

**Spanish Illegal framework and policies on child welfare and protection
Regulations and practices
Belgium/Flanders – Northern Ireland - Norway – Spain
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Introduction

The aim of the PANDA project is to promote the participation of young children (aged 12 years and under) in decision making in a transnational context through strengthening professionals’ collaboration with young children known to social services, especially in child welfare and child protection.

Led by 8 partner organisations comprising social workers, managers, policy officers, academics and trainers from four countries, Belgium, Spain, Norway and Northern Ireland, the project has three objectives:

- to increase the skills and knowledge of professionals by creating a media library;
- to support organisations to create the conditions necessary for participatory social work with young children by providing a framework for policy officers and managers to support the implementation of a participatory approach;
- to provide trainers with new tools and methods in this area.



Figure 1 PANDA concept (2022)

In this text, you can read about the main legal framework in the four participating countries. It are four examples of how International legislation is translated into regional child welfare and child protection systems.

Each country has structured the presentations somewhat differently, but all have described how the authorities take care of and include the most vulnerable children in their country.

1. Main concepts

Spanish regulation of minors is based on two main concepts: legal personality and the capacity to act.

- **Legal personality:** refers to the capacity to be the holder of rights and obligations. All human beings have legal personality.
- **Capacity to act:** refers to the capacity conferred by the law upon a person to enable them to validly carry out legal acts. Not all human beings have it, it is progressively acquired.

During the early stages of life they must mature rationally and emotionally until they reach full maturity. During this process of evolution, humans are physically, mentally and legally vulnerable. Their vulnerability diminishes and their autonomy increases in inverse proportion as they complete these stages.

During their maturity process three main concepts will guide their protection:

1. Priority of the best interest of the minor.

2. *Parental guidance in the exercise of the right.* Minors hold the rights, but the law provides for the right and obligation of parents to guide and direct them in the exercise, and children must respect their parents.
3. *Modification of the exercise of the right according to the minor's circumstances.* Minors will progressively assume the exercise of their rights (and responsibilities) according to their own capacity and circumstances. During this process the acquisition of the capacity to act will be determined by two criteria:
 - Age (*objective*): which is presumed when an individual reaches a certain age (12 years old usually)
 - Maturity (*subjective*) which will depend on the mental capacity of each individual at a specific time and with relation to the particular act to be carried out.

1.1. Best interest of the minor

Many authors have tried to define and specify the content of the expression "interests of the minor". The truth is that it is a changing concept and depends on many other parameters, whether social, legal or intellectual. It is a "complex, flexible and adaptable concept, having to be adjusted and defined individually, according to the specific situation of the child concerned and taking into account the context, needs and specific personal circumstances" (Pérez Vallejo & Sainz-Cantero Caparrós, 2018, p. 47).

Article 3.1 of the Convention on the Rights of the Child of November 20, 1989 is the one that for the first time positive this general principle by establishing "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

- *Organic law 1/1996: undetermined concept*

In Spain, article 2 of the Organic Law 1/1996 for the protection of minors makes a general pronouncement in relation to this principle by stating "in the application of the present law, the best interests of minors shall prevail over any other legitimate interest that may concur".

As indicated above, one of the main problems with this principle is that it is an indeterminate legal concept, which has always caused some confusion or doubts as to how to deduce it. Initially, the legislator left the difficult task of giving this principle content to the judiciary. The following aspects are usually emphasized:

1. It is not a question of guaranteeing the will of the minor, but rather of guaranteeing that which is most beneficial to him or her. It is necessary to determine and search for what in each case is the best for that particular minor.
2. Through this principle we try to guarantee the free development of the personality, therefore we try to guarantee what is most beneficial for him/her, not now, but for the future.
3. The supremacy of the interests of the child. The interest of the minor enjoys special protection so that in case of conflict with other interests also worthy of protection in our system, the interest of the minor must always prevail, as established in Article 2 of the LOPJM.

- *Organic Law 2/2015: general criteria and general elements for determination*

Organic Law 8/2015 of July 22, 2015, amending the system of protection for children and adolescents introduced important changes in art. 2 of the LOPJM, trying to collect the jurisprudential criteria maintained to date and the criteria of General Comment No. 14 of the United Nations Committee on the Rights of the Child about the interest of the minor being a primary consideration, criteria that are recognized in Supreme Court Judgment No. 416/15 of July 20.

The new art. 2 of the LOPJM establishes a series of general criteria and general elements for the purposes of interpretation and application of what is understood by the interest of the minor in each case, which will be taken into account without prejudice to those established in the specific applicable legislation, as well as those others that may be deemed appropriate in view of the specific circumstances of the case.

1.1.1. General criteria

a) The protection of the minor's right to life, survival and development and the satisfaction of his or her basic material, physical, educational, emotional and affective needs.

b) The consideration of the minor's wishes, feelings and opinions, as well as his or her right to participate progressively, according to his or her age, maturity, development and personal evolution, in the process of determining his or her best interests.

c) The convenience that his or her life and development take place in an adequate family environment free of violence. Priority shall be given to the permanence in the child's family of origin and the maintenance of family relationships shall be preserved, whenever possible and positive for the child. In the event that a protective measure is agreed upon, family foster care will be prioritized over residential care. When the minor has been separated from his or her family, the possibilities and convenience of his or her return shall be assessed, taking into account the evolution of the family since the protective measure was adopted and always prioritizing the interests and needs of the minor over those of the family.

d) The preservation of the identity, culture, religion, convictions, sexual orientation and identity or language of the minor, as well as the non-discrimination of the same for these or any other conditions, including disability, guaranteeing the harmonious development of his or her personality.

1.1.2. General elements

1. The age and maturity of the minor.
2. No discrimination. "The need to guarantee their equality and that they will not be discriminated against due to their particular vulnerability, whether because of lacking a family environment, suffering ill-treatment, disability, sexual orientation and identity, their status as a refugee, asylum seeker or applicant for subsidiary protection, belonging to an ethnic minority, or any other relevant characteristic or circumstance".
3. Impact of the decision. "The irreversible effect of the passage of time on their development".

4. Stability. The need for stability of the solutions adopted to promote the effective integration and development of the minor within society, as well as to minimize the risks that any change in their material or emotional situation may pose to their personality and future development.
5. Preparation for the transition. “Preparation of the transition to adulthood and independence, according to their personal capacities and circumstance”.

1.2. How is “participation” understood in Spanish regulation

Following article 2 of Organic Law 1/1996 for the protection of minors it can be said that Spanish regulation focus on three main concepts or rights that must be guaranteed for minor:

- **The right be informed:** in an understandable way (Spanish Civil Code)
- **The right be heard and listened** (art. 9 LOPJM)
- To **participate** in decision making process. Academics identify it as “the right to carry out activities and to express herself (Verhellen. 1997)”. If we analyse the Autonomous Community regulation it is usually understood as the creation of Public bodies that will allow minors to participate and express their ideas. Some examples will be:
 - “Promote the establishment of bodies for the participation of adolescents and children's and adolescents' in social organizations” (Law 6/1995 on guarantees of children and adolescents’ Madrid).

Councils of Attention to Childhood and Adolescence of the Community of Madrid (law 18/1999): contributing to the expression and direct knowledge of their interests and needs.

2. The participation of minors in Spain: Public policies

2.1. Introduction

The present document gathers the public policies for the participation of children in the Community of Madrid. It is necessary to consider that many of the plans and actions related to children and youth are integrated into the legal and administrative framework referring to the family and Social Services in Spain.

The territorial organization of the Spanish State, which is divided into Autonomous Communities, must also be taken into account. These have political power, administrative power, decentralized management, and attributed competencies. These are exclusive, concurrent, and shared. The exclusive competencies can be of the State or the Autonomous Communities with the exercise of all powers. In the concurrent competencies, the State establishes the basic rule, and the Autonomous Communities develop this rule, develop the regulations and assume the execution of the public

function. In shared competencies, the State legislates, and the Autonomous Communities execute the civil service under State regulations (Presidencia de Gobierno, 2021).

There is also the Local Administration constituted by the city councils of the cities that have their competencies. This form of State administration, join with the ideological conception of those who govern in each Autonomous Region, means that we have different forms and treatment of minors in this country.

For the above reasons, in this document, we will include state policies, plans, and strategies that support autonomous and local policies and legislation, but focusing on the Community of Madrid, since the Autonomous Communities have exclusive competence in the protection of minors, as stated in article 26 of the Statute of Autonomy of the Community of Madrid. However, the exposition will begin with the national policies that supporting the whole Spanish State.

In this country, as in others, accession to Convention the Convention on the Rights of the Child (CRC) influenced their situation. It implied a particular social sensitivity to recognizing their rights and produced legislative modifications because the children need another person for their development, education, care, and representation. The aim is to guarantee adequate legal and administrative protection in the attention of their needs, full development of their personality and social integration, and to be heard. In the event of a lack of protection, the public authorities must prevent social exclusion situations (Observatorio de la infancia, 2021) of this sector of the population.

Several moments that have marked the evolution of public policies for children and define the space for action can be identifying. The following stand out: In March 2000, the Lisbon Strategy. The European Union committed leaders to make a decisive impact on eradicating poverty by 2010, including children.

1. In March 2000, the Lisbon Strategy. In it, European Union leaders committed themselves to make a decisive impact on eradicating poverty by 2010, including that of children.
2. In 2002, the Spanish State signed the Global Plan of Action, "A World Fit for Children," committed to implementing plans to promote the protection and guarantee of children's rights and ensure their well-being. It includes establishing or strengthening national bodies and a system for assessing the impact of these measures.
3. Assuming this global strategy for children, the Government of Spain prepared the First National Strategic Plan for Childhood and Adolescence (PENIA) for 2006-2009.
4. In 2010, the European Commission drew up a new policy strategy, "Europe 2020", for sustainable and inclusive smart growth. It incorporates a Recommendation of the European Commission to combat child poverty, discrimination against particularly vulnerable children, school failure, the situation of immigrant children, or adolescents with behavioral problems admitted to therapeutic centers (Gaitan, 2011).
5. Later, Sustainable Development Goals (SDG – Agenda 2030) reach all people to protect all children, emphasizing the most vulnerable. It is a great challenge for this country to eradicate the poverty rates that achieve a high percentage of children. It must provide

quality education to reduce the high rate of early school leaving. It must also minimize inequality about rich children and adolescents, improve reasonable health rates and achieve decent employment and economic growth for those aged 15-19 who do not work or study.

6. The Promulgation of Organic Law 8/2021 of June 4, on the comprehensive protection of children and adolescents against violence, we will deal with later.

At present, care for children and adolescents is marking by state and regional legislative progress that guarantees, promotes, and defends their rights. "There is greater social sensitivity and prominence of social initiative; incorporation of the 'Good treatment' referred to the attention to the childhood, enhancing the positive parental relations like a priority factor that promote the change in this culture." (Observatorio de la infancia, 2021). There is a trend towards improving the quality of life and preventing the risks of children, especially among the most vulnerable.

The welfare of children and adolescents is a joint responsibility between the Public Administrations, the social initiative, and the citizens of this country, being the closest or first-line service, the Public System of Social Services placed in the city councils of each city. These services have the technical cooperation of the corresponding Ministry and, also, with the support of the Autonomous Communities.

In this context, the Childhood Observatory was born after Spain acceded to the CRC. This State body aims to homogeneity the interpretation of information to guarantee the equality rights of children and adolescents, regardless of their place of residence.

On its board directors, are represented various public bodies such as the Secretary of State for Social Services; the General Directorate of Services for Families and Children; the General Directorate of an Autonomous Community who rotate according to seniority of their Statutes of Autonomy, as well as delegates from each Autonomous Community. It is also representatives of each of the existing ministries, the General Subdirectorate of Social Services; representatives of disability support policies; the Labor and Social Security Inspectorate; the National Institute of Statistics and the Sociological Research Center. The observatory also convenes the third sector, UNICEF, the Spanish Youth Council, the Youth Institute, and the Women's Institute.

The objectives of the Children's Observatory of Spain are:

- To know the child population's quality of life status and the changes occurring in this situation in our country.
- To know the childhood quality status of life, thus the changes that occur in our country
- Monitor social policies that are affecting children and adolescents.
- Make recommendations regarding public policies that affect children and adolescents.
- Stimulate research and knowledge of childhood and adolescence to prevent problematic situations.
- Publish studies and make periodic reports that contribute to a better implementation of children and adolescents' rights and the knowledge of their needs (Observatorio de la infancia, 2021).

Since its inception, the observatory has produced research and reports, technical documents, statistics, strategic plans, and action protocols that serve as a reference for the Autonomous Communities to prepare their own.

Another fact, under the ratification of the CRC, is the institution in Spain of Ombudsman for Minors that some Autonomous Communities assumed. Madrid has an ombudsman from 1997 to 2012. The mission was to safeguard and promote the minors' rights to fulfill their request to be heard. When this authority disappeared in Madrid, the Institute for Children and the Family assumed these functions.

On the other hand, from 2006 to 2016, two National Strategic Plans for Children and Adolescents (PENIA I and PENIA II) and the Plan of Action against the Sexual Exploitation of Children and Adolescents (PESI), in force until 2013. The strategic objectives of the PENIA refer to coordination between the different State administrations, support for families, social awareness, care for children at risk, quality education, and health. It also proposes the protection of the environment and ensuring the effective participation of children as full citizens. Some Autonomous Communities, such as Madrid, have their plans. These are more specific and include detecting the social risk of children, assistance actions, and promotion of their rights and participation.

The Third National Strategic Plan for Children and Adolescents (PENIA) is under preparation; incorporate the recommendations of the Committee on the Rights of the Child, the Sustainable Development Goals and the results of the evaluation of PENIA II." (Government Presidencies, 2021)

For its part, the Law on the Comprehensive Protection of Children and Adolescents from Violence, adopted on 4 June 2012, referred to above, provides for national plans, programs, and policies affecting children and adolescents. It provides for the State Council for the Participation of Children and Adolescents to ensure the effective exercise of participation in formulating, implementing and evaluating national plans, programs, and policies affecting children and adolescents.

2.1.1. Autonomic level. The Community of Madrid

In the Community of Madrid, child and youth participation policies include the Children and Adolescents Plan of the Community of Madrid 2017-2021. Its general objective is to promote the necessary conditions of freedom, equality, and participation that allow children and adolescents to integrate fully into society, for which their needs must be met. "This does not imply, in all cases, public coverage of all of them. What is a requirement is that special and preferential treatment be granted to this group, whose weakness and vulnerability requires priority attention in the exercise of all their rights" (Community of Madrid, 2017)

This Plan has six strategic lines, contemplates the construction of a more child-friendly society; the protection of the fundamental rights of children and adolescents and the recognition of their obligations; priority attention to situations of poverty, disadvantage, and or exclusion; attention to their health and prevention of unhealthy behaviors. Likewise, consider the preferential attention in cases of vulnerability and improvement of the quality of the management, and evaluation results of all the actions oriented to their integral well-being.

The strategic lines of this Plan contain specific measures. Concerning the protection of children and adolescent's fundamental rights and obligations, it proposes measures grouped according to their nature. These are comprehensive planning and the right to education; training for employment for young people; integral development through leisure and culture; right to information; right to participation, among many other measures and strategies in various areas.

Children and adolescent participation are considered a primary right and a measure of self-protection that provides the right to be heard. To this end, they promote "autonomous meetings of child and adolescent participation where children and adolescents debate among themselves the issues that concern them and prepare the proposals and demands they deem appropriate." These will go to the Madrid Assembly, which will respond to the proposed questions be submitted (Comunidad de Madrid, 2017).

It also promotes creating a working group to create and implement a protocol for jurists, health workers, security personnel, teachers, etc., on the right of children and adolescents to be heard.

Furthermore, for some years in the Community of Madrid, the minor's participation has been carried through the Councils for Care of Children and Adolescents (COPIA). These are collegiate bodies of coordination and exchange between public, state, regional and local administrations and the social entities involved in the well-being of children and adolescents. These Councils for the development of concrete actions have a structure that integrates the Area Councils and the Local Councils.

The Area Councils, whose scope of action is the entire Community of Madrid, inform the Local Councils about the projects, the rules of the organization, and the Local Councils' operation. They draw up the inventory of resources and make proposals to achieve the highest degree of homogeneity in the procedures of action of the Local Councils. Its scope of action includes the Social Services Area of each district.

The Local Councils for Child and Adolescent Care, whose territorial field is the municipalities, work in a coordinated manner to raise awareness and train professionals working with minors; promote rights; prevention; detection of social difficulties, and intervention on risk factors in this sector of the population. They encourage the participation of children and adolescents through the unification of criteria and promote community participation in the general aspects of care for children and adolescents.

2.1.2. The local level. The city of Madrid

In the same local dimension, which is the closest to the entire population, the Madrid City Council has carried out three Plans for The Care of Children and Adolescents: 2005 to 2008 and 2010 to 2013, 2016-2019, collecting in all fundamental aspects participation. The last, the IV Local Plan of Childhood and Adolescence of Madrid 2020-2023, is a living and open instrument in endless revision and improvement, which specifies its local policy for minors residing in the city of Madrid in various strategic lines.

Among many other policies and actions, the participation area is proposed to consolidate the Service for the Revitalization of Participation for Children and Adolescents. It also indicates that an interdistrict coordination procedure will harmonize the different actions related to participation, the Madrid City Council acting as the backbone of other networks or levels of extra-municipal participation.

It also proposes the maintenance of the Commission for the Participation of Children and Adolescents of Madrid (COPIAM). These commissions are permanent participation bodies in each of the 21 districts of the city of Madrid. They are participation points for children from 6 to 12 years old and adolescents from 13 to 17. In these groups, activities carried out help them analyze the reality of their social and spatial environment. They allow them to discuss aspects of their interest and develop proposals to improve the neighborhoods where they live in Madrid city.

For this reason, the Municipal Plan foresees that a group's representation attends the Plenary of The Childhood and another of the annual adolescence chaired by the mayor. It should be that these participation groups take into account community services and those of the education system. It is networking to take advantage of all the existing resources in favor of this population.

2.1.3. The third sector (NGO)

In this context of networking and resources for children and adolescents, the Third Sector must be included. Social organizations have grouped in the Children's Platform, which "promotes child participation to raise the voice of children and ensure that their demands reach those responsible for the design and implementation of policies that affect them." This platform has its strategy to encourage the participation of minors called "La Infancia Opina." (Plataforma de la infancia, 2021)

The third sector, represented by non-profit social organizations, has a solid presence in Spain in everything related to actions related to social welfare. It is a sector that manages services for children and adolescents in all areas, including concrete participation actions such as Madrid. This management is by contracts or agreements with the different State administrations.

To conclude, it can say, that policies for minors' participation reflect a transverse way in the strategic objectives of children's policies, in these strategic goals in the field of social protection, and health and education. More concretely, participation is including in the strategic plans implemented until today.

Helpful links

Observatory of children

<https://observatoriodelainfancia.mdsocialesa2030.gob.es/>

Children´s platform

<https://www.plataformadeinfancia.org/lainfanciaopina/>

II National strategic plan for childhood and adolescence 2013-2016 (II PENIA)

https://observatoriodelainfancia.mdsocialesa2030.gob.es/documentos/pdf/II_PLAN ESTRATEGICO INFANCIA English.pdf

National Strategic Plan for Childhood and Adolescence 2006-2009. Passed by Cabinet Resolution on 16 June 2006

<https://observatoriodelainfancia.mdsocialesa2030.gob.es/documentos/PlanEstra2006Ingl.pdf>

III Plan of Action against Sexual Exploitation of Children and Adolescents (2010-2013)

<https://observatoriodelainfancia.mdsocialesa2030.gob.es/productos/pdf/IIIPlanContraExplotacion.pdf>

Order DSA/1009/2021, of September 22, creating the State Council for Child and Adolescent Participation

https://www.mdsocialesa2030.gob.es/derechos-sociales/infancia-y-adolescencia/PDF/consejo_participacion/BOE_Consejo_Participacion.pdf

Poverty and Social Exclusion of Children in Spain

<https://observatoriodelainfancia.mdsocialesa2030.gob.es/productos/pdf/pobrezaExclInfEspana.pdf>

Child Poverty Commissioner

<https://www.comisionadopobrezainfantil.gob.es/es>

References

Ayuntamiento de Madrid. (2020). *IV Plan Local de Infancia y Adolescencia de Madrid 2020-2023*. Madrid: Dirección General de Familias, Infancia, Educación y Juventud.

Comunidad de Madrid. (2017). *Plan de Infancia y Adolescencia 2017/2021*. Madrid: Dirección General de la Familia y el Menor. Comunidad de Madrid.

Fernández-Arrojo, M. (2020). Las políticas de la infancia en España a la luz de la convención de los derechos del niño. Especial referencia a Cataluña. *Quaderns de Polítiques Familiars*, 1-13.

Gaitán, L. (2011). Contexto y marco conceptual: el Estado de Bienestar, las políticas públicas y los derechos de los niños. En *Las políticas públicas y la infancia en España: evolución, impactos y percepciones* (págs. 8-26). Madrid: Unicef España.

Observatorio de la infancia. (14 de junio de 2021). *Ministerio de derechos sociales y agenda 2030*. Obtenido de <https://observatoriodelainfancia.vpsocial.gob.es/queEs/composicion/home.htm>

Plataforma de la infancia. (27 de junio de 2021). *Plataforma de Infancia España*. Obtenido de <https://plataformadeinfancia.org/que-hacemos/participacion-infantil/>

Presidencia de Gobierno. (14 de junio de 2021). *Organización del Estado*. Obtenido de <https://www.lamoncloa.gob.es/espana/organizacionestado/Paginas/index.aspx#organizacionterritorial>

Presidencias del Gobierno. (15 de junio de 2021). *Política Social*. Obtenido de <https://www.lamoncloa.gob.es/espana/eh18-19/sanidad/Paginas/psocial.aspx>

UNICEF. (14 de junio de 2021). *Infancia y Objetivos de Desarrollo Sostenible (ODS)*. Obtenido de <https://www.unicef.es/infancia-ods>

