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acting in the best interests of the child »**

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**RECEPTION OF UNACCOMPANIED FOREIGN MINORS
IN SPAIN**

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1. - INTRODUCTION

The migration phenomenon, including unaccompanied foreign minors, must be placed in the context of the increase in economic, social, cultural and technological exchanges that has occurred in recent decades with the advance of globalisation.

The constant flow of goods, capital, people and information between countries is affecting the diversity of the flows and bringing new social groups of migrants whose presence was previously insignificant.

The migration of unaccompanied foreign minors is closely related to the effects of economic transition, the decreasing power of states to control cross-border movements and the resulting permeability of borders, as well as the increase in the flow of information all over the world.

Spain has not watched this increase in world migration flows from the sidelines. On the contrary, it occupies a key position on migration routes.

According to information contained in the comparative report drawn up under the CONRED I project, in 2001, the number of unaccompanied minors in Europe increased between 1980 and 1990.

In Spain it was in the mid-1990s that significant numbers of unaccompanied foreign minors, especially from Morocco, began to be detected. The turning point came at the end of the 1990s, when unusually large numbers of arrivals made Spain one of the countries in Europe with the largest population of unaccompanied foreign minors.

The arrival of these young people took politicians and Spanish society en general by surprise. The services responsible for the protection of minors were not prepared to deal with minors with such different needs and characteristics. Their capacity was no longer sufficient.

In a very short space of time a network of resources and new mechanisms had to be set in place to deal with the situation.

The emigration patterns of the young migrants are largely determined by the distance between the countries of departure and arrival, relations with the receiving country and the existence of migration routes established by adults which the minors follow. In Spain the main countries of origin are Algeria, Morocco, Romania and sub-Saharan Africa.

This phenomenon is one of the major challenges facing Spanish society and a constant source of concern for the authorities and society in general.

2. - SOCIODEMOGRAPHIC CHARACTERISTICS OF UNACCOMPANIED FOREIGN MINORS IN SPAIN

Quantification of the phenomenon

In 2004 9,117 arrivals of unaccompanied foreign minors were registered in Spain. For the first six months of 2005 the figure was 2,471.

Geographical distribution in Spain

In 2004 their geographical distribution was very uneven, with concentrations in a few Autonomous Communities. Andalusia, the entry point, is the Community that received most minors, with 26.71% of the total, followed by Valencia (20.35%), Madrid (17.93%) and Catalonia (12.93%). The other Communities, with the exception of Ceuta and Melilla, other entry points together with the Basque Country, received less than 2%. They showed a preference for the more prosperous areas, with the most resources, and in these areas, for the larger towns and cities. In the first half of 2005 the same general trend was observed.

Table 1 – Registered arrivals of unaccompanied foreign minors in each Autonomous Community in 2004

	TOTAL	% of national total
Andalusia	2,435	26.71
Aragon	87	0.95
Asturias	11	0.12
Balearic Islands	96	1.05
Canaries	131	1.44
Cantabria	55	0.60
Castille La Mancha	127	1.39
Castille-Leon	183	2.00
Catalonia	1,178	12.92
Valencia	1,855	20.35
Extremadura	15	0.16
Galicia	24	0.26
Madrid	1,635	17.93
Murcia	46	0.50
Navarra	38	0.42
Basque Country	425	4.66
Rioja	3	0.03
Ceuta	442	4.85
Melilla	331	3.63
TOTAL	9,117	100

Source: Statistical report "Arrivals of unaccompanied foreign minors in Spain" 2004
Directorate General of Immigration

Places of origin

The main geographical origin of these young immigrants was Africa. In 2004 7,036 of the arrivals registered, or 77% of the total, were from Africa. A long way behind, immigrant minors from European countries numbered 1,213, or 13.40% of the total, while unaccompanied minors from Latin America accounted for 2.30% and from Asia and North America an insignificant 0.71% and 0.05% respectively. The origin of 508 (5.25%) of the minors was unknown.

4,650 of the minors from Africa (54% of the total) came from the Maghreb region, mainly Morocco and Algeria. Those from sub-Saharan Africa accounted for 22% of the total, placing them second in terms of geographical regions, but with a relatively small number from each country, with the exception of Ghana.

In 2004 minors from Morocco and Romania accounted for more than half of the arrivals registered (57.26%), with 48.71% from Morocco and 8.55% from Romania. Other nationalities barely accounted for 2% each. The countries of origin were numerous, but few were statistically significant. The most significant were Algeria, Ghana, Ecuador, Bulgaria, Moldova, Brazil, Croatia, Colombia, Nigeria, Cape Verde, Guinea, Congo, Cameroon and Sierra Leone.

Table 2 - Distribution of arrivals in 2004 by geographic region of origin

	National total	Percentage
Europe	1213	13.4
America	272	2.98
Africa	7.039	77.2
Asia	65	0.71
Unknown origin	508	5.25
TOTAL	9117	100

Source: Statistical report "Arrivals of unaccompanied foreign minors in Spain" 2004
Directorate General of Immigration

Distribution by gender

The unaccompanied minors who emigrate are mainly males (89.49%).

The percentage of girls is relatively higher among young immigrants from Latin America and Europe: 38% of immigrant minors from Latin America and 37% of those from Europe were girls. But they account for only a small minority of child immigrants from Africa (6%) and Asia (10%).

It is interesting to note that 38% of the young girls who immigrated came from Romania, while the percentages for other countries were small, with the exception of Morocco, which accounts for such a large percentage of all child immigration.

The distribution of these young female immigrants in Spain is less widespread than that of their male counterparts, and they are concentrated in different areas, such as Aragon, the Canaries, Murcia and Ceuta. Boys tend to prefer large towns and cities in the more prosperous regions.

Table 3 – Arrivals of minors in 2004 by gender

	National total	
	Numbers	Percentage
Boys	8,147	89.49%
Girls	970	10.51
TOTAL	9,117	100

Source: Statistical report "Arrivals of unaccompanied foreign minors in Spain" 2004
 Directorate General of Immigration

Duration of stay in protective care

While 9,117 minors had been taken into care in 2004, by 31 December only 2,004 (90.47% boys and 9.53% girls) remained in the care of the services for the protection of minors in the Autonomous Communities. Once again, minors of African origin made up a large majority of these: 1,685, or 84.04% of the total.

Explanations for this small percentage of minors still in the care of the authorities include that fact that many of these young immigrants tend to run away, others come of age and some are repatriated, although the number is small, as we shall see later.

About a third of the minors in care are in Andalusia, 15.41% in Valencia, 10.07% in Madrid, 10.07% in the Canaries and 9.13% in Castille la Mancha .

Table 4 – Foreign minors still in care on 31 December 2004 in each Autonomous Community

	TOTAL	PERCENTAGE
Andalusia	487	24.3
Aragon	20	0.99
Asturias	4	0.19
Balearic Islands	4	0.19
Canaries	202	10.07
Cantabria	14	0.69
Castille La Mancha	183	9.13
Castille-Leon	46	2.29
Catalonia	114	5.68
Valencia	309	15.41
Extremadura	5	0.24
Galicia	7	0.34
Madrid	221	11.02
Murcia	0	0
Navarra	6	0.29
Basque Country	145	7.23
Rioja	0	0
Ceuta	91	4.54
Melilla	146	7.28
TOTAL	2,004	100

Source: Statistical report "Arrivals of unaccompanied foreign minors in Spain" 2004
 Directorate General of Immigration

Table 5 - Foreign minors still in care on 31 December 2004 by geographical region of origin

Geographical origin	Total	
	Number	Percentage
Europe	129	6.45
America	70	3.49
Africa	1790	89.32
Asia	15	0.74
TOTAL	2004	100

Source: Statistical report "Arrivals of unaccompanied foreign minors in Spain" 2004
Directorate General of Immigration

The relative share for each continent remains the same as for arrivals.

3. - PROFILE OF THE FOREIGN MINORS WHO ARRIVE IN SPAIN

The group of unaccompanied foreign minors arriving in Spain is an extremely vulnerable group made up mainly of teenage boys between 14 and 18 years of age, who come to Spain by different routes and means and have different social profiles. Although they form a heterogeneous mix, studies have identified some prevalent characteristics that may be summarised as follows:

- They are predominantly males.
- They generally have numerous siblings.
- Most come from Morocco.
- The average age is about sixteen.
- They are mature for their age.
- They keep in touch with their families on a normally regular basis.
- They want to improve their personal and family situation.
- Their purpose is generally clear: to obtain papers and find work as soon as possible.
- They are very mobile, both in Spain, moving from one part of the country to another, and in the European Union. Where they choose to settle depends largely on where they feel they are most likely to be able to achieve their goals.
- They usually have networks of fellow countrymen who can lend a helping hand.
- They reject the official protection offered in favour of the greater freedom of living in a flat, for example.
- They are largely unskilled, with a few years of schooling but without having completed compulsory education.
- They usually have some form of work experience.
- They tend to reject school and prefer forms of learning that give them access to employment.
- They tend not to mix with young Spanish people.
- The difference between their expectations and the reality when they arrive in Spain comes as a great shock to them.
- Returning to their country of origin is not an option.
- They know the law and the protection system and use them to their advantage.

For Moroccan minors, according to a study conducted in Tangiers,¹ the family situations in the country of origin can be very briefly summarised as follows:

1.- Minors who live with their families in a caring and economically stable environment make up 10% of the unaccompanied minors who come to Spain.

2.- Minors who live with their families in a caring atmosphere but with economic difficulties, and spend a lot of time in the street but without making a way of life, make up 40%.

3.- Minors who live in poor or very poor and unstable families make up 35%.

4.- And finally, street children, minors who have drifted away from their families and live in the streets, make up 15% of the total.

Reasons that drive these minors to emigrate to Europe

The main reasons are political and economic. Spain and France in particular attract minors for economic reasons, while Switzerland, Denmark and Belgium are often destinations for minors fleeing the political situation in their country of origin and seeking asylum. In Spain the number of asylum seekers is insignificant.

The prototype of the minor arriving in Spain is someone who has emigrated with a clear "project" in mind: to obtain papers and work. This aim is so uppermost in their minds that it largely shapes their relationship with the protection system.

The decision to emigrate may have been taken individually or as a family or social decision; individual decisions are usually based on socio-economic factors, while family decisions may be taken to protect the minor or send them where a brighter future awaits them, as well as for the money the minor will be able to send the family from the country of destination, and the possibility of subsequent family reunification.

Many of the young people from the main countries of origin of emigration to Spain have been brought up in a "culture of emigration", fuelled by exposure to the western way of life and standard of living via the media and the tales of fellow countrymen who have emigrated and, at the same time, by the mafia of people-traffickers, who are the first to benefit from this situation. The economic problems many families are going through as a result of structural changes in the economies of these countries often make the emigration of the son or daughter a family project.

It should be noted that the protection of minors' rights and the fact that chances of succeeding in one's emigration project and being able to stay in the chosen country are much greater for children under 18 years of age are used by people-trafficking networks to hook their "clients". And many immigrants who are no longer minors try to pass themselves off as such in order to qualify for access and protection.

¹ Jiménez Álvarez, M. (2005) "Migration of minors in Morocco. Reflections from Europe's southern border", in "Las otras migraciones: la migración de menores marroquíes no acompañados a España", Madrid, Akal. pp 115-133

Entry routes and strategies

In Europe, according to the CONRED-I report, two groups of countries can be distinguished when it comes to the means of access used.

In the first group (Denmark, Switzerland and Belgium), new arrivals tend to request asylum. To justify refugee status, they bring the 1951 Convention on the Status of Refugees into play.

Spain and France fall into the second group. Minors tend to enter the country illegally, with no identification papers. When detected, they are placed in the hands of the authorities responsible for the protection of minors. Very few tend to apply for asylum.

Most Moroccan minors, who form the predominant group in our country, tend to arrive alone. Many cross the border between Ceuta and Melilla hidden under lorries, others stow away on boats or cross the Straits of Gibraltar in small flat-bottomed boats. Another route used by people-traffickers, brings them from the Canaries, also in small boats, while yet another possibility is to arrive with an adult – a member or friend of the family – and stay behind to fend for oneself when the adult leaves.

When visas are no longer required for entry into the Schengen area, it is quite likely that Romanian minors, another large group, will be able to enter legally at border crossings. Some of these Romanian children are in the hands of traffickers and mafia organisations, as a number of police operations have revealed.

Many minors use existing networks between their countries of origin and Spain, with the help of family members, friends and neighbours already established in our country.

Minors outside the protection circuits

In addition to the unaccompanied foreign minors identified by the authorities, nobody knows how many more unaccompanied children there are in the country fending for themselves without any help from the authorities.

There are no reliable statistics on the number of children living in the streets in Spain or elsewhere in Europe.

In Spain these children are mainly boys (only 3% are girls) from 10 to 17 years of age (the average age is 15), and 92% of them come from Morocco and 4% from Algeria, and more than a third of them come from Tangiers (Morocco). By contrast, half of the 50 "street girls" detected in the last four years came from European countries. 20% of these children are illiterate and have come looking for work, with all the difficulties that entails, and 77% of them were never street children in their own country.

They are mainly minors whose expectations have been disappointed and who run away from the reception centres and are caught up in a spiral of exclusion and crime, swelling the ranks of illegal immigrants.

A small number are minors who lived in the street in their countries of origin and adopt the same lifestyle in Spain

In Madrid and Barcelona "*street education*" programmes have been introduced to provide these children with informal education and try to bring them into the care of the child protection authorities.

Relations with the social protection system

Those minors who have a clear idea what they want, which is generally papers and work, will often go to any lengths to achieve their aims. They are familiar with the Spanish protection system and laws on minors and make use of the system. Driven by the quest for papers, they travel Spain from one centre to another, based on the information they receive from other minors about where they are most likely to be issued with papers soonest. According to a study carried out last year by the Ararteko (ombudsman) for the Basque Parliament, many of the minors who arrive in the Basque Autonomous Community came from Catalonia, where they were told that it was easier to get papers in the Basque Country. Some experts speak of geographical "corridors": from Andalusia, Ceuta or Melilla, the entry points, to Catalonia, from where some move on to the Basque Country. Another of these corridors leads straight from the entry points to Madrid.

Minors thus frequently run away from the care centres. According to the report mentioned above, the average length of stay of 40% of them is less than a week. Another 40%, however, stay more than 6 months. So most of them stay either for a very short time or for a very long time.

Mobility is encouraged by what they see as the urgent need to legalise their situation. But this urgency clashes with the realities of administrative red tape and the labour market, making it difficult to achieve integration. As a result, they tend to reject schooling in favour of more practical vocational training.

The clash between their expectations and reality is a source of great frustration and personal conflict. The situation is worse when the family expects them to send money to support them.

The fact that these minors' lives and circumstances have made them "grow up" faster than other children makes it difficult for them to accept and adapt to a protection system that treats them as minors rather than adults.

Another group is made up of younger minors and/or those without a clear plan to guide them. The tendency to run away from care centres and the psycho-social disturbances caused by the migration experience make it hard for the welfare services to assist them and considerably increases the risk of them becoming social misfits.

4. - LEGISLATIVE FRAMEWORK

Unaccompanied foreign minors enjoy legal protection in Spain as well as the rights enshrined in the International Convention on the Rights of the Child, which Spain has ratified, and all the rights embodied in national law on the protection of minors and aliens and in the laws of the autonomous communities.²

There is no discrimination whatsoever between Spanish and foreign children, regardless of whether they are in Spain legally or illegally. Under Section 12 of Law 1/1996, on the Legal Protection of Minors, and Section 92 of the Law implementing Aliens Act 4/2000, all dealings with minors must be conducted in the best interests of the child.

So these minors are covered both by the laws on the protection of minors and by those on migration and aliens, the main legislation in these areas being:

Legislation on the protection of minors

- Law 1/1996, of 15 January 1996, on the Legal Protection of Minors, partially amending the Civil Code and the Law on Civil Procedure.

Legislation on aliens

- Implementing Act 4/2000, on the rights and freedoms of foreigners in Spain, as amended by Implementing Act 8/2000;
- RD 2393/2004, of 30 December 2004, regulating Implementing Act 4/2000.

Legislation on asylum

- Law 9/1994, of 19 May 1994;
- Implementing Act, approved by RD 203/1995, of 10 February 1995.

Autonomous Community laws on the protection of minors

5. – POLITICAL FRAMEWORK

Various central and autonomous government departments deal with unaccompanied foreign minors, as well as the State Prosecutor's Office, NGOs, municipal councils and others.

The bulk of responsibility for minors in Spain lies with the Autonomous Communities, in conformity with the constitutional distribution of responsibilities and those assumed by them in their respective Statutes. However, aliens and foreign relations are the responsibility of central government.

² Law 1/1996, of 15 January, on the Legal Protection of Minors, partially amending the Civil Code and the Law on Civil Procedure, and Organic Law 4/2000, on the rights and freedoms of foreigners in Spain, as amended by Implementing Act 8/2000, and RD 2393/2004, of 30 December 2004, regulating Implementing Act 4/2000.

The State Prosecutor's Office is responsible for protecting the rights and interests of minors in legal proceedings.

The need for co-ordination of the actions of the various administrative services and private bodies involved led the Ministry of Labour and Social Affairs to set up a working group to analyse and address this issue in the framework of a Children's Observatory that had been set up earlier. As a consequence of the work done by this group, an Institutional Co-ordination Protocol on Unaccompanied Foreign Minors was produced, specifying the duties of the various authorities concerned.

Similarly, in policy planning and implementation, in state and autonomous community action plans in favour of children and the social integration of immigrants, there are measures and programmes for the benefit of these foreign minors.

As part of general government policy, the State Secretariat for Immigration and Emigration has adopted two strategic priorities for assisting these minors:

- Financial support for programmes implemented by the Autonomous Communities and NGOs.
- Co-operation with the minors' countries of origin.

Central government, the Autonomous Communities and local authorities have all implemented and financed numerous schemes in the countries of origin to help underprivileged minors and, in some cases, returned minors.

6. - PROVISION FOR UNACCOMPANIED FOREIGN MINORS IN SPAIN

Phase 1: location and investigation

Once on Spanish soil the minor is generally detected by the law enforcement agencies, with only a small number located by private individuals, judicial authorities, NGOs, etc. Sometimes the minors themselves report to the welfare services in the Autonomous Communities, or to the police.

The law enforcement agencies have a group specialised in dealing with minors, called the GRUME. The municipal police also have special officers responsible for dealing with minors.

Once the children are detected, the law enforcement agencies inform the State Prosecutor's Office, which issues orders for the minor to be given the requisite assistance by the Child Protection Services and, if necessary, authorises medical examinations to determine the child's age.³

Young adults frequently claim to be minors in order to enjoy the protection to which minors are entitled. In Spain the authorities try to verify their age before giving them access to protection, in keeping with Instruction 2/2001 of the State Prosecutor's

³ Section 35 of Implementing Act 4/2000, on the rights and freedoms of foreigners in Spain, as amended by Implementing Act 8/2000 and Section 92.1 of the Regulation on Implementing Act 4/2000, of January, on the rights and freedoms of foreigners in Spain and their social integration.

Office, dated 28 June 2001. The idea is to allow the centre for the protection of minors to do its work properly and ensure the safety of resident minors.

Sometimes, however, these tests can take a long time and, pending the results, the subjects receive care in the protection centres.

Osteometry is the method used to determine age. It involves X-rays of the hand and wrist. Because of the problems of reliability inherent in this method, the above-mentioned Public Prosecutor's Instruction 2/2001 recommends that the authorities take into account the lowest age in the likely range indicated by the test results.

At present these tests are given *priority* in the network of public hospitals in the National Health System which have emergency radiology units.

The Public Prosecutor is informed of the test results and, if they confirm that the subject is a minor, he or she is placed in the care of the child protection services, in accordance with the law on the legal protection of minors.

Before or while the tests are carried out, the law enforcement agencies attempt to identify the minor and include the data in the **Register of Unaccompanied Foreign Minors**.⁴

This is a difficult task as most of the minors have no papers and often conceal their identity to avoid being sent home. Some even register under different names in the Registers kept by the Autonomous Communities they pass through.

The competent authorities are therefore obliged to take steps to ascertain the real identity of the minors and gather information about their social and family circumstances.

The results of these measures determine the final decision whether to send the minor back home or to let him or her stay in Spain.

Repatriation

The government is legally responsible for repatriating unprotected foreign minors, through its Delegations and Sub-delegations. The General Commissioner's Office for Aliens and Documentation is responsible for all the formalities to verify the identity and personal and family circumstances of the minor. It does this with the help of the corresponding embassies and consulates. The usual procedure is to report the arrival of the minors and request help to verify their identity and locate their families or, failing that, the child protection services in the country of origin which may have been responsible for them. If the country has no diplomatic representation in Spain, the formalities are carried out by the Ministry for Foreign Affairs and Co-operation.⁵

⁴ Under Section 111 of the Regulation of 30 December 2004 on Implementing Act 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, the General Directorate of Police is required to keep a register.

⁵ Section 92 of the Regulation of 30 December 2004, on Implementing Act 4/2000, on the rights and freedoms of foreigners in Spain and their social integration.

In general these efforts go unrewarded as the only information available is that obtained by the Child Protection Services in whose care the minor happens to be. As the legal guardians of the minors these services are obliged to assist with the investigation and contribute any relevant information.

This information is obtained mainly by talking to the minors and being with them on a daily basis, and through telephone conversations with their families in their countries of origin.

When the minors come from the Maghreb the authorities often manage to locate their families. With minors from other regions, however, such as sub-Saharan Africa, it is often difficult, if not impossible, to establish any contact.

At present there is no other means of gathering this information.

It usually takes between three and six months to identify the family, although it may take longer as the Child Protection Services have to present a report that will be taken into account when the decision is made whether to send the child back to their family or allow them to remain in Spain.

It is worth noting that whether or not the Child Protection Services have taken any steps to protect the minor has no effect on the decision concerning the child's fate.

Phase 2: the decision

Once the requisite information has been gathered, it is for the central government authorities to decide whether to send the child back to their family or to allow them to remain in Spain.

The reasons for the decision must be duly documented and, according to the legislation governing aliens, the main criterion must be the best interest of the child. This means that repatriation is ordered only in those cases "where the child can be reunited with his or her family or placed in the care of the child protection services of the country of origin" (Section 92.4 of RD 2393/2004, of 30 December 2004, implementing the Aliens Act 4/2000).

The approval of the new Regulation⁶ and the adoption of Instruction 6/2004 of the State Prosecutor, dated 26 November 2004, on the legal treatment of unaccompanied foreign minors, somewhat changed the criteria for deciding on the advisability of reuniting unaccompanied foreign minors with their families. Under the new provisions family reunification is not necessarily the ultimate aim; other factors are taken into consideration that may sway the balance of the child's best interest in favour of allowing them to remain in Spain.

The decision must also be taken after hearing the minor and consulting the report drawn up by the Child Protection Services.

⁶ Royal Decree 2393/2004, of 30 December 2004, implementing the Aliens Act 4/2000.

There is also a control system requiring the Children's Judge to be informed of all the steps taken during the repatriation process.⁷

Reaching the right decision about repatriation means assessing the personal and family circumstances of each minor individually, not only in the country of origin but also in the receiving country. Their participation in the integration process, their plans and their chances of carrying them out in our country and leading a normal, socially integrated life are all factors that must be taken into consideration. Thought must also be given to potential factors of exclusion that can lead to some minors, as they form such a heterogeneous group, falling by the wayside and turning to crime.

The problem that arises when assessing their circumstances is the lack of information on the situation in their country of origin. New machinery and schemes are needed for locating the families through bodies operating in the countries concerned.

In keeping with the legislation on aliens,⁸ the repatriations are carried out by the National Police, who hand the minors over to the border control authorities in the country to which they are returned.

The number of repatriations is very small. In 2004 they numbered 111, of whom 10.51% were women, and in the first half of 2005 there were only 11 repatriations, and 29.03% of those were women.

Table 6 - Repatriations carried out in 2004 and the first half of 2005

	year 2004	Jan.-June 2005
Total	111	31

Source: Statistical report on "Unaccompanied foreign minors"
Directorate General of Immigration State Secretariat for Immigration and Emigration

Phase 3 - Access to the legal protection given to minors

Once the minor is placed in the care of the Child Protection Services, the legal protection machinery goes into action, with a declaration of the child's need for protection and the assumption of guardianship.

This state of need exists when the minors are deprived of the necessary moral and material assistance through failure or inability to provide the care and protection to which minors are entitled by law.

The legal concept of need (*desamparo* or 'lack of protection' in Spanish) is based on the same fundamental principles as the whole legal system for the protection of minors in Spain.

From the time of the formal declaration or the *de facto* recognition of the state of need, our legal system calls for the assumption of guardianship and the immediate, effective protection of the minor by the public authority responsible in the Autonomous

⁷ Section 92.4 of RD 2393/2004, of 30 December 2004, implementing the Aliens Act 4/2000.

⁸ Section 92.4 of RD 2393/2004, of 30 December 2004, implementing the Aliens Act 4/2000.

Community where the minor is located, which must take the minor into its care, accompany and feed the child and provide him or her with a proper education.⁹

The guarantees and procedures linked to the declaration of need are the same for foreign minors as for nationals.

This formal declaration for unaccompanied foreign minors is not a uniform practice all over the country. In some territories minors are given legal protection as soon as they are located, while others receive *de facto* protection which is not formalised until some time later, when it seems likely that the minor will stay in our country.

Running away from a protection centre does not affect the validity of the declaration of need.

Once the declaration has been made, arrangements for guardianship follow, but only if it is not possible and fitting for the minor to return to his or her family.

Guardianship entails the following responsibilities:

- Protecting and promoting the child's interest.
- Guaranteeing proper care: food, clothes, a home and health care.
- Guaranteeing that the minor has access to a proper education and upbringing.
- Helping the child to find his or her place in society.
- Providing legal assistance and/or interpretation whenever necessary.
- Allowing the minor to take part in all decisions affecting him or her.
- Legally representing the child.

Guardianship is provided by the Child Protection Services in the Autonomous Community where the minor is living.

Under Spanish law guardianship actually involves care or custody, i.e. the effective provision of protection. **Custody** may be delegated, but guardianship remains the responsibility of the authorities concerned. These authorities tend to grant **custody** either to directors of centres or to non-profit associations, whose work they finance and supervise.

The public authorities remain responsible for ensuring that the minor is well looked after and protected. So a specific guardian is appointed.

National and autonomous community laws lay down the conditions in which guardianship may be terminated¹⁰, which include the end of the circumstances that warranted the guardianship, transfer to another protection service or repatriation.

⁹ Section 172 of the Civil Code

¹⁰ Sections 276 and 277 of the Civil Code

Papers

The legislation governing foreigners in Spain considers foreign minors under the guardianship of the public authorities as legal residents.¹¹

Residence permits are issued to foreign minors under official guardianship following application by the guardianship authority.

The effect is retroactive, to the time when the minor was first placed at the disposal of the competent child protection services.

The legislation on aliens¹² provides for a time limit of nine months from the moment the minor was placed at the disposal of the child protection services, following which, if it has not been possible, or considered appropriate, to send the child back to his or her family, a residence permit is issued. This retroactive effect is in the minor's interest when it comes to applying for Spanish citizenship, and it means that minors are considered as legal residents from the time when they are taken into care.

Formalities to issue the minor with papers begin at different stages in the procedure in different parts of the country. While some regions set the process in motion immediately, others wait until the possibility of repatriation has been excluded and the minor has agreed to the principle of integration through the channels proposed by the guardianship authority.

One of the main problems with these minors in Spain is the excessive duration of the formalities to provide them with papers.

This affects the minors in different ways, especially those nearing adulthood who come of age before their papers are ready.

To solve this problem the legislation governing aliens¹³ provides for a temporary residence permit to be issued for exceptional circumstances if so requested by the guardianship authority when the minor has undergone training with a view to his or her social integration.

Minors over 16 years of age who wish to work may not do so without papers.

The residence permits issued to minors under the protection of the authorities expire when the Child Protection Service ceases to be the child's guardian.

If the application for a residence permit is being processed and the minor leaves the Autonomous Community concerned, the permit is automatically denied.

¹¹ Section 35.4 of Aliens Act 4/2000, of 13 January

¹² Section 92.5 RD 2393/2004, of 30 December, implementing the Aliens Act 4/2000

¹³ Section 92.5 RD 2393/2004, of 30 December, implementing the Aliens Act 4/2000

Foreign minors under the protection of the Spanish authorities may acquire Spanish citizenship after two years of guardianship followed by one year of legal residence without interruption.¹⁴

In order to obtain a work permit, minors over 16 years of age must apply, with the job offer, to the Guardianship Committee, which studies the issue and, if it considers it favourably, forwards the application to the Ministry of Labour.

The Regulation implementing the Aliens Act¹⁵ provides for residence permits, but not work permits, to be issued to foreign minors for as long as they remain in the care of the Spanish authorities, to allow them to participate in activities conducive to their social integration, at the recommendation of the guardianship authority.

The work permit does not expire when legal guardianship comes to an end.

Phase 4: Social action

In Spain, depending on their individual circumstances, unaccompanied foreign minors have access to the same services and programmes as other needy minors.

As mentioned earlier, the main problem facing the authorities responsible for their integration is that they form a highly mobile group, who often run away from care centres, which makes it difficult to provide them with a full assistance programme.

Some of the minors only pass through the initial reception centre, while others move on to long-stay centres.

The arrival of unaccompanied foreign minors in Spain is a new phenomenon and one which is taking on unexpected proportions. It is a real challenge for the authorities concerned. The urgency of the situation and the need for action have made it difficult to set aside the necessary resources. Lack of experience has led to changes of tack and changes in the resource network to deal with changing situations and the changing needs and profiles of the minors concerned.

Furthermore there is no single social action model in Spain but a number of different models because of the decentralisation of responsibilities in these matters. This decentralisation has made it possible to develop forms of action and resources tailored to the characteristics of the minors arriving in the different regions of Spain and also to the geographic, social, economic and cultural specificities of the regions concerned.

Decentralisation also causes problems and occasional malfunctions, however, accentuated by the high mobility of the minors. It is difficult to define common criteria or a common approach to this migration phenomenon, and to achieve a balanced distribution between the various Communities, with the result that some have reached saturation point, making it hard to provide the best possible care. What is needed is a stronger co-ordination effort by the competent authorities, with the help of the various public and private players involved in the protection of unaccompanied foreign minors.

¹⁴ Section 22.2 of the Civil Code

¹⁵ Section 68 of the Regulation of 30 December 2004 implementing Aliens Act 4/2000, on the rights and freedoms of foreigners in Spain and their social integration

The intentions of the minors, whether they mean to stay for a shorter or a longer period in a given area, as well as their number, affect the approaches adopted and the resources provided.

As a rule, each Autonomous Community draws up an *Action Protocol for all Centres*.

Broadly speaking there are three phases in approaches to dealing with unaccompanied foreign minors in Spain: the reception phase, the long-stay care phase and the emancipation phase. Each stage involves action programmes in such fields as language learning, health, education, vocational training, employment and social integration.

i. Reception phase

Reception centres cater for urgent situations. The length of stay is 2 to 3 months.

These Centres differ from place to place, some being run by the public authorities and others by private bodies under agreements with the authorities concerned.

Initially these minors were placed in general facilities which they shared with Spanish children in need of protection, but various communities have gradually opted for facilities specifically devoted to unaccompanied foreign minors. They felt that the general, shared facilities could not cater properly for the needs of unaccompanied foreign minors as they did not have sufficient staff and found it difficult to run special programmes for them, to teach them the rudiments of the Spanish language, culture and social values. Some Autonomous Communities still use general facilities, however, depending on the number of minors and the capacity of the network. Girls are always placed in general facilities because there are so few of them.

Experience has shown the wisdom of using special facilities in the reception phase, as it is easier to cater for the special needs of these children when the actions are properly planned. These Centres generally offer Personalised Education Projects, in which the minors have a say. They also have rules and regulations.

The purpose of this reception phase is to prepare the minor for life in the host society. Once this is accomplished, they are immediately handed over to general care facilities.

The preparation for life in Spain focuses in particular on:

- Learning the language of the host country
- Learning the rudiments of its culture
- Learning its social customs and traditions.

Cultural mediators have proved to be important figures in these reception centres, helping the minors to assimilate the basic rules of the host society, while providing staff in the centres with essential cultural tools for working with these minors and avoiding conflicts.

Based on a psychosocial interview with the minors, and with their help, personalised action plans are drawn up and they are sent on to another centre capable of providing the stable care they need.

Phase 5 : Long-stay residential phase

The minors sent to these centres have previously shown a certain willingness to settle down.

Now a series of steps begin aimed at providing them with the cognitive, social and vocational skills they need to become independent. These measures form part of a long-term life project.

Residential care rather than placement in families is preferred because it is not easy to find families to take the children in.

The main obstacles are:

- Most of the minors are over 14 years of age
- They do not speak Spanish
- Cultural differences.
- Social stereotypes that brand these minors as troublemakers.

Having said that, some Autonomous Communities have developed or financed projects where minors have been placed in families of the same cultural origin and in autochthonous families who have demonstrated special openness to and aptitude for intercultural relations.

For residential care a varied network of facilities has been developed. The different backgrounds, characteristics and numbers of the children arriving in different parts of the country have produced this diversity of resources. As a result, some Autonomous Communities which used to use general facilities have opted to use specialised facilities in this phase, while others continue to use general facilities.

In general it seems to be preferable in this phase to share general, standard facilities. Once these foreign minors have acquired certain basic skills to help them fend for themselves in our country, living with autochthonous children facilitates their integration, whereas housing them in specialised facilities tends to heighten their segregation.

While in some areas large centres are still used, this approach has generally been superseded by the opening of smaller centres and facilities more reminiscent of family homes, with 8 to 10 places. These may be public or private facilities.

The minors are expected to help with the cleaning and other chores.

Some Autonomous Communities have set up programmes to find lodgings for minors who have particular difficulty adapting to normal centres, with the assistance of Day Centres which provide guidance and vocational training.

In all the Autonomous Communities an integral approach to social assistance to these minors is adopted. The personalised action plans reflect this approach, with a series of actions in at least the following fields:

- Language and culture
- Health
- Education/vocational training
- Integration in the labour market

Many obstacles have been encountered, and continue to be encountered in dealing with these minors. They can be summarised as follows:

- The unpredictability of the arrivals sometimes results in saturation of the protection networks in some parts of the country. Action is taken according to the urgency of the situation and the capacity of the centres, but sometimes the children have to be sent to facilities which are not really equipped for them.
- The fact that they frequently run away makes it difficult to see a project through.
- Because this is a fairly recent phenomenon, little is known about these minors and their problems.
- Many minors who enter the residential centres are close to adulthood, so there is little time to put a personalised development plan into practice.
- Where the younger minors have no migration and education project, it is harder to persuade them to keep to the programmes.
- They have difficulty accepting situations of control and protection.
- In some centres there is a high turnover of staff, which makes it more difficult to work with these young people.
- Sometimes the educators and staff attending to these minors have not received enough specialised training.
- Some minors have behavioural problems or consume harmful substances and need special medical and psychological treatment, for which there are insufficient resources.

Phase 6 : Emancipation phase

The idea here is to prepare the young people to fend for themselves. When they come of age, a special emancipation programme is set in motion to help them make the **transition to an independent life**.

The aim is to prepare the minor to lead a normal and independent life.

Resources are increasingly being assigned to this **transition** phase, such as halfway houses between residential care and complete independence. The focus during this period is on acquiring certain basic skills the young people will need in order to join the social mainstream:

- Learning to look after themselves.
- Fitting into the neighbourhood.
- Making the most of community resources.
- Finding and taking care of accommodation.
- Occupational skills.
- How to find and keep a job.

The young people have a high opinion of these resources and programmes, which are perfectly in keeping with their expectations.

Upon coming of age, some of the young people need professional advice and assistance in their transition to a normal life because they lack the wherewithal to succeed on their own. Special "adult life" plans have been developed which provide this assistance, then gradually phase it out as it becomes unnecessary. In this manner the young person receives the right degree of support at all times.

One example of an intensive support programme is a housing network where the young people can find shelter for a while when they are no longer in the charge of the child protection authorities.

This goes hand in hand with support and guidance from educators in various matters, vocational training, or help finding work, as well as help with everyday chores.

Less intensive programmes include help in finding shared or alternative housing, and mediation in the renting of accommodation, for example.

Finally, once the young people are fully independent, there are day centres they can turn to if need be for all sorts of personalised assistance designed to help them achieve full social and occupational integration.

HEALTH CARE

The right of unaccompanied foreign minors to health care is enshrined in the legislation on the protection of minors and on aliens. Unlike adults, minors are not required to register with the municipal registrar. On arriving in Spain they receive medical care if necessary, which it usually is. When they arrive at a reception centre they are given a check-up.

During their stay they have access to health care facilities on an equal footing with Spanish minors.

Those minors who are mentally disturbed or have a drug habit are channelled into the general health care system, although agreements are sometimes concluded with private bodies to take care of them.

EDUCATION

The right to education, which is also enshrined in the legislation on the protection of minors and on aliens, entails free access to the public education system between the ages of 6 and 16, and also access to grants and assistance.

The main problems encountered in providing these minors with an education are:

- The fact that they arrive after the school year has started.
- Their low level of schooling.
- The fact that they do not speak Spanish.
- Their lack of interest in a school education.

Once they have joined the general education system, they are entitled to the same special support which other foreign pupils receive (Spanish language, support with the syllabus, school supplies, psycho-educational support).

VOCATIONAL TRAINING

Vocational training is a very suitable option for these minors as their average age on arrival in Spain is about 16, they are generally unskilled and their main aim is to become legal residents and find work.

There are special social programmes for young people who fail to successfully complete compulsory schooling. They provide them with real work experience. These programmes are only open to those foreigners with an Alien Identification Number.

To increase and diversify the training available and open it up to minors who do not yet have an Alien Identification Number, the Autonomous Communities have introduced vocational training and work integration programmes run by public and private bodies, using ordinary or special facilities.

Day Centres are general facilities designed with this same aim in mind. As well as guidance and advice, they provide access to training workshops.

Minors between 16 and 18 years of age who wish to work must apply, with a job offer, to the Guardianship Committee, which forwards the application to the Ministry of Labour.

LEISURE ACTIVITIES

Educators encourage the minors to take up leisure activities using community facilities in order to speed up their social integration, but it is not easy for them to mix with young Spanish people of the same age.

CONCLUSIONS

The immigration of unaccompanied minors to Spain is just one sign of the transformations migration processes have undergone in recent years.

The flow of young immigrants into our country began in earnest in the latter half of the 1990s. Since then, it has steadily increased in volume and intensity. At present Spain is one of the countries which receive the largest numbers of foreign minors, mainly because it is an entry point into the European Union.

Most of the minors concerned come from Africa, especially from Morocco. They are part of the great South-North migration pattern: from Morocco to Spain and from the sub-Saharan countries to Morocco and from there on to Spain.

Although they form a motley group, the general profile of the minors who arrive in Spain is that of a male, between 15 and 17 years old, hoping to become a legal resident and find work. They have often been imbued with a veritable culture of emigration in their countries of origin.

It is interesting to note that some of these minors do not seem to be driven by pressing economic problems in their countries of origin. They simply seem to have got it into their heads that there is no hope for them in life unless they emigrate. It is a belief shared by many young people, around which members of their community shape a system of values, and it is often fuelled by families counting on the son's emigration for their survival. For some families emigration is an alternative to schooling as a means of social ascension.

This migration of minors is part of a broader economic scheme that connects certain regions with others. The migration process seems to be supported by family or peer networks which help to perpetuate the culture of emigration.

It is in this broader context that the phenomenon must be analysed and answers sought with a view to proposing long-term solutions. One way of avoiding the problem would be to put a stop to the state of dependence of the countries of origin on the receiving countries, saying no to a development strategy that hinges on emigration. What is needed, on the contrary, are sustainable development strategies that do not deprive these countries of the potential and capabilities of these young people, who are the lifeblood of their development.

It is a complex subject, then, which must be approached not only in bilateral terms but also in a multilateral perspective.

Concerning the legal situation of these minors in Spain, once they have entered the country the child protection machinery goes into action and they are treated in the same way as Spanish minors.

There is a contradiction, however, between the protection offered by the system and the desire for emancipation and work expressed by many of the minors which makes the protection process difficult to implement. The minors frequently run away from the care centres, for example.

Accordingly, it was decided to adjust the resources and programmes to the actual characteristics and needs of this population group.

This and the inexperience of the existing child protection system in Spain in dealing with these particular minors led to the diversification of the resources, in many cases encouraging the children's independence, while at the same time applying full assistance programmes.

The main conclusion that can be drawn from this experience is the need to open up the protection systems to the cultural diversity which already exists in Spanish society. It has been necessary to diversify the network of resources, to make the channels used more flexible and to incorporate mediators and educators from the countries of origin into the protection services. It has also been necessary to develop special training for the people working in this previously uncharted field. And all this has had to be done in a very short space of time because of the urgency of the situation.

Furthermore, the decentralisation of our protection system has highlighted the need to foster co-ordination between the different departments and bodies involved in order to make their efforts more coherent and effective.

Finally, protecting these minors really requires a case-by-case study in order to identify the basic parameters for reaching decisions on whether to repatriate them or let them stay in Spain. The decision-making process must objectively consider the family and social circumstances in the countries of origin, but also the real possibilities of a brighter future our country may offer these children, always bearing in mind the best interest of the child.

The disparity between the expectations of these minors and the reality that awaits them confirms this conclusion and calls for governments to assume their responsibilities and take the necessary steps to obtain the relevant information about the minors, and in particular to locate their families and assess the situation at the origin of the emigration.

APPENDICES

APPENDIX I - BIBLIOGRAPHY

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