
Esther Fernández-Molina, María Bermejo and Olalla Baz

Abstract
In 2010, the Council of Europe adopted Guidelines on child-friendly Justice. This means, inter alia, developing an accessible justice system and focusing on respecting children’s rights to participate in and to understand proceedings. This research was conducted to establish the implementation of child-friendly justice through 129 observations in the courtrooms of two Spanish juvenile courts. The findings show that attempts have been made to comply with European standards, especially by judges who have implemented the required adaptations and encouraged the participation of children. However, the infrastructure does not appear to be the most appropriate, and questionable practices have been identified.

Keywords
child-friendly justice, children rights, courtroom, participation, youth justice

Introduction
The Council of Europe (COE) has created new standards aimed at improving the justice system and adapting it to the specific needs of children. These standards are contained in the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010). These Guidelines are a soft law instrument built on binding international law, including the Convention on the Rights of the Child (hereinafter CRC) and the case law of the European Court of Human rights (Liefaard and Kilkelley, 2018) which has helped to provide a basis for rethinking juvenile justice (Goldson and Muncie, 2012).

By child-friendly justice, the COE refers to justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand...
the proceedings, respecting the right to private and family life and the right to integrity and
dignity. These guidelines promote and protect, among other things, children’s rights to
information, representation and participation in judicial proceedings. They also give a
place and a voice to the child at all stages of the justice system procedures. The guidelines
build on five fundamental principles: participation, the best interest of the child, dignity,
absence of discrimination and rule of law, as well as detailed principles applicable before,
during and after proceedings.

The aim of this article is to assess the implementation in the Spanish juvenile justice sys-
tem1 of the new standards proposed by the COE in their Guidelines on child-friendly justice.
Despite the weak legal status of the Guidelines, as Liefard and Kilkelly (2018: 66) point out
we should take them seriously, they build on specific provisions in the CRC (refreshing
recently by the United Nations (UN) Committee of the Rights of the Child in General
Comment No. 24 on children’s rights in the child justice system),2 the case of law of the
European Court and the new European union legislation, Directive 800/2016/UE, on proce-
dural safeguards for children who are suspects or accused persons in criminal proceedings.

In particular, we assess the adherence to this new approach during judicial criminal
proceedings, especially, during the trial in the courtroom. First, we show how these guide-
lines are implemented in trials.

**Participation**

The European Court has recognised the right to effective participation as part of the child’s
right to a fair trial (Kilkelly, 2015). Children have the right to be heard and express views
in decisions that affect them, and adults must take children’s views seriously. However, it
should be explained to children that their right to be heard and to have their views taken
into consideration may not necessarily determine the final decision. According to the
guidelines, they should be clearly informed that if a judge does hear them, this does not
mean they will ‘win’ the case. In order to gain or obtain the trust and respect for the given
judgement, effort should be made by the child’s lawyer to explain why the child’s opinion
has not been followed or why the given decision has been made, as is done for adults
(paragraph 111). Moreover, children should be consulted on the manner in which they
wish to be heard. In this sense, it is important to remember that the right to speak up is a
right and not a duty, with there being no obligation for a child to participate (Vandekerckhove

**Access to court**

As Vandekerckhove and O’Brien (2013: 536) point out, the guidelines on access to court
are probably the most innovative and debated of all the Child Friendly Justice Guidelines.
If children are subjects with rights, the justice system should allow them to make use
of their rights whenever necessary. Thus, access to court for children involves their under-
standing of these rights and the adapted proceedings and settings.

**Information.** From their first involvement with the justice system and throughout that pro-
cess, children and their parents should be promptly and adequately informed of their rights
and the means they can use to exercise them. The Guidelines provide a detailed list with key information that children and their parents should receive. The European Court established that the child’s right to a fair trial does not require a complete understanding of every point of law, but an effective participation involves the need to understand why they are being prosecuted (the charges against them); what may happen to them, now and in the future; what their role is in the process; what options they have; and what the consequences of these options are. Furthermore, the Guidelines underline that the information should be adapted to their age and maturity, and provided in an understandable language, which is gender- and culture-sensitive. To this end, child-friendly material containing relevant information must be provided but, as the UN Committee of the Rights of the Child points out, ‘providing the child with an official document is insufficient and an oral explanation is necessary’ (General Comment No. 24).

Adapted proceedings, professionals and settings. The Guidelines (paragraph 54) establish that in all proceedings, children should be treated with respect for their age, their special needs, their maturity and level of understanding, bearing in mind any communication difficulties they may have. In addition, children should be dealt with in non-intimidating and child-sensitive settings. As Liefaard (2016) states, juvenile justice proceedings ‘should be conducted in an atmosphere of understanding to allow the child to participate and to express herself/himself freely’ (p. 910). To achieve this, the system needs trained professionals and adapted settings.

Thus, professionals having direct contact with children should also be trained in communicating with them at all ages and stages of their development, and in situations of vulnerability. As Kilkelly (2008: 54) points out, the judicial training raises awareness of the duty to facilitate the involvement of young people in the process and to develop the necessary skills to engage with young people. Also, the lawyer’s participation is particularly important here. It is essential to guarantee the access to court and fair trial, and thus, the guidelines recognise that children have the right to their own legal counsel and representation in their own name. Children should have access to free legal aid under the same or more lenient conditions as adults. In the same way, the lawyer does not have to bring forward what he or she considers to be in the best interests of the child (as does a guardian or a public defender) but should determine and defend the child’s views and opinions, as in the case of an adult client (paragraph 104).

Moreover, the architectural design of the settings is an important concern because it can make children feel unsafe and uncomfortable. The UN Committee of the Rights of the Child in its General Comment Nos 12 and 24 underscores that a child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age. In this sense, the courts should provide, where possible, special interview rooms and avoid direct confrontations between victims and perpetrators. Likewise, a child-friendly environment implies the absence of wigs, gowns or other official symbols (such as a gavel). As the Guidelines conclude ‘the setting may be relatively formal, but the behaviour of officials should be less formal and, in any case, should be child friendly’.

Finally, it should be noted that time is a crucial element. Children perceive time differently from adults. A year of proceedings represents a much more significant proportion of
a child’s life than that of an adult (Vandekerckhove and O’Brien, 2013). As the UN Committee of the Rights of the Child remembers, ‘the longer this period, the more likely it is that the response loses its desired outcome’ (General Comment No. 24). Thus, time in the proceedings is a highly important issue when dealing with children. Cases in which children are involved should be handled expeditiously, and the urgency principle should be applied to provide a speedy response protecting the best interests of the child. Similarly, children may need more regular breaks throughout the trial because of their different perception of time and shorter attention span.

**Best interest**

According to international legislation, the child’s best interests should be a primary consideration in all cases involving children. This means the situation needs to be assessed accurately and must guarantee certain aspects such as dignity, privacy and protection from discrimination.

**Dignity and privacy.** Children should be treated with care, sensitivity, fairness and respect throughout any procedure or case not only because of judicial and ethical considerations but also because they should have the feeling of justice being done and of being treated with dignity and respect (Kilkelly, 2010). As shown by procedural justice theory, these feelings are important to promote positive attitudes towards the justice system and compliance with the law (Tyler and Trinkner, 2017).

Moreover, children’s vulnerability demands more protection of their privacy in court. This includes the *in camera* rule when the interests of the children or their privacy require it, which should be reconciled with the existing principle of free access to judicial proceedings. It is also important that children be able to speak freely, and that the atmosphere is not disturbed by unwarranted interruption, unruly behaviour or transit of people in and out of the room.

**No discrimination.** The Guidelines remind us that the prohibition of discrimination is a well-established principle in international human rights law. Some categories of particularly vulnerable children may need special protection in this respect (Goldson and Muncie, 2012). The text lists some of these categories (i.e. race, colour or ethnic background, language, religion, political or other opinion, socio-economic background, association with a national minority, property, birth, gender identity). However, the list does not purport to be exhaustive, as other grounds for discrimination cannot be excluded. In this context, the main factor of discrimination is age and capacity and, accordingly, the justice system must ensure the child’s right to a fair trial, developing whatever mechanisms might be needed to this end.

**Methods**

**Study design**

This is a descriptive, exploratory study using non-participant observation as the data collection method. The authors observed the waiting room and courtroom of two Spanish
juvenile courts (hereon in referred to as Court A and Court B), one of which is located in a large city and the other in a medium-sized city.

**Observation method**

In this research, we have opted for structured, or systematic, non-participant observation. However, we first conducted a one-session pilot study using open observation. We then implemented a provisional record sheet during three sessions. Once the information collected in these four sessions was analysed, we designed the final observation coding sheet.

Two separate questionnaires were used for the two spaces observed in the study. The first was for the observations conducted in the waiting rooms, which collected information on: (1) environmental aspects (infrastructure design, places to sit, stress situations) and (2) personal interactions between the juvenile and their lawyer, between the lawyer and the parents, or the interactions with court officers.

The second questionnaire, used for observations made in the courtroom, gathered information on: (1) environmental aspects, (2) non-verbal language (sarcasm, eye rolling, yawning, laughter or inappropriate looks), (3) professional performance (case preparation, mistakes with the child’s name, delays or perceived haste), (4) cordial and courteous treatment, (5) participation of the juvenile and (6) adaptation of technical language and speed of discourse. As well as completing the questionnaires in each daily session, field notes were taken to collect further information to contextualise the observations. These notes are referenced in the text using the code FN.

**Analysis plan**

The information from the quantitatively analysed variables was triangulated with that from the field notes. Thus, the quantitative analysis has served to objectify, identify and describe the reality of the courtroom in the two juvenile courts. Furthermore, the non-standardised information has allowed us to delve a little deeper into certain issues, corroborating and complementing some of the findings.

**Procedure and ethical questions**

As the research was conducted in criminal courts, authorisation was sought from, and granted by, the General Council of the Judiciary. Express authorisation was also given by the presiding juvenile judges. Furthermore, the research was approved by the Clinical Research Ethics Committee of the University of Castilla-La Mancha. The research was carried out at Court A from 13 November 2015 to 13 January 2016, and at Court B from 18 November to December 2015 and from 12 April to 3 May 2016.\(^4\) The courts generally hold hearings/trials once a week, although on exceptional occasions, a second day is used. The research covered a total of 21 days of hearings (4 or 5 hours per day).

Two of the authors conducted the study. One of them was responsible for requesting the informed consent of the juveniles and their parents for observation of what happened inside and outside the courtroom. It was explained that all the information collected would
be confidential and anonymous and they were given an email address in case they subsequently wished to contact the research team. This researcher remained close to the young person in order to observe everything happening around her. In addition, she completed the data collection form, which focused exclusively on information regarding what was happening around the accused child. The other researcher was present in the courtroom to complete the questionnaire and the field notes on what occurred during the hearing.

**Participants**

A total of 129 juveniles (unit of analysis) participated in this study (see Table 1). Observations were conducted until saturation level was reached, that is, until each new observation provided no further novel evidence (Guest et al., 2006). In accordance with previous research (Blanch et al., 2017), the sample comprised mainly male juveniles (84%). Participants were aged between 14 and 20 years, with a mean age of 15.8 years, considering that the age of criminal responsibility in Spain is 18. A total of 52.4 per cent had previous experience of judicial proceedings while members of ethnic minorities (foreigners and gipsies) accounted for 44 per cent. Most of the children were accused of property crime, such as burglary (41.7%) or theft (12.6%), while the most common violent crimes were family violence (10.7%) and assault (5.8%).

**Results**

**Observations in the waiting room**

**Settings.** The waiting rooms in the juvenile courts were not large. Indeed, they might be better described as corridors rather than waiting rooms. Furthermore, at Court B, the space was shared with five other juvenile courts. These rooms were overcrowded because of delays and people seemed to be nervous, moving around from one place to another without sitting down. On one occasion, there were 52 individuals in the waiting room (FN 125.5). Moreover, tension was sometimes noticeable among the public. On one occasion, a fight broke out between witnesses (FN 42.7).

There was no dedicated space for private meetings, and thus lawyers met with the children in the presence of other people. On some occasions, lawyers, seeking more privacy, used the hall leading to the waiting room for interviews. Only on very few occasions did lawyers request the use of the prosecutor’s office to speak to their clients. Ultimately,
Waiting rooms were not only poor but also unfriendly because these settings were intimidating and made juveniles feel uncomfortable (see Guidelines, paragraph 54).

**Waiting for the trial.** The juveniles normally spent a considerable amount of time in the waiting room as proceedings only started punctually on 30.5 per cent of the occasions. In this space, the children interacted with court officers and especially their lawyer, who used this time to speak about the case and prepare their defence. During these meetings, the lawyers treated their clients cordially and courteously and no disparity of criteria between the parties was observed. On some occasions (20% of the juveniles observed), the lawyers were observed to speak only to the parents.

At these meetings, some lawyers were seen to show concern about the children’s future and gave them advice (FNs 12.5, 27.5, 54.4, 66.5 and 79.5) or attempted to calm the family (FN 88.5). In other cases, they attempted to make conversation with the juvenile (in FN 13.5, they chatted about trips and typical dishes from the child’s home country, or about football in FN 123.5). However, other lawyers failed to observe Guidelines and, contrary to paragraph 39, they were not capable of communicating with their clients. They conversed minimally with them, and instead, spoke on their phones or walked around (FNs 19.4, 86.4, 87.4, 105.4 and 105.5). On certain occasions, the family requested the lawyer speak to the juvenile (FNs 64.4 and 65.4). On two occasions (out of 121), it was the juvenile who had to seek the attention of their lawyer (FNs 105.5 and 119.4).

It was also observed that once the proceedings had finished, on some occasions (28.7%), the lawyers did not say goodbye to their clients (i.e. FNs 62.5 and 63.4) or did so negatively (brusquely, coldly, with excessive haste, or they only said goodbye to the parents). In the waiting rooms, the juveniles also interacted with the court officers, who were cordial most of the time. They provided explanations about the need for phones to be switched off or about their location or that of their parents in the courtroom. These officers were willing to resolve any questions on all occasions, although in general, this was not necessary. It is worth noting that on one occasion, the officer was rushed and stressed (NC 16.3), while on another occasion, the officer was seen to roll their eyes in response to a juvenile’s comment (NC 60.3).

Not only was this space shared and used for interactions with family members, lawyers and court officers but, on occasion, also with victims and witnesses. This was especially true of Court A, which had no space reserved for protecting the rights of victims and witnesses or to avoid visual contact with their aggressors. Curiously, although Court B was architecturally designed in such a way that defendants and victims need not coincide in the same space, this separation only occurred occasionally, with both parties usually sharing space in the waiting room. Again, the settings did not seem friendly because they made juveniles feel very uncomfortable and unsafe.

**Observing the courtroom**

**The settings.** The courtrooms had several tables put together to form a ‘U’ shape. In the centre were seated the judge and the court secretary, with the prosecutor and the juvenile’s lawyer on either side (or opposite each other). Other professionals were also present, such
as the members of the technical team, who advised the judge and the defendant on the juvenile’s psychosocial circumstances, and a member of the court office, responsible for calling the accused and the witnesses to the courtroom and for supervising the audio-visual recording of the proceedings. The accused was seated opposite the judge and behind the accused sat the family members. Furthermore, as the trials were public, there was also space for other persons (from where the researcher conducted the observations).

The Guidelines state that architectural surroundings can make children very uncomfortable. Even for adults, courthouses can be rather oppressive or intimidating. These settings can be improved by working in a more child-sensitive way (paragraph 122). However, the juvenile courtroom at Court A was very similar to an adult one, with the presence of certain elements such as a raised platform, the emblem of the Ministry of Justice and a lack of windows. In contrast, the room at Court B had no symbols of justice or a witness stand, and it had windows with the blinds up. Regarding the symbolism of the criminal justice system, it should be noted that at Court A, all the legal actors were required to wear gowns during hearings (contrary to paragraph 123). At Court B, however, there was a notice at the entrance to say that gowns were not required (NC 11.9), although some of lawyers opted to wear them (4.8%). One of the observations made in Court B reports the following comment in this respect: ‘gowns aren’t worn here; the juvenile is like one of the family’ (FN 15). Handcuffs were also seen to be used on certain occasions. This could be observed in precautionary measures with young people detained in cells who came to the courtroom through the waiting room accompanied by police officers. In Court A, the juveniles usually arrived in the courtroom in handcuffs, while in Court B, they were usually accompanied by legal professionals, and were only handcuffed in exceptional cases (high-risk cases or those who were thought likely to attempt to take their own life, see FN 23.9).

As regards the environmental conditions, on all occasions, the room was calm and there were few people. On three occasions (out of 129), the hearings were conducted by videoconference. In these cases, added difficulties were observed. The image and sound quality were not good and the delay in the audio was a source of confusion. On very few occasions, the difficulties were so serious that the trial was conducted with the juvenile communicating by telephone, with very poor sound quality (FNs 53.5 and 57.9).

Professional performance. The Guidelines promoting other child friendly actions encourage member states to ensure that the professionals receive appropriate support and training in order to implement adequately the rights of children (section V, l). The professional performance may also contribute to promote a child friendly justice. In this sense we observed that more than two-thirds of hearings were late starting, with this delay reaching between 45 and 50 minutes on occasion (FNs 78.4 and 81.4). When proceedings stated late, inevitably, the trial seemed to be rushed. For example, some hearings lasted only 3 minutes in which reading the charges was almost forgotten (FN 115.7), and in some cases, the charges were not even read (NC 103.9). Nonetheless, this is the exception rather than the rule.

Generally speaking, the cases were well prepared (they knew the facts and the juvenile’s background), although occasionally substantial problems arose. For example, in
under a third of the cases, there was a perception of confusion, which was such that on 15 per cent of occasions, mistakes were made with the juvenile’s name or with files. It is also worth noting that in general, the legal actors showed no signs of tiredness, and when this occurred, in the form of yawning or stretching, it was observed at the end of the day or during trials lasting several hours (one lasted 6 hours).

**Child friendly environment.** The Guidelines recommend that informal and cordial treatment be fostered in interactions with the different actors of the justice system (paragraphs 112 and 124). However, indications of formality remain. Nearly half the time, the juvenile was addressed using the formal Spanish ‘usted’ pronoun, which is not normally used in Spain to address young people. However, despite this formality, the juvenile was greeted cordially at the start of the hearing most of the time. It was also noted that the professionals recalled repeat offenders. For example, in one trial, it was observed that the judge congratulated a juvenile on their proper compliance with a previous sentence (FN 12.9). On another occasion, the juvenile was complimented on their new hairstyle (NC 48.9). Indeed, this approachable attitude was manifest, as, for example, when the prosecutor joked and empathised with the child, using their own child as an example (NC 75.9). However, this was not always true; on occasions, this easy atmosphere was lacking, with the juvenile not being greeted.

Furthermore, inappropriate use of language also impeded an informal atmosphere in the courtroom (contrary to paragraphs 2, 49 and 56). Technical words (jargon) were used in nearly half the cases, even when limitations to understanding were evident. For example, on one occasion, it was observed that the language was not tailored to the needs of two cognitively impaired juveniles, with terminology such as ‘provide consent’ being used, which the children in question clearly did not understand but which was vital to the adoption of the judicial measure (FNs 32.8 and 33.8). On another occasion, it was observed that the juveniles were not clear about the amount of damages they were required to pay, due to the vocabulary used (FNs 44.9 and 51.8). It is important to note that these difficulties were not only experienced by the juveniles; in one of the trials, a witness told the judge they could not understand what was being said due to the language used (FN 96.8). It is also worth noting that the difficulty was not only a question of language but also of speed of discourse, which was frequently too fast to be easily understood. In particular, it was difficult to retain core information when the secretary was reading the charges of which the juvenile was accused.

Nonetheless, and although less frequently, the legal professionals also demonstrated their awareness of the difficulties and attempted to mitigate any language problems. The judges sometimes asked the child on trial whether the language used was comprehensible (‘do you understand what we are talking about?’). Indeed, in two-thirds of the cases, they were given further explanation on matters such as pleading guilty, damages or insolvency (FNs 2.9, 10.9, 26.7, 27.5, 66.7 and 102.7). In another case (FN 40.9), it was explained to the defendant why only he had been summoned despite the offence having been committed by three people, indicating that only he had been recognised. It was also observed that for sentences handed down in voce on the day of the hearing (in case of a plea of guilty),
Dignity. The children should be treated with dignity, and respect is one of the principles of this new paradigm provided for in the Guidelines on child-friendly justice (section C and paragraphs 39 and 40). This research revealed the existence of great sensitivity to the situations of the children. However, unfortunately, other disrespectful behaviours were also observed. As an example of the former, a transsexual defendant on trial was asked what name they wanted to appear in the disposition (FN 35.9). The need to take account of the diversity of the juveniles in the case of non-Spanish defendants was observed, especially in the case of those who did not understand Spanish. On occasions, when the judge realised the defendant did not understand the language, an interpreter was called for (FNs 120.5 and 121.5), and the child was usually asked directly if they understood Spanish properly (FNs 107.9 and 119.9). In these cases, a further professional, the interpreter, was involved. On some occasions, the interpreters acted in a highly competent manner, sometimes translating the entire trial (FN 121.5), while others seemed to be unsure of how to act. On one occasion, the interpreter was observed to ask the lawyer if it was necessary to translate what the defendant said or what the lawyer had said in the waiting room (FN 95.4).

Nonetheless, in a few cases, disrespectful behaviours by professionals were observed, such as improper looks (4.7%) or inappropriate laughter (7%). On one occasion, a prosecutor was seen to look a juvenile up and down with an expression of disdain (FN 15.8). A comment was also overheard when a police officer referred to a defendant’s father as an ‘unpleasant character’ (FN 60.5). Furthermore, professionals were occasionally observed to snort (FN 43.7) or consult their mobile phones during the hearings (NC 15.8, 51.8 and 56.8). Finally, it is worth noting that respect for diversity was not always observed, especially as regards foreign juveniles. On one occasion, when a foreign juvenile left the courtroom, a prosecutor was heard to say, ‘Let him go back to his own country and knock people around there’ (FN 50.9).

Participation of juvenile defendants. As has already been mentioned, child-friendly justice can only be achieved with the participation of juvenile defendants in the proceedings (section A, 32 and 61). Thus, it is essential to listen to the juvenile’s side of the case and take their opinion into account. During the observation sessions, the judges almost always required the participation of the juvenile defendant. Almost two thirds of the time, the juveniles exercised their right to give their opinion of the events and/or proceedings, while in the other cases they refused to speak. It was also observed that the judges mostly encouraged interaction with the children, asking them, for example, if they had understood the charges and the prosecutor’s petition and the written report of allegations. However, despite the judges’ interest in making themselves understood, the children were usually seen to say yes mechanically and almost without thinking. It was observed that one of the judges not only insisted that the children speak and give their opinion but also deliberated with them about who was on their side and what was good for them or not (FN 108.9), or asked them their opinion about which centre they wished to serve their sentence at, as, in the words of the judge, ‘your welfare concerns me’ (FN 104.10).
We observed a special concern to safeguard the juveniles’ right to due process and ensure a fair trial. In Court B, on one occasion, when the juvenile did not voluntarily appear at the proceedings, the judge required the police to bring the defendant to court. The judge explained that she would hold no trial without the presence of the accused, since decisions are taken which impact greatly on their rights and liberties and thus she considered their presence essential (FN 23.9). Moreover, on 25.4 per cent of the occasions, this right to participate was extended to the defendant’s parents, who also expressed their opinion about the events and/or the proceedings. For example, in one case a mother was required to describe the juvenile defendant’s behaviour at home (FN 108.6).

**Juveniles and their parents in the courtroom.** We also thought it pertinent to observe how the juveniles and their families behaved in the courtroom, to better understand their attitude towards the experience of the proceedings. We observed that they almost always knew how they were expected to behave. Nonetheless, we also observed occasions in which children experienced compromising situations because they were unaware of what to do. For example, in one case, a juvenile did not realise they had to stand up (although this is compulsory in the Spanish proceedings; FN 15.9), and in another, the court officer had to tell the juveniles to keep quiet during the trial (FN 89.9). Certain lack of awareness was often shown by the children in the courtroom, and although, as mentioned above, the court officer usually told the juveniles where they had to sit in the courtroom, only 48.4 per cent of the children appeared to show knowledge of this fact.

On occasions (17.9%), the children seemed to be nervous. In one case, the juvenile’s tone of voice clearly suggested he was very upset (FN 68.7). This nervousness sometimes led to juveniles making spontaneous remarks in their trial (interrupting the judge), for various reasons such as not agreeing with the measure imposed or not wanting their parents to give their version of the facts or proceedings (FN 27.9). During one of the trials observed, the judge told the defendant (a girl) she was very agitated and asked whether they should suspend the hearing until she calmed down (FN 97.9). Furthermore, on two occasions, on leaving the court, the juveniles told the researcher they had been frightened and had expected the judges to wear wigs and gowns like in American films, but in the end, it had not been like that at all (FNs 109.10 and 111.10). However, despite the difficulties of some of the accused, the children were generally seen to engage with the process. For example, they made eye contact with the legal professionals and only a few were seen to pay no attention to their own trial. It is worth noting that, in general, during the observations the experience of the proceedings helped the children to accept their responsibility for the events. On one occasion, a child accused of family violence remarked, on hearing the charges in court, that he was shocked by how he had behaved (FN 103.10).

Moreover, as UN Committee of the Rights of the Child states, the maximum possible involvement of parents or legal guardians in the proceedings is recommendable (paragraph 57, General Comment No. 24). However, parents’ behaviour was sometimes observed to be inappropriate. On one occasion, a father argued with a judge (FN 25.6), and on other occasions, parents complained or snorted, especially when the victim or witnesses were declaring (FNs 46.6, 83.6, 84.6, 88.6, 89.6 and 104.6). Like their children, the parents also interrupted the judge to express their opinion about aspects such as the amount
of damages (FN 89.6), to reprimand their child if their behaviour was inadequate (FN 99.6) or to say their child had not committed the offence (FN 43.6). We also observed that some parents were distracted and had to be called to attention, or they sometimes looked around the courtroom as if the process had nothing to do with them, as well as one occasion when a mother did not know if her child had entered the courtroom or not (FN 117.5).

Some parents wanted to intervene on behalf of their children to explain everything in more detail, and others were worried about whether the measure would prevent them from going to work or make them miss a medical appointment (NC 30.6, 40.5, 43.4, 62.5 and 108.6). In contrast, on some occasions, the legal guardians kept out of the trial, especially foreign mothers (Moroccans, specifically) who did not speak the language (FNs 107.5 and 116.4). On one occasion, the lawyer did not let a Moroccan mother enter court, preferring the presence of the defendant’s older brother who spoke Spanish (FN 107.5).

Discussion

This article assesses the adaptation of practices in Spanish juvenile courts to the standards proposed by the COE and has shown that juvenile courts in Spain are making efforts to adjust to international guidelines and have attempted to adapt to the conditions of the juvenile defendants, which is especially true of judges. They have seamlessly integrated international law on children’s rights (Fernández-Molina et al., 2017), even if it means modifying conventional practices from the legal culture strongly influenced by legal principles (legal certainty, proportionality, criminal liability . . .). However, there are still certain issues that need to be improved. We have determined shortcomings in the implementation of some guidelines, and the most important thing we have observed is that juvenile defendants continue to be uncomfortable in the courtroom; on many occasions, they are tense and seem not to feel free to express their opinions.

Below, we discuss the results obtained, dividing them into two sections referring to two of the key aspects enshrined in the concept of child-friendly justice: juvenile justice that protects children and promotes their participation in the process.

**Juvenile justice as a justice system that protects children**

As the Guidelines propose, child-friendly justice is one that protects children and makes them feel safe. To this end, States should invest in suitable material and human resources.

**Settings and environment.** Against the Guidelines recommendations, the observed waiting rooms do not satisfy the conditions required for juveniles to feel comfortable. As previous research has shown in other countries (European Union Agency for Fundamental Rights (FRA), 2017; Kilkelly, 2008) the spaces are often overcrowded, and the atmosphere is palpably tense as a result of the unsatisfactory conditions of the infrastructure. The defendants, for example, share a space with victim and witnesses, and lawyers cannot maintain confidential conversations with their juvenile clients because there is no appropriate space for doing so. Waiting to enter the courtroom is frequently a moment of tension for these children. It is a time when they have to speak to their defence counsel, whom in most
cases they have just met or do not know well and must then have a conversation which is vital to the outcome of their case in front of a crowd of people (Birckhead, 2010).

Although the courtrooms are somewhat calmer spaces, it was observed that, especially in one of the courts analysed, these spaces still feature many examples of the symbolism of the asymmetric relations between the person on trial and the authorities responsible for administering justice. Thus, although international standards clearly recommend the elimination of these elements that so prominently create a distance and which may intimidate the juvenile defendants, they remain present: the judge on an elevated platform and the juvenile on a lower level, seated on a bench with their parents behind them; the wearing of gowns which reifies the image of the different actors and which makes it impossible for the juvenile to distinguish between the professionals and their respective roles (Benech-le Roux, 2005; Birckhead, 2010). Thus, it seems there are still obstacles to be overcome before the spaces where the criminal proceedings take place are suitable for children.

We were able to observe that children’s privacy is compromised in the waiting rooms. The absence of private spaces makes it difficult to hold a private conversation, which is a crucial issue to prepare a good defence of the case. On the contrary, the judges try to balance in the courtroom the public nature of the principles of criminal proceedings with the principle of privacy proposed in the Guidelines on child-friendly justice. Thus, in general and against the UN Committee of the Rights of the Child recommends (General comment No. 24), the hearings were public but, sometimes, if the best interest of the children or their families justified the contrary, the hearings were in camera (i.e. domestic violence proceedings).

**Professionals.** During our observations, we were able to verify the performance of courtroom professionals in compliance with the Guidelines. They evidently prepare their cases and are serious in the practice of their profession. They make genuine efforts to adapt what is a professional practice essentially characterised by rigour and formality to a more informal one, tailored to the circumstances of juvenile offenders. Attempts are made to provide additional explanations when the young defendant appears not to understand the ideas being transmitted. The professionals are also observed to treat the children with dignity and cordiality, and, on occasions, great respect for diversity is demonstrated.

However, it is also true that although the professionals are clearly motivated and qualified for their work, inappropriate behaviours occur. For example, the tone used by the legal actors (judges, prosecutors and lawyers) is still excessively formal. On many occasions, they address the juvenile defendants using the formal Spanish ‘usted’ pronoun, legal jargon is not always avoided, and the discourse is sometimes difficult to understand for someone unfamiliar with the world of law, both due to overuse of legal terminology and the excessive pace of speech. As observed by Rap (2013), when the court secretary reads the charges of which the juvenile defendant is accused and on which they must give their opinion, this is a critical moment that the children often find incomprehensible. The secretary reads the charges exactly as they are written in the disposition. These texts contain technical language, using archaic and complex grammatical constructions, and are read at great speed, with lack of interest and little intonation. In short, it is an incomprehensible speech about
which the juvenile must present a plea that may condition the outcome of the judicial proceedings.

Foreign juveniles have greater problems in this regard. As suggested in previous research (Naik, 2017), when juvenile defendants lack a good understanding of the language, certain legal safeguards are jeopardised and minority rights are questioned (Goldson and Muncie, 2012). On occasions, these problems extend to foreign mothers who sit through what happens in the courtroom like uninvited guests but who then must, as legal guardians, sign their consent to the decisions taken.

Frequent delays have also been observed. These undermine the quality of the process (Kilkelly, 2008) and could be considered a lack of respect which affects the satisfaction of the children and their families with the justice system since they generally make every effort to arrive correctly on time at court (Greene et al., 2010). On very few occasions, unprofessional and disrespectful behaviours were observed, which generated great tension between the children and their families.

Generally, the judges were perceived to make more effort to tailor their practices to the circumstances, while the other legal actors, prosecutors and lawyers seemed more concerned about technical and legal issues and frequently replicated the practices used in the adult justice system. This is largely because in Spain judges receive better specialised training than all other professionals (Fernández Molina and Rechea Alberola, 2007), and they are (except in rare occasions) only juvenile judges, that is, they do not have to work at the same time in the adult justice system (Fernández-Molina and Bartolomé, 2019).

Finally, it is worth noting that hearings by videoconference, which occur albeit infrequently, compromise, in our view, the right to a fair trial. The technical difficulties they entail generate great confusion among all the professionals. The juvenile defendants, overwhelmed by the situation, are seen to give their assent to everything said to them, whether they have heard or understood it, apparently wishing to put a swift end to a faltering conversation which is incomprehensible to everyone present.

Participation of the children in the proceedings

Our observations in the courtrooms suggest that the professionals, especially the judges, are concerned about listening to the children and require them to express their opinion. In addition, unlike the adult process, a sincere invitation for children to talk was observed, going beyond a mere formality to comply with the right to be heard as included in Spanish legislation. As previously mentioned, we observed a general professional concern to safeguard the rights of the defendants and to adapt the proceedings to children’s needs. Nonetheless, although most of the children were attentive and intent on behaving correctly, they were too tense and the opportunity to express their opinion was taken mechanically. The juvenile defendants appeared to give their assent to everything and only asked for clarification or freely expressed their opinion on a limited number of occasions. Hence, it would be useful to explore the opinion of the children after their experience of the judicial proceedings and determine exactly how they feel and how they regard the opportunities they are given to participate in the trial. As Committee of the Rights of the Child
General Comments Nos 12 and 24 mentioned, greater effort possibly needs to be made to ensure the courtroom space and atmosphere instil sufficient confidence for juveniles to engage more with the events around them. Something appears to fail in the way the proceedings are organised since the children, although they are attentive to what is happening, barely interact and are generally hesitant to express their opinion.

We were also able to observe the juvenile offenders’ interactions with their lawyers. Many children only met their lawyers a few minutes before the proceedings began. The conversation was confined to an explanation of how the lawyers proposed to focus the defence, so it can be deduced that the preparation of the case strategy largely ignored the opinion of the defendants, which is clearly harmful to their interests. For a good defence, there must exist a well-established relationship between the lawyer and their young client; it is essential for the juvenile defendants to collaborate with their lawyers (Pierce and Brodsky, 2002). It must be remembered that the lawyer is the voice of the juvenile during the trial, and for this role to be successful, there must be a personal relationship.

Lawyers can also play a role in improving juveniles’ adjudicative competence, providing legal instruction and enhancing their legal knowledge (Viljoen and Roesch, 2005). They should also be responsible for introducing them to the language and customs of the legal institutions and should explain to them their rights, times and stages of the proceedings. They may also advise them on how to dress and how to behave in the courtroom (Benech-Le Roux, 2005). Our research shows that this would have been highly beneficial in some of the cases we observed, since on many occasions the children were clearly confused about how they had to behave and what was expected of them in the courtroom.

Research has shown that young offenders view positively the level of involvement of their lawyers, especially when they spend time preparing the defence with them, and when, as well as addressing matters exclusively related to the case, the lawyers also show concern about aspects of their personal circumstances (Peterson-Badali et al., 2007). The conditions in which the defence was conducted that we observed in the current research make it impossible to establish this relationship of trust.

Finally, it is worth noting that participation is important not only to recognise the children’s right to a fair trial but because, as literature on the process-based model suggests, these children are immersed in a legal socialisation process in which they are developing their beliefs and attitudes towards laws and legal authorities. Thus, each positive interaction they have with a legal actor transcends the experience itself and helps in their positive socialisation (Fagan and Tyler, 2005). Thus, when the accused perceive, they are treated with dignity and respect, and when their interests are listened to and when they feel decisions are taken equitably by honest, impartial individuals, regardless of the outcome of the trial, they are far more likely to serve the sentence imposed and respect the law in the future (Tyler, 2006). This has been shown to be especially true in the case of juveniles (Dumortier and Bernuz, 2018). Although the justice system must protect them and treat them as children, professionals cannot forget that they are dealing with adolescents, who tend to have very low expectations of their opinion being taken into account (Rap, 2013). Hence, when an adolescent feels they are listened to and that their opinion counts, their view of the system and their engagement with it are substantially enhanced.
Hence, their experience of the juvenile justice system is a unique opportunity to promote moral and legal values of children in society as well as the legitimacy of the institutions that guide them towards normative and prosocial behaviour (Tyler and Trinkner, 2017). Specifically, it seems that perceptions of the procedural fairness of judges and lawyers are the strongest predictors of the legitimacy of the juvenile justice system (Sprott and Greene, 2010). In the case of the Spanish system, and based on the findings of this research, we recommend for lawyers to devote more attention to aspects related to the quality of their treatment of clients.

In conclusion, this article has shown the Spanish juvenile justice system’s efforts to promote a child-friendly justice. However, there are some aspects of the country’s legal culture that still remain and hamper this reform. Especially, excessive formality and legal jargon do not permit a positive environment in the courtroom. Further research is required to explore the real needs of juvenile offenders as regards achieving truly child-friendly justice and to know their expectations of a fair trial. Moreover, the superior performance of judges leads us to suggest that prosecutors’ and lawyers’ specialisation will have to improve, and also, they will have to work full time in the juvenile justice system.

Finally, this research has some limitations. The observations are only representative of two courts and may not be generalizable to other juvenile courts in Spain. In the analysis, some aspects have emerged a posteriori but, as they were not observed systematically, cannot be analysed. For example, we observed that the children had little instruction in their rights and their knowledge of the proceedings was limited. Future research (using different methods) is needed to delve deeper into juveniles’ perceptions and substantiate them.

Acknowledgements

We are grateful to Concepción Sáez Rodríguez, member of the General Council of the Judiciary for processing the authorizations. We are also grateful to the judges of the juvenile courts selected for allowing our presence for such a long time, thus facilitating our knowledge of what occurs in the courtrooms. We also thank the young people who consented to our observation of their judicial experiences and their parents for permitting this. Finally, we are grateful to the anonymous reviewers who provided helpful comments on an earlier version of the manuscript. We are indebted to Dr Rosemary Barberet for the final review.

Funding

The author(s) disclosed receipt of the following financial support for the research, authorship and/or publication of this article: This research was carried out with funding from the national government of Spain, National Plan I+D+I (DER2017-90552-REDT) and the regional government of Castilla-La Mancha, Spain (PPOII-2014-009-P).

ORCID iD

Olalla Baz https://orcid.org/0000-0003-3127-0700

Notes

1. To know more about the Spanish Juvenile Justice System, see Fernández-Molina et al. (2017).
2. Additional text within double quotes is ours.
3. It is a legal term that means in private and describes court cases where the public and press are not allowed to observe the procedure or process.
4. This court took a recess from 1 December 2015 to 12 April 2016, and it was thus necessary to apply for a further authorisation from the General Council of the Judiciary, since the research then involved the presence of the researchers in the waiting rooms of other law courts in the same city. This authorisation was granted on 31 March 2016.

5. In some cases, the procedure is very long and young adults must attend the trial for crimes committed when they were children.

6. This team includes psychologists, social educators and social workers. Their main task is to prepare a technical report about the juvenile’s family and other social and educational environments in order to make a recommendation for the prosecutor and the judge about the most suitable treatment for the juvenile offender. Where appropriate, their criminal record is also included in this report.

7. Despite hearings being public by law (Article 35 LO 5/2000), judges have the right to deny entry when it affects the interests of the juvenile defendant. This typically happens in cases of domestic violence.

References


Author biographies

Esther Fernández-Molina is an Associate Professor in Criminology at the University of Castilla-La Mancha. She heads the Criminology Research Centre and the Research Group in Criminology and Juvenile Delinquency at this university. Her research focuses on juvenile justice, public opinion, and crime.

María Bermejo was working as a Researcher in the Criminology Research Centre at the University of Castilla-La Mancha.

Olalla Baz is working as a Researcher in the Criminology Research Centre at the University of Castilla-La Mancha. She holds a PhD in Law from the University of Castilla-La Mancha in 2017. Her research focuses on juvenile offending, attitudes towards the justice system, and legal socialization.