best, given the time and I speak via Skype.

Therefore, I will make an initial reflection. And then I will explain the two systems: the civil system, general, and the penal system, for those responsible or victims of a crime. I will extend more in the first one that can be more unknown or different to other countries.

Then, we can start.

FIRST AT ALL, THE PRINCIPLES AND NATIONAL LEGISLATION.

- Spain has signed the various conventions and treaties that have been concluded for child protection. You know all of them.
- These conventions have had an influence on national legislation. In the Spanish Constitution and in the approval of specific legal texts. The most relevant legislative text is the organic law for the Legal Protection of Minors, January 15, 1996. It'ss a fundamental law in this area. It contains the rights and duties of minors. The measures and guiding principles are included in the action of the administration in this matter. The actions in situation of social deprotection of the minor and institutions of protection of minors. This legislation is supplemented by the provisions of the Civil Code, basically.
- **The fundamental principle, obviously, is “the best interest of the child”.** Every minor has the right to have his or her best interests valued and considered as capital (principal) in all actions and decisions that affect them, both in the public and private spheres.
- In the application of this law and other norms affecting it, as well as in the measures concerning minors adopted by public or private institutions, the Courts, or legislative bodies shall take preference over any other interest legitimate.
- **This is the first problem: the interpretation of what is the best interest of the child in each case.** Is it really the interest of the minor or is it the interest of the administration, the educator or the social worker? Therefore, our law requires that this interest is always motivated and justified. So that it can be subject to judicial control.
- Another fundamental principle of our system is **the right of every child to be heard and listened to.** This will mean a paradigm shift in our system and in the awareness and sensitivity of those involved in the procedures. I say it will mean because it is a change that costs to assume. The protagonism of the child in every decision.

- This principle has been recently recalled by the European Court of Human Rights. **In Iglesias v. Spain case, dated October 11, 2006.** An interesting case in which there was no hearing of the minor in a family case. Spain is condemned for this.
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We'll now see the protection system we had until the end of 2015.

I'll talk more about the experience in Catalonia. In 2016, according to the DGAIA, in Catalonia there are 6,500 children in helplessness: 3,840 in foster care, 2,850 in foster care centers and the rest in other spaces.

The process by which a file is opened to a family can begin with an anonymous denunciation of neighbors, hospital and school alerts or cross-denunciations in complicated divorces. Or for "asking for help to municipal or county social services." If it detects that there are minors, the Administration turns on the focus.

The arguments for investigating the family are varied. For example, the child is wearing the same clothes for several days, doesn't go to class or goes with sandals in winter. There are other situations in which the resolution of helplessness is argued like this: "Economic precarity, currently unemployed. It presents labor instability and lack of own income". Most retirements are in families with few resources. But they have also suffered lawyers, pediatricians, gynecologists or executives.

The withdrawal of a minor occurs when the Administration determines that the child is in a situation of helplessness. The family is knowledgeable and in most cases accepts the helplessness. The decision is made by a technical team formed by a psychologist, a pedagogue and a social educator. It's an administrative resolution without judicial guarantees. They had no control. If they don't abandon the child and something happens the responsibility is theirs and the DGAIA, but if they leave and they didn't need not pay for their mistake.

It was necessary to change the system to intervene from the beginning a judge, which only happened when the family wants to recover the child. The withdrawal of a child from his family should only occur in extreme

situations, if the child is in physical or psychological danger, and it wasn't always so.

In July of 2015, in Spain the system of protection is modified. In the first place, judicial control is increased practically from the beginning of the proceedings. The intervention of the Public Prosecutor is reinforced. And modify the criteria of preference when intervening in a family:

1º. Stable measures should be chosen against temporary measures.

2º. Family measures will always prevail over residential measures.

3º. The agreed measures will be chosen against those imposed.

I think that this change is important, since it will be necessary to establish a consensus in the adoption of measures, and always try to opt for family inclusion with some degree of stability, either with another part of the same family or with a family prepared specifically for the care of these cases.

As I said before, what is important initially is the existence of a situation of helplessness. This is a situation that occurs in fact because of the non-fulfillment or the impossible or inadequate exercise of the duties of protection established by the laws for the custody of minors, when they are deprived of the necessary moral or material assistance. This is what our law defines.

The law indicates some specific cases in which the abandonment can be declared. They are:

a) The abandonment of the child, either because they are missing persons to whom the exercise of custody by law, or because they don't want or can't exercise it.

b) The period of voluntary custody, either when their legal guardians are in a position to take care of the custody of the child and don't want to assume it, or when, wishing to assume it, they are not in a position to do so, except in exceptional cases in which voluntary custody may be extended beyond the two-year period.

c) The risk to the life, health and physical integrity of the minor. In particular where there is serious physical abuse, sexual abuse or gross negligence in the fulfillment of food and health obligations by the persons of the family unit or of third parties with their consent; also when the child is identified as a victim of human trafficking and there is a conflict of interest with the parents, guardians and custodians; or when there is a repeated consumption of substances with addictive potential or the performance of other types of repeated addictive behavior by the minor with the knowledge, consent or tolerance of the parents, guardians or custodians. It is understood that there is such consent or tolerance when the necessary efforts have not been made to alleviate these behaviors, such as the request for advice or failure to cooperate sufficiently with the treatment, once they are known. It is also understood that there is helplessness when there is serious harm to the newborn caused by prenatal abuse.

d) The risk to the mental health of the child, their moral integrity and the development of their personality due to the continued psychological abuse or to the lack of serious and chronic attention of their affective or educative needs by parents, guardians or custodians. When this lack of attention is conditioned by a serious mental disorder, by habitual consumption of substances with addictive potential or by other habitual addictive behaviors, the absence of treatment by parents, guardians or guardians will be assessed as an indicator of helplessness. lack of sufficient collaboration during it.

e) Failure or improper exercise of custody duties as a result of serious deterioration of family living conditions, when they give rise to circumstances or behaviors that impair the child's development or mental health.

f) The inducement to beg, delinquency or prostitution, or any other exploitation of the minor of similar nature or gravity.

g) Absence of schooling or lack of repeated and not properly justified attendance at the school and continued permissiveness or induction to school truancy during the compulsory schooling stages.

h) Any other situation seriously detrimental to the child that brings about the non-fulfillment or the impossible or improper exercise of parental

authority, guardianship or custody, whose consequences can't be avoided while remaining coexistent.

The law expressly states a series of cases or situations that can't give rise to declaring a helplessness situation by itself:

- The situation of poverty of the parents, guardians or custodians can't be taken into account for the assessment of the situation of helplessness.
- A minor will never be separated from his parents because of a disability of the minor, of both parents or of one of them.

For me, it's important these two express prohibitions in our system. I consider that they break with past situations and fairly dubious practices in this field.

In the face of such a situation **an administrative guard** may be adopted. It can be voluntary or judicial. **Voluntary** When parents or guardians, due to serious and transient circumstances duly accredited, can't care for the minor, they may request the Public Entity to assume custody for the necessary time, which may not exceed two years as the maximum term of temporary care of the minor, unless the best interest of the minor advises, exceptionally, the extension of the measures. After the deadline or extension, if applicable, the minor must return with his parents or guardians or, if the appropriate circumstances don't exist, be declared in legal situation of helplessness.

The voluntary surrender of the custodian shall be made in writing, stating that the parents or guardians have been informed of the responsibilities they continue to have with respect to the child, as well as the manner in which the guard is to be exercised by the Public Entity, in particular minors with disabilities, the continuity of the specialized support they receive or the adoption of others more suited to their needs.

The **judicial guard** may be in situations of marital crisis.

The custody will be carried out by means of **foster care** and, if this is not possible or convenient for the child's interest, through **residential care**. The foster care will be performed by the person or persons determined by the Public Entity. The foster care takes place within a family (So that there is no doubt or confusion with the language and translation that I do).

Residential care shall be exercised by the Director or person in charge of the center where the child is fostered, in accordance with the terms established in the legislation for the protection of minors.

The interest of the child will always be sought and priority will be given, if it is not contrary to that interest, to reintegration into the family and that the care of the brothers be entrusted to the same institution or person to remain united. The situation of the minor in relation to his / her family of origin, both in terms of custody and visits and other forms of communication, shall be reviewed at least every six months

Foster care produces the full participation of the child in family life and imposes on the recipient's obligations to ensure him to have in his company, feed, educate and procure a comprehensive education in a caring environment. In the case of a child with a disability, he / she must continue with the specialized supports he / she receives or adopt other ones more suited to his / her needs.

The foster care will require the consent of the foster family and the child if they have sufficient maturity and, in any case, if they are older than twelve years.

The **foster family** can take place in the extended family of the minor or in the family of others, being able in the latter case to be specialized.

The foster family can adopt the following modalities according to their duration and objectives:

a) **Emergency family care**, mainly for children under six years, which will last no longer than six months, while deciding the appropriate family protection measure.

(b) **Temporary family foster care**, either because the situation of the minor is expected to be reintegrated into his or her own family, or until a more stable protection measure is adopted, such as permanent foster care or adoption. This placement will last for a maximum of two years, unless the best interest of the minor advises the extension of the measure by the foreseeable and immediate family reintegration, or the adoption of another definitive protection measure.

c) **Permanent family support**, which will be well established at the end of the two-year term of temporary placement because family reintegration is not possible, or directly in cases of children with special needs or when the circumstances of the child and his family so advise. The Public Entity may request from the Judge to attribute to the permanent residents those powers of guardianship that facilitate the performance of their responsibilities, attending, in any case, the best interests of the child.

In order to favor the development of the child's life in a family environment, the family foster care measure will prevail over residential care for any minor, especially for children under six years of age. Residential care for children under three years of age will not be granted except in cases of duly accredited impossibility of adopting at that time the measure of foster care or when this measure is not in the best interests of the child. This limitation to agree residential care will also apply to children under six years in the shortest possible time. In any case, and in general, residential care of these children will not last more than three months.

Therefore, the system is improved by greater judicial control, by the active presence of the Public Prosecutor in the protection of the child, by the preference of foster care and by the temporary limitations of any action on minors. The other problem is that there are enough families to carry out this work, with preparation, and public funds to guarantee it.

Of interest are also other provisions of the legal reform. The rights of the child have been established that is hosted in a family or residential setting. A statute has been established for the person who participates in foster

care. And an important novelty, which generates doubts and controversy, is the possibility of placing the minor in a specific protection center due to behavior problems.

This would be the perspective of civil protection. In the area of **criminal law**, it should be noted that we have an excellent law. That law gives us a reintegration rate of almost 75%. It's a law that allows to impose measures of educational type, and modify them and adapt them to the evolution of the juvenile offender.

Most procedures end with an agreement.

As for the child who has been the victim of a crime, there is a specific legislation for his/her protection. This legislation follows the European directives and the jurisprudence of the European Court of Human Rights. These are victims who require special attention and there are a number of measures for their adequate protection.

I think with all this I can finish. It's just a very quick overview of our protection system. Thank you very much for your attention and sorry for what I could not understand well. Enjoy the symposium y have a good day.

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