

Unaccompanied immigrant minors in the Canary Islands: A legal approach

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The Canary Islands have received significant numbers of unaccompanied minors, especially during 2006. This phenomenon has resulted in the need to develop an appropriate policy response across the Spanish State and the European Union. The proposals to establish special protected status for unaccompanied migrant children have generated considerable controversy within the Autonomous Community of the Canary Islands, since it has assumed competence for taking the necessary measures for the protection of minors within its territory. This paper provides an overview of the relevant legislation and policies on reception, return and integration applicable to unaccompanied minors, analysing the difficulties that policymakers must take into account as they address the phenomenon of child migration.

Introduction

The Autonomous Community of the Canary Islands has experienced an important growth in migration flows and settlement of foreign populations in the last few years. This affirmation, applicable to any of the Spanish autonomous regions, acquires certain singularity in the case of the Canary Islands because of the proximity of the Archipelago to the western coast of Africa, its location at the outermost bounds of the European Union, its position at the southern frontier of Spain and the overland discontinuity between the insular regions (Asin Cabrera, 2006).

In recent years, irregular migration has become a major political concern both at national and European Union level. During 2006 and 2007, in particular, the Canary Islands became notorious in Spanish and international media because of the arrival of undocumented migrants to the coasts of the Canary Islands on board vessels from Morocco and Sub-Saharan African countries. However, this immigration is a small part of total arrivals in the Archipelago and leaves only traces of relatively minor importance in the statistics on resident foreigners living in this autonomous region (Godenau and Zapata, 2008, p. 13).

In relation to these movements, the Autonomous Community of the Canary Islands has also noted, especially during 2006, the migratory phenomenon of significant numbers of minors unaccompanied by a responsible adult coming from African countries, primarily from Morocco and Sub-Saharan States, with the objective of obtaining documents and employment, and sending money to their families.

The phenomenon of unaccompanied children migrating to Spain began at the end of the 1990s and significantly increased after the year 2000. The majority of these minors enter Spain without any identity documents and their average age is between sixteen and seventeen. But in recent years, there has been an increase in the number of minors between thirteen and fourteen, and over time even younger minors have been found, some under the age of ten.

This influx introduces a complex variable of alien status and gives rise to many practical difficulties and dysfunctions. This is because these young people acquire two legal statuses that determine their future: that of minor and that of immigrant. For this reason, the child protection laws and the legislation on immigration become the legal framework in which their stay in our country will develop.

The arrival and the situation of unaccompanied minors have acquired increasing importance on the political agenda of the regional authorities and of the central government of Spain, as well as across the European Union. This is, particularly, the case of the Autonomous Community of the Canary Islands since it has assumed competence for taking the necessary measures for the protection of minors within its territory.

Being foreign minors and immigrants, they represent an important vulnerable group which requires special attention and a comprehensive response from the relevant legislative bodies, different authorities and administrative services, bearing in mind the preservation of the minor's best interest, a principle stated in the United Nations Convention on the Rights of the Child of 20 November 1989.

Legal framework of unaccompanied minors in Spain

In Spain, the legal framework for unaccompanied minors is governed by a combination of two different sets of laws: child protection legislation in situations of risk or abandonment and immigration legislation (Asín Cabrera, 2011, pp.251-259).

The fact of two sets of legislation applying to unaccompanied migrant children means that at least two government bodies are in charge of them. One would like to think this might mean twice the assistance and protection. But in practice, this has meant that unaccompanied minors often fall through “bureaucratic administrative cracks” that fail to take into primary consideration the child’s best interest.

1. Legislation on the Protection of Minors: The competences of the Autonomous Community of the Canary Islands

Spanish legislation puts special emphasis on the legal protection of children and has adopted several laws, at national and at Autonomous Community level, to ensure better compliance with the United Nations Convention on the Rights of the Child. Concerning the situation of unaccompanied minors, once they are in Spanish territory and the age of the minor is confirmed, the child protection legislation comes into force and they are treated in the same way as Spanish minors.

The Spanish Constitution of 1978 establishes, in Paragraph 4 of article 39, that “Children shall enjoy the protection provided for in the international agreements which safeguard their rights”. This principle of the Constitution has guided and must continue to guide Spain’s policies for children both with respect to the incorporation of international texts on the rights of the child and in the development of domestic law.

Spain is a decentralized State organized territorially into 17 autonomous communities. The Spanish Constitution is based on the unity of the State, and recognises and guarantees the right of the Autonomous Community to manage their

own interests, exercising legislative and administrative powers circumscribed to their territorial limits (Aurrecoechea, 1989, p. 74). In accordance with the constitutional distribution of competences between the State and the Autonomous Communities, there are two types of legislation concerning the protection of minors: national legislation and that of the Autonomous Communities.

Within national legislation on the protection of minors, by virtue of Organic Law 1/1996 of 15 January on the Legal Protection of Children, the public powers “must protect children through actions of prevention and repair of the risk situations they face, for which powers shall establish adequate services to this end, shall protect them, and in cases of abandonment, shall assume their guardianship by operation of law” (Policies on reception, return and reintegration arrangements for unaccompanied foreign minors. Spain, 2009, p. 30). Along with this national legislation, the Autonomous Communities have assumed, through their respective Statutes of Autonomy, competences on the protection of minors.

Under autonomous legislation, the Child Protection Services are the competent authority to declare and assume guardianship, and to adopt any measures necessary for the protection of a child who finds within their territory. This is the case of the Autonomous Community of the Canary Islands, for which the Statute of Autonomy, approved by Organic Law 10/1982 of 10 August and amended by Organic Law 4/1996 of 30 December, provides, in paragraphs 13 and 14 of article 30, the competences in matters of “social assistance and social services and over public institutions for the protection and guardianship of minors”. According to these competences and the adoption of Act 1/1997 of 7 February on the integrated care of minors, the Autonomous Community of the Canary Islands, and specifically the Child Protection Directorate, is the youth welfare authority responsible for the protection, housing and care of all children in its territory. It establishes the distribution of functions and responsibility for the care of minors among the public administrations of the Islands and regulates the administration of prevention measures for children in situations of risk, to protect and ensure the social integration of such children in society.

In 2006 this migratory phenomenon caused a thousand unaccompanied minors to come ashore on the coasts of the Canary Islands. The arrival of this flow of migration took regional authorities by “surprise” and the reception units of the Child Protection Services of this Autonomous Community were not prepared to provide adequate care and suffered great demographic pressure from unaccompanied foreign minors. This has resulted in the number of these individuals in specific housing centres (Reception Centres for Foreign Minors (CAME) and Immigrant Processing Centres (CAI)) exceeding that originally planned for the Canaries, around 300 places generally distributed between the islands of Tenerife and Gran Canaria. The figure for 2006 was around 1,000 minors, a figure which rose in 2007, according to the Autonomous Government, which had to provide emergency centres and resources (DEAMENAC) to cope with this extreme situation. During that year, the centres were filled to capacity (Godenau and Zapata, 2008, pp. 33-38).

For the purpose of reducing the high number of unaccompanied foreign minors at the reception centres of the Child Protection Services of this Autonomous Community, the High Council for Immigration Policy, at the request of the Autonomous Community of the Canary Islands, approved, in September 2006, a Special Programme for the transfer and care of unaccompanied foreign minors from the Canary Islands Region to the Spanish mainland, born of the principle of solidarity between Spanish regions.

The objectives of this Programme were as follows:

Attend to the circumstances faced by the Canary Islands as regards the protection of unaccompanied foreign minors through collaboration with other Autonomous Communities.

Coordinate the transfer of unaccompanied foreign minors who had arrived in the Canary Islands to the different Autonomous Communities, which would assume the guardianship and protection of the received minors in their respective territories.

Collaborate with the destination Autonomous Communities in the protection of unaccompanied foreign minors through the financing of expenses resulting from their care.

Facilitate institutional collaboration as regards the protection of unaccompanied foreign minors.

Set forth a protocol for action which facilitates collaboration across different stakeholders intervening in the programme.

2. The treatment of unaccompanied minors in Aliens Legislation

The second body of legislation applied to unaccompanied minors in Spain is Organic Law 2/2009 of 11 December, amending Organic Law 4/2000 of 11 January, on the rights and freedoms of foreign nationals in Spain and their social integration (Official State Gazette nr. 299, dated 12.12.2009) and Royal Decree 557/2011 of 20 April, approving the Regulation on Implementing Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, amended by Implementing Organic Law 2/2009 (Official State Gazette, nr. 103, dated 30.04.2011).

This recent legislation, as was the case previously, contains, in article 35 of Organic Law 2/2009 (Alien Law) and in articles 189 to 198 of the Regulation on Implementing the Alien Law, specific provisions referring to the treatment of unaccompanied foreign minors. But for the first time, it includes a legal definition of the term “unaccompanied foreign minors”. By virtue of article 189 of the Regulation on Implementing the Alien Law, unaccompanied minor refers to “a

foreigner below the age of eighteen, who arrives on Spanish territory unaccompanied by an adult responsible for them, whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or a minor who is left unaccompanied after they have entered the territory of Spain”.

Determining that the migrant is under the age of eighteen is crucial in order to delimit the subjective scope of the Alien regulations. This is a very important question that must be resolved without delay, because once minority of age is confirmed, the unaccompanied foreign minors must be referred to the Child Protection Services of the Autonomous Communities, the competent bodies for assuming their guardianship and exercising any necessary protective measures.

In this phase of detection and age determination, the State Prosecutor’s Office plays a very active and important role. It is responsible for protecting the rights and interests of children and issues the order for the minor’s placement at a reception centre under the Child Protection Services of the Autonomous Community to be given the assistance (article 190 of the Regulation on Implementing the Alien Law).

As regards integration, Organic Law 2/2009 introduces a change which strengthens the role of social integration of minors. It consolidates the previous policy and acknowledges the obligation to provide legal and social care and protection due in accordance with the Law on the Legal Protection of minors. In order to facilitate this integration, relevant financial instruments have been introduced and measures taken at policy level (paragraphs 3 and 4 of article 2 ter of the Alien Law). This is the case for the granting of financial aid to the regional and municipal authorities with most immigration (Andalucía, Ceuta and Melilla) and particularly the Autonomous Community of the Canary Islands for the transfer to other regional authorities of foreign unaccompanied minors for reception and protection (Annual Policy Report on Migration and Asylum, 2009, Spain, p. 27.)

2.1. The assisted return and reinsertion of unaccompanied minors in their country of origin

In accordance with the objectives and the main strand of actions of the Action Plan on Unaccompanied Minors (2010-2014) adopted by the European Commission on 6 May 2010 (Communication from the Commission to the European Parliament and the Council of 6 May 2010 - Action Plan on unaccompanied minors (2010- 2014). SEC (210) 534, Brussels, 6/5/2010/. COM (2010) 213 final), the Spanish Alien legislation put, primarily, a special emphasis on the prevention of this migration in the origin countries and on finding durable solutions based on an individual assessment of the best interests of the child consisting prima facie of assisted return and reinsertion of the minor in the country of origin. The option for the unaccompanied minor to stay in Spain is a subsidiary one. It occurs only when the return of the child through family reunification or

by placing the minor with child protection agencies in the country of origin is not possible (paragraph 5 of article 35 of the Alien Law).

These returns are not to be confused with the figures of return upon refusal of entry at a border, or other types of removal, measures which are applicable only to foreign adults (Moya Malapeira, 2002, pp. 128-129).

Paragraph 1 of article 35 of the Alien Law introduces a practice, which has already been initiated, of concluding bilateral Agreements between Spain and the minors' countries of origin in order to prevent irregular immigration and to facilitate the assisted return measures for minors, while recognising that the best interest for many may be reunification with their families and development in their social and cultural environment.

In recent years the Spanish Government has maintained a policy of international cooperation with the countries of origin of these minors and has signed the following bilateral Agreements:

The Memorandum of understanding between the Kingdom of Morocco and the Kingdom of Spain on the assisted return of unaccompanied minors, signed in Madrid on 23 December 2003. Currently in force.

The Agreement between Romania and Spain on cooperation in the field of protection of Romanian unaccompanied minors in Spain, their repatriation and the fight against the exploitation of minors, signed in Madrid, on December 15 2005 (Official State Gazette, nr. 195, dated 16.08. 2006).

The Agreement between the Republic of Senegal and the Kingdom of Spain on cooperation in the realm of prevention of the emigration of Senegalese unaccompanied minors, their protection, return and reintegration, ad referendum in Dakar on 5 December 2006 (Official State Gazette, nr. 173, dated 18.07. 2008).

The Agreement between the Kingdom of Spain and the Kingdom of Morocco on cooperation in the realm of preventing the illegal immigration of unaccompanied minors, their protection and their assisted return, in Rabat on 6 March 2007, Pending ratification.

The last two Agreements represent a second generation of bilateral agreements on this issue. Both approach international cooperation in depth, from all perspectives: the prevention of migrations, the protection of minors in Spain, as well as the return and reintegration in their countries of origin (paragraphs 1 of articles 1 of the Agreements).

In addition to the importance that the Alien Law attaches to relations with the origin countries of the unaccompanied minors, through encouraging international bilateral Agreements, paragraph 2 of article 35 allows that the Autono-

mous Communities may enter into agreements with origin countries with the aim of ensuring that the minors are provided with assistance and opportunities for social integration in the society from which they came. This novel aspect is a formalisation of a practice which some Autonomous administrations are already implementing in this area and which widens the scope of external action available to Autonomous Communities with respect to unaccompanied immigrant minors. Specifically, these agreements could include, amongst other measures, financial support for the setting up of child protection units, particularly in zones that the migrant minors come from (the building of reception centres), professional training activities, etc.

These “agreements” are not statutory and are therefore not subject to international law. However, as with paragraph 1, the sole objective is to prevent irregular immigration of this migrant group to our country.

2.2. Procedures for return

Once the minor has been referred to the competent protection services, the next step is to find out their identity and their personal, family and social situation. The aim of this investigative stage is to put together a case with enough information so that a decision may be made on the future of the immigrant minor. In this respect, and by virtue of the provisions of paragraph 5 of article 35 of the Alien Law, the Spanish legislator gives priority to the first measure to be taken, the return, and reintegration of, the minor to their country of origin. The procedure established for this measure is that of repatriation, which will be effected, in accordance with the principle of the minor’s best interests, either through reunification with family, or through the transfer of the minor to the child protection services, provided they meet the required conditions for guardianship of the minor.

The regulatory standards of the repatriation procedure are set out in paragraphs 5 and 6 of article 35 of the Aliens Law and, more particularly, in articles 191, 192, 193, 194 and 195 of the Regulations referring to competence in the repatriation procedure, to the request for prior reports required at the beginning of the procedure, to the pleadings and determining the period of probation, to the hearing and ruling, and to the repatriation itself. These are detailed regulations which bear evidence to a strengthening of both the position and the legal guarantees of unaccompanied foreign minors.

The competence in the repatriation procedure corresponds to the Delegations and Sub-Delegations of the Government in whose territory the minor’s domicile is located.

2.3. The residence of an unaccompanied foreign minor

The stay of the unaccompanied foreign minor in Spain, in a residence under guardianship, is a subsidiary option contemplated by the Spanish legislator when family reunification or transfer to the Child Protection Services in his/her country of origin are impossible or deemed inadvisable for the minor. When

this happens, the Autonomous Community with due competence in child protection must proceed to declare the minor in situation of abandonment, to assume administrative guardianship *ex lege* as set out in article 172.1 of the Civil Code and article 18 of Organic Law 1/1996 for the Legal Protection of Minors, and to take the corresponding protective measures, of which reception in specific residential centres for immigrant minors is the most widely applied. However, Spanish authors have remarked that the Autonomous Administration does not have to wait to declare the minor in situation of abandonment for the State Administration to decide in favour of their staying on Spanish territory. In the event of the State Administration subsequently deciding on the minor's return to his/her country of origin, the declaration of abandonment will simply be revoked.

In compliance with article 196.1 of the Regulations, “once the impossibility of repatriating the minor has been attested, and in any case once nine months have lapsed since the minor was referred to the competent child protection services, the process of granting him/her a residence permit, set out in article 35.7 of the Organic Law 4/2000 of 11 January, will begin.”

The precept introduces temporal criteria, but this does not mean that the nine month period from the moment that the minor is referred to the competent child protection services has to elapse in order for him/her to apply for a residence permit. What the regulations for aliens do make mandatory is the granting of a residence permit once this time period has elapsed.

Furthermore, we have to take into consideration the fact that, according to article 35.7 of the Aliens Law, the residence permit will be granted “with retroactive effect from the moment that the minor was referred to the child protection services”. This is significant, as the length of the guardianship will be an essential element in obtaining a long-term residence permit and, if granted, for the subsequent acquisition of Spanish nationality in compliance with article 22.2 c) of the Civil Code, which requires one year's legal residence on the part of the foreign minor who has been under the guardianship, care or legal protection of a Spanish citizen or institution during two consecutive years.

That said, as paragraph 8 of article 35 of the Aliens Law clarifies, the granting of a residence permit will not be an obstacle to the subsequent return of the minor to their country of origin when this favours the best interests of the child.

Finally, a question we must at no time lose sight of is the fact that unaccompanied immigrant minors are entitled to rights that may not be violated by the Aliens Law. Hence, article 35 of the Aliens Law makes it clear in paragraph 7 that “the absence of a residence permit will not impede the recognition and the exercise of all the rights that the condition of minor entitles them to”. This means that unaccompanied foreign minors, independent of their administrative situation in Spain, enjoy all those rights recognised by the international Conventions to which Spain is party, as well as by State legislation and that of the competent Autonomous Communities.

2.4. Reinforcement of the role of regional authorities

In recent years, the growing presence of unaccompanied minors in the Autonomous Communities and, in particular, the Autonomous Community of the Canary Islands, has occupied “an increasingly prominent place in regional political agendas”, surpassing all projections and exhausting the resources available through the Child Protection Services for their residential care in the foreign minor reception centres prepared for this purpose. This has led to an increasing accumulation of these minors in the Emergency Reception Centres for Unaccompanied Foreign Minors (DEAMENAC) and in the Reception Centres for Foreign Minors (CAME), both belonging to the network of child reception centres run by the Island Councils, and whose occupancy numbers have, at times, been very much over the previously established capacity limits. This circumstance has led to the repeated request, by the Canary Islands Government to the National State Administration, for direct intervention, and to other Autonomous Communities, for their aid and solidarity in receiving the minors and providing assistance to them in their own Community (Special Programme for the Reception and Assistance of Unaccompanied Minors transferred from the Canary Islands). Moreover, and because of the difficulty of finding a solution to controlling a migrant influx which increases the numbers of minors that have to be received and legally protected under the guardianship of the Autonomous Administrations, this has become an aspect of the migratory phenomenon which has pitted local and state administrations against each other, to such a point that the Canary Islands Government proposed reverting the statutory competences relative to the protection of these foreign minors back to the National Government.

Paragraphs 11 and 12 of article 35 of the existing Aliens Law incorporate, in particular, the proposed amendments put forward by Coalición Canaria (Canarian Coalition Party) regarding the possibility of passing the guardianship of the unaccompanied minors over to NGOs specialised in the protection of minors (art. 35.11), as well as the possibility of Autonomous Communities reaching agreements with other Autonomous Communities – where the unaccompanied minors are – to assume guardianship, either administrative or by operation of law, and custody of the minors (art. 35.12). In this way one of the most important and controversial demands made by the Canary Islands Government to the Central Government in the management of immigrant minors has been settled. In this respect, we should remember that previous to the current reform, it was permitted to transfer the unaccompanied minors to other Autonomous Communities under their protection and custody, but not under administrative guardianship, for which the Autonomous Community of the Canary Islands was still responsible.

In relation to the possibility of the General State Administration and the Autonomous Communities establishing agreements with non-governmental organisations, foundations and other entities dedicated to child protection with the aim of transferring the guardianship of the unaccompanied minors to them, the

precept incorporates a significant novelty. In compliance with article 222.1 of the Civil Code, guardianship is established if there is no one to exercise parental authority or if there are disabled persons involved, and must always be established through the courts. As stated in article 35.11, legal capacity for initiating a guardianship corresponds to the Autonomous Community in whose custody the minor is to be found. To this end, the case must be addressed to the competent court, which then proceeds based on the minor's future place of residence; the corresponding agreement must be attached, together with the consent of the entity that is going to assume guardianship.

Reaching adulthood

The procrastination on the part of certain local child protection services in presenting applications for residence permits, together with the delays in the rulings on said permits, are circumstances which act against the interests of this population of immigrant minors. These minors without residence permits may remain on Spanish territory while they are under the guardianship of a public entity. But once they have turned 18 their situation becomes irregular. In other cases, those in which the minors have been granted a residence permit, the problems begin when the minors reach majority of age, at which time the administrative guardianship and, inexplicably, their residence permit, expire, together with their regular administrative situation in our country.

The aim of articles 197 and 198 of the Regulations is precisely to address this type of situation which, one more than one occasion, has been condemned by the Ombudsman or the Ombudsman for Children in the different Autonomous Communities.

In the case of minors under the legal guardianship, custody, provisional protection or in the care of child protection services, and who reach majority of age, the legislative framework for foreigners makes a clear distinction between two situations: 1) Attainment of majority of age in the case of an unaccompanied foreign minor in possession of a residence permit and 2) Attainment of majority of age in the case of an unaccompanied foreign minor not in possession of a residence permit.

With respect to the first situation, regulated by article 197 of the Regulations, concerning the attainment of majority of age in the case of an unaccompanied foreign minor in possession of a residence permit, a point to be noted is the fact that the expiry date of the residence permit is not limited to the minor attaining majority of age, but that the permit holder, on reaching the age of eighteen, may apply to renew the permit in two different time frames: 1) during the sixty calendar days previous to the expiry date and 2) within the ninety calendar days after the expiry date of the previous permit. This is a point that should be seen in a very positive light, since it puts an end to a highly criticised practice whereby the expiry date of the temporary residence permit was set for the day before the minor reached majority of age.

Presentation of the application within either of these time frames will extend the validity of the previous permit until a ruling in the case has been delivered.

With regard to the renewal procedure, this is done in accordance with article 51 of the Regulations covering the renewal of a not-for-profit temporary residence permit, taking into account the following particularities: 1) the financial means to be attributed to the individual are set at the monthly equivalent of 100% of the IPREM (Spanish minimum wage index) and 2) the possibility of taking into account the positive reports that may be presented by the competent public entities with respect to the efforts made to integrate, the continuity of training or studies that they he/she has undertaken, as well as his/her incorporation, both effective and potential, in the labour market.

In addition, the application for renewal will take into special consideration the degree of integration in Spanish society by the applicant. This is evaluated through a series of indicators pertaining to: respect for the house rules of the protection centre; degree of knowledge of the official languages of Spain; the existence of family ties in Spanish territory; the length of time that the individual has been under the protection, custody or guardianship of a Spanish citizen or institution; the continuity of their studies; the existence of job offer or contract; and participation in training activities.

This renewal will be for a period of two years, except in the case of a long-term permit, and the permit holder has a period of one month from notification to apply for the corresponding foreign identity card.

Another provision set out in article 197.6 of the Regulations is the application to modify the existing not-for-profit residence permit with the aim of obtaining a work and residence permit. This is an application which may be submitted as soon as the individual reaches majority of age or at any moment subsequent to this, and it must be made in accordance with article 200 of the legislative framework.

With respect to the second situation, that of attainment of majority of age in the case of an unaccompanied foreign minor not in possession of a residence permit, this is a scenario which should only arise on a limited number of occasions. However, the reality is that these situations are common and consequently need a specific legal response so that these minors, who have been under the guardianship of the protection services and have attained majority of age without obtaining a residence permit, may have access to a regularised situation and integrate themselves into the host society. In these cases, as established in the first paragraph of article 198 of the Regulations, when the minors have participated satisfactorily in the training and other activities programmed to favour their social integration, the child protection service may recommend that a temporary residence permit be granted in exceptional circumstances.

The application for a residence permit, which must be accompanied by a written recommendation from the protection services, must be presented by the foreigner in person during sixty calendar days before or ninety calendar days after the date on which he/she turns eighteen. In addition to this, however, there must

be documentary evidence that the individual is currently in one of the following situations: 1) That he/she has adequate financial means to live on, the monthly equivalent of 100% of the IPREM (Spanish minimum wage index); or 2) That he/she has a job contract or successive valid contracts, in line with the provisions established in art. 64.3 b), c), d), e) and f) of the Regulations, with a view to obtaining contracted work; or 3) That he/she complies with the requirements established in art. 105.3 a), b), c) and d) of the Regulations, with respect to the obtaining contracted work. In this last situation, the required income from their work activity must be the monthly equivalent of 100% of the IPREM

As is clear from the exigency of the requirements that have to be met and the short time period fixed for the application, those minors that have now reached adulthood and often find themselves in the streets will, in our opinion, find it difficult to obtain this residence permit and the work permit that this entails.

Concluding remarks

1. The migration of unaccompanied minors poses a particular challenge, necessitating an appropriate policy approach, guided by the best interest of the minor, as stated by the United Nations Convention on the Rights of the Child.

2. In contrast to other European countries (Belgium or Portugal) where the regulations on asylum shall initially prevail, the Spanish legal system for regulating the special situation of these minors is based on a “child protection model”. The children enjoy the rights embodied in the international Conventions which Spain has ratified, in national laws on the protection of minors and in the laws of the Autonomous Communities. This is a model that in theory implies an “automatic protection” of these minors within the Spanish territory, but in practice, this is not always the case (CON RED Project, 2005, p. 131). This is because, too often, national authorities resort to immigration legislation first and child protection legislation second, which has dire consequences for children.

3. Spain considers that the best interest of the minor is to be reunited with the family in the country of origin.

The provisions of Alien Legislation which apply to unaccompanied minors clearly highlight the tendency to view assisted return as the preferential measure to be adopted, providing for more permanent reception and settlement in Spain only when family reunification through repatriation has been proved to be difficult.

In light of the priority placed on assisted return, it is very important to underline that the minors should not be repatriated to their country of origin unless the reintegration into their social environment of origin is ensured to be in their best interests. It should not be mandatorily imposed without hearing the opinion of the minor as, in many cases, this measure would accentuate their situation of vulnerability and defencelessness.

4. In Spain most cases fall under the non-asylum procedure. However, according to article 48 of Organic Law 12/2009 of 30 September regulating the right to asylum, there is also the possibility of applying it, but this is an option that occurs very rarely among minors.

5. The Autonomous Community of the Canary Islands has assumed, in its Statute of Autonomy, important competences in the protection and guardianship of minors. These competences have had a significant effect on the way that the Child Protection Services of the Autonomous Community of the Canary Islands have dealt with the care and protection of unaccompanied minors within its territory, especially during 2006, since the circumstances have exceeded the Regional Government's resources for their care.

This situation gave rise to "a polemic debate on the limit to which the Regional Government of the Canary Islands could provide immediate care for these young children" and the need to reach agreements between the different State Public Administrations in order to facilitate institutional collaboration in the protection of these minors. In fact, this is a question that has led to important political controversies between regional and central authorities, sometimes without taking into account the best interest of the children.

6. The migration of unaccompanied minors is a complex subject which presents a major challenge to our institutions, authorities and stakeholders in terms of their capacity to receive, protect and integrate these migrant children in our society.

The last reform of the Spanish Alien legislation has undergone considerable changes which reinforce the legal guarantees and rights of these minors. But this legislation has not yet become effective enough to regulate the situation of these minors and still gives rise to important failings in protection and many difficulties and dysfunctions in practice.

7. One of the major needs, highlighted by the application of two different and often contradictory sets of legislation to the unaccompanied minors, is to enhance the harmonisation of policies and practices through the coordination of the actions of the multiple authorities and actors involved in their treatment, in order to improve the procedures and to consider these minors "first and foremost as children, and only then as migrants".

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