

PETI Fact-finding visit to Balears, Spain

11 - 13 April 2022

Spain. The Balearic Islands

The Kingdom of Spain is the second biggest country of the European Union, and with more than 47 million citizens, it is the fourth most populated. The Spanish Constitution determines the Parliamentary Monarchy as its political form. The country is committed to the protection and promotion of human rights in its legal system, where fundamental rights and freedoms are interpreted in accordance with the Universal Declaration of Human Rights and international treaties on the matter. Its domestic legal system is also integrated by the Charter of Fundamental Rights of the European Union. Spain was a chairing member of the UN Human Rights Council for the 2018-2020 period.

The Balearic Islands are a Spanish autonomous community, composed of the islands of the Balearic archipelago. It is located in the Mediterranean Sea and its capital city is Palma de Mallorca, located in the main island, Mallorca. Palma is the seat of the Balearic Government, the Parliament of the Balearic Islands and the Island Council of Mallorca. Its President is the Socialist (PSOE) Francina Armengol. Apart from the autonomous government, each of the islands is endowed with its own political organisation and administration held by the so-called Island Councils, namely the Island Council of Mallorca, based in the city of Palma de Mallorca itself.

Legislation

Spain grants special protection to children's rights through important legal instruments, such as the Spanish Constitution, the UN Convention on the Rights of the Child, the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, the [transposed](#) Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, as well as legislative acts. The public authorities, in accordance with the Constitution, must ensure the comprehensive protection of children, who are equal before the law regardless of their parentage. Parents must provide assistance of all kinds to their children while they are minors and in other cases established by law. Children also enjoy the protection provided for in international agreements that reflect their rights ([Article 39 of the Spanish Constitution](#)).

Of all the rights recognised by the [Convention](#), it is worth highlighting those that the Committee on the Rights of the Child has proclaimed four guiding principles. These are: the principle of non-discrimination (Article 2); the principle of the best interests of the child (Article 3.1); the right to life, survival and development (Article 6); and respect for the views of the child in all matters affecting them (Article 12).



As the [EP thinktank](#) recently stated, the main EU legal instrument is [Directive 2011/93/EU](#) of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography. The directive has criminalised various forms of child sexual abuse and exploitation, harmonised these criminal offences across the EU and established minimum sanctions. Furthermore, [Article 25](#) of the directive on the removal of and blocking access to websites containing or disseminating CSAM, contributes to the fight against online child sexual exploitation and abuse. Adopted one year later, the victims' rights [Directive 2012/29/EU](#) complements the existing framework, as it takes a child-sensitive approach and requires primary consideration to be given to the best interests of the child.

In July 2020, the European Commission adopted the [EU strategy for a more effective fight against child sexual abuse](#), setting out eight initiatives aimed at fully implementing and developing the EU legal framework, identifying remaining gaps, strengthening the law enforcement response, enhancing prevention, involving industry and supporting international multi-stakeholder cooperation. The strategy also envisages the creation of a European centre to prevent and counter child sexual abuse.

Finally, there are [legislative acts](#) such as the Organic Law 1/1996, of January 15, 1996, on the Legal Protection of Minors, partially amending the Civil Code and the Civil Procedure Law (Organic Law on the Legal Protection of Minors), or the Organic Law 8/2015, of July 22, 2015, on the modification of the system for the protection of children and adolescents, also safeguard the rights of children. The former is the main regulatory framework for the rights of minors, guaranteeing them uniform protection throughout the territory of the State. It has been the reference for the subsequent autonomic legislation, in accordance with their competencies in this area.

The system of guardianship of minors in Spain

The latest [Statistical Data Bulletin on Child Protection Measures](#) revealed that in 2020, the number of children and adolescents cared for by the Public Child Protection System has decreased compared to 2019, from 50,272 in 2019 to 49,171 in 2020 (49,985 in 2018). The number of guardianships also decreased compared to the previous year, from 33,208 guardianships in 2019 to 31,738 in 2020. The total number of residential foster care placements as of 31 December breaks the upward trend started in 2018, from 21,283 in 2018 to 23,209 in 2019 and 16,991 in 2020.

[Guardianship](#) is a figure through which an adult, an institution, or the Administration, assumes to be the legal guardian of a minor. This institution must be established by court order in certain cases. According to Article 199 of the [Spanish Civil Code](#), the following are subject to guardianship:

1. Unemancipated minors in a situation of helplessness.
2. Unemancipated minors not subject to parental authority.

In accordance with Article 172 and following of the Spanish Civil Code, a situation of helplessness is one which is caused by the non-fulfilment, or the impossible or inadequate exercise of the duties of protection established by the laws for the guardianship of minors when they are deprived of the necessary moral or material assistance. Economic capacity is not considered to be a factor of helplessness, rather situations of neglect and risk to the child's health, dignity and life are taken into account.

It is the authority that determines that a person fulfils the conditions required to carry out the function of guardian. In this way, they can be appointed for the exercise of the guardianship. Guardians can be:

1. Natural persons who are not disqualified according to the regulations in force (Art. 211 of the [Spanish Civil Code](#)).
2. Non-profit legal persons whose purpose is the assistance and protection of minors (Art. 212 of the Spanish Civil Code states that: "Foundations and other non-profit legal entities, public or private, whose purposes include the protection and assistance of minors, may be guardians".)

According to [Spanish Law](#), when the Public Entity finds that a minor is in a situation of neglect, it will act (...) assuming the guardianship of the minor by operation of law, adopting the appropriate measures of protection and informing the Public Prosecutor's Office and, if necessary, the Judge who granted the ordinary guardianship.

In this sense, guardians assume the obligation to provide the child with an integral formation and an adequate education, as well as to represent them in their acts and to administer their assets. Article 228 of the [Civil Code](#) details the main functions of the guardian, namely:

1. To provide food.
2. To provide what is necessary to guarantee their education, not only as regards the educational system, but also as regards an integral formation as a person.
3. To facilitate the tools for the minor to reach social insertion.
4. Before making any decision regarding the guardianship, to inform the minor and provide a space for the expression of his or her wishes.

Furthermore, the Organic Law on the Legal Protection of Minors states that Public Authorities shall develop actions aimed at raising awareness, prevention, detection, notification, assistance and protection of any form of violence against children and adolescents. This is to be done through procedures that ensure coordination and collaboration between the different Administrations, collaborating entities and competent services, both public and private, in order to guarantee a comprehensive action.

The Balearic situation. Protocol of action

The autonomic law that regulates the guardianship of minors in the Balearic Islands is Law 9/2019, of February 19, on the care and rights of children and adolescents of the Balearic Islands. In the Islands, public institutions for the protection and guardianship of minors have been the exclusive competence of the Autonomous Community since Organic Law 9/1992 of 23 December 1992, which transferred a whole series of competences to the Autonomous Communities that had acceded to autonomy through Article 143 of the Constitution.

Professor of Civil Law University of the Balearic Islands, Pedro Munar Bernat, [explains](#) that the main competences that are attributed to the Island Councils, are:

- The processing and resolution of proceedings for the declaration of a situation of risk.
- Immediate attention to minors in a situation of neglect and legal and material protective actions.
- Processing and resolution of protection files in cases of possible abandonment of minors.
- Assumption of the guardianship of minors in a situation of abandonment.
- Powers, functions and obligations of the competent administration in relation to the collaborating entities in matters of childcare.

The [Autonomous Community Law](#) mirrors national legislation and foresees that the minor is in a situation of neglect if they are alternatively in any of the following situations:

- mistreatment of a physical or psychological nature in any of its manifestations;
- absence of the persons to whom the guardianship function is legally entrusted;

- failure to comply with the obligations inherent to parental authority or guardianship or deficient or inadequate exercise, voluntary or involuntary, of the guardianship functions, which generates a serious danger for the minor in the moral or material order.

The assessment of the concurrence - or not - of these circumstances is in the hands of the public entity, that is, the respective Island Council. When there is a lack of protection, the Law automatically attributes the guardianship to the public entity, conferring on it the power of guardianship. When the deprivation of parental authority or removal of the guardianship of a neglected minor occurs, the public entity assumes all the guardianship functions, both of a personal and patrimonial nature.

According to Law 9/2019, of 19 February, on the care and rights of children and adolescents of the Balearic Islands, the purpose of residential care is "to offer comprehensive care in a residential environment to children and adolescents whose material, emotional and educational needs cannot be met, at least temporarily, in their own family". As of 29 May 2020, there were 201 minors in residential foster care by IMAS, 140 of them between 14 and 17 years old. These minors were living in one of the 38 centres owned or subsidised, managed by the Consell de Mallorca and FEIAB, which provide residential care to children and adolescents with protection measures.

The Protocol of action in cases of child sexual abuse and sexual exploitation of children in the Balearic Islands was drawn up and approved in 2018 by the Government of the Balearic Islands. The protocol was intended to be a technical instrument for the improvement of inter-institutional coordination in the actions in cases of child sexual abuse and exploitation, and necessary to guarantee the best interests of the child or adolescent and their comprehensive protection. This protocol has served as a model for protocols developed in other autonomous communities, such as the Basque Country, which is a strong point to consider.

The ultimate objective of the protocol is "the judicial consideration of the facts, the determination of whether or not they are a crime from the point of view of the judge". whether or not they are a crime from the beginning of the process, the assessment of the credibility of the testimony, and the guarantee of proof of the crime. In all these last aspects, the judicial bodies are the only ones empowered to take decisions".

The Majorcan Institute of Social Affairs (IMAS)

The Majorcan Institute of Social Affairs (IMAS) is the institution of reference in Mallorca for the management of social services, child protection and welfare resources. It is an autonomous body that depends on the Department of Welfare and Social Rights of the Council of Mallorca. It was created in 2003 under the name of the Institute of Social and Sports Services of Mallorca, and in 2007 it changed its name.

Thus, the IMAS assumes the responsibilities, established by Law 14/2001, of attribution of competences to the island councils in the field of social services. In short, the councils develop the programmes, services and centres for social services, minors and residences, etc. The IMAS runs the [Family and Minors Programme](#), whose main functions is:

- To carry out the actions foreseen in the legislation regarding the protection of minors in a situation of serious lack of protection and neglect.
- To directly or indirectly manage the services, centres and intervention programmes deemed necessary to attend to minors in a situation of serious lack of protection or neglect, and their families.
- To educate and follow up the persons or families applying for foster care and adoptions.

The IMAS foresees [residential care centres](#): these centres must assume responsibility for the integral development of the child or adolescent, guaranteeing adequate satisfaction of their biological, affective and social needs, in an environment of security and protection. The residential centres for minors can be publicly owned and managed by IMAS or privately owned with a contract with the Administration. Currently, the Minors and Family Service has a total of 25 centres in Mallorca, both IMAS' own management network centres and private centres subsidised by IMAS.

The Natzaret Foundation

According to [its website](#), the Nazareth Foundation is a non-profit organisation that promotes the comprehensive education of children and youth, in order to transform and improve their present and future personal situations. The Nazareth Foundation has been recognised as a teaching and research foundation by the Balearic Government. It is one of the 12 non-profit organisations federated in the Balearic Islands for the care of children and adolescents in situations of risk or lack of protection, that manage Residential Centres for Minors ([FEIAB](#)). The Foundation is run by a board chaired in perpetuity by the Bishop of Mallorca.

The object of the Foundation is the temporary reception and comprehensive education of children and young people of both sexes from environments with serious family and social deficiencies. Over the years, this field of action with children has expanded and now it is also working to improve the quality of life of ex-guardian youth, people with disabilities, families in need of support, etc.

The Foundation's aim is to promote the reception and comprehensive education of children and young people in order to transform and improve their present and future personal situations. Also, to promote the work to transform and improve the situation of women victims of gender violence, as well as people with disabilities and people who are within the reach of receiving the support of the Foundation.

The Foundation runs various [programs](#), in particular providing residential care services for minors, but also offers housing service for ex-guarded youth and runs community and support programs aimed at young people who have been left out of emancipation programs and who are in a vulnerable situation and lack opportunities. The goal of the projects is to give these young people tools to manage the procedures of adult life, in the social, family and work environment, in a safe, healthy and emotional environment. The Foundation also tries to cover some basic emergency needs (hygiene, food, a place to rest, clean clothes, etc.).

Timeline of events

The problem addressed in the petitions that gave rise to this fact-finding visit, came to light when it became known that on Christmas Eve 2019 a 13-year-old girl in care was sexually assaulted in Palma de Mallorca. The incident was reported by the minor and confirmed in hospital by a forensic doctor. The perpetrators, including a minor who allegedly served as a liaison between the girl and six perpetrators, were arrested shortly afterwards. It was the third time that the girl had suffered something similar, the two previous times reported in 2019.

On 13 January, *Diario de Mallorca* published that a group of minors under the guardianship of the Majorcan Institute of Social Affairs (IMAS) - which has 359 minors under its guardianship - were prostituted on the streets of Palma, in some cases receiving drugs as payment. The victims identified until July 2019 were all between 13 and 17 years old and under the guardianship of the Balearic government for having been victims of abuse, aggression, sexual violence, or simply having been abandoned by their parents. They were fifteen girls and one boy, living free in flats provided by the administration, but had freedom to leave.

On 16 January 2020, the public prosecutor's office in Palma decided to open proceedings to investigate the facts. In October 2020, the senior prosecutor of the Balearic Islands, Bartomeu Barceló, reported that these were "serious isolated cases", "there was no orchestrated network on the part of IMAS educators, although there were isolated cases". The known cases were investigated and several arrests were made.

The Report of the Commission of Experts on cases of sexual abuse and exploitation and Sexual Exploitation of Children of minors with a legal measure of protection of Mallorca

This [Report](#) was commissioned by the IMAS in 2020 to a Commission of Experts created on 27 February 2020 by Agreement of the Executive Council of the Consell de Mallorca.

Although the exact number of children and adolescents who are victims of commercial sexual exploitation of children and adolescents in the world is unknown, the few studies carried out at international level indicate that it is a frequent problem that affects a significant number of minors. These studies have identified particularly vulnerable groups of children such as children in residential care, who have been victims of sexual abuse and other forms of maltreatment in their families of origin, and who exhibit behaviour marked by recurrent running away and escaping from care.

Information and empirical evidence was collected on this complex problem in residential care centres in Mallorca, with the aim of proposing effective measures for the prevention, early identification and adequate care of victims of commercial sexual exploitation.

In the end, the Committee of Experts concluded that the problem of commercial sexual exploitation of children and adolescents is multi-causal and cannot be tackled successfully if it is understood as a problem linked to a specific context, in this case, residential centres.

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