

**STATEMENT OF THE SPANISH OMBUDSMEN ON THE PUBLIC
ADMINISTRATIONS' RESPONSABILITIES REGARDING
UNACCOMPANIED MINORS**

October 2006

Introduction

Over the last few months we have been witnessing again the arrival of unaccompanied foreign minors to the Canary Islands Region. Together with other young people from North Africa, who have also come to our country over recent years, they all pose a major challenge to our institutions and society in terms of their capacity to receive, protect, and educate these children and integrate them into society.

This situation brings up the serious question of the limit to which the Regional Government of the Canary Islands can provide immediate care for these youngsters, since the circumstances have exceeded the Regional Government's resources both for the care of both adults and minors. Recently, the Ministry of Labour and Social Affairs and the Regional Governments reached an agreement to send minors that have arrived in the Canary Islands to different parts of the country.

Independently of the challenges that the immigration phenomenon presents for the drawing up and development of social welfare politics, we, all the Spanish Ombudsmen agree on the need to reach agreements between the different State Public Administrations in such an important issue as far as minors' rights are concerned. In addition, and despite its importance, we would like to say this is only the first step for the Public Administration fulfilling its inescapable obligation to watch over the basic interests of minors, as stated by the Convention on the Rights of the Child, Article 3, and to safeguard their just as they would for those of any other minor living in Spain. (Legal Protection of Minors Act 1/1996). It must be remembered as well the Article 2.1 of the Convention on the Rights of the Child explicitly forbids discrimination against minors because of their national origin. Also, the Spanish legal system states clearly that above all, minors are minors, a principle that should prevail over non-national status.

The European Network of Ombudsmen for Children (ENOC) approved at their last Annual Meeting a statement urging all the Council of Europe member States to adopt the necessary measures to ensure the rights of unaccompanied minors. This shows the significance of this phenomenon at a European level, and, given its particular importance in the case of Spain, accounts for the statement presented by all the nation's Ombudsmen to explain to the Spanish society our responsibility in guaranteeing the rights of these minors. This statement underlines the Public Administrations' responsibilities with regard to minors and suggests some actions to be taken in order to make sure these rights are respected.

Principles of action

1. **The competent Public Administrations within the different Regions should take up the minor's guardianship without delay**, while the minor's situation and family background are under assessment. While examining the child's case his /her access to socio-educational resources and work training should be guaranteed.
2. The competent Public Administrations should **start processing the minor's legal papers and residence permit** once family reunion through repatriation has been proved to be too difficult, in accordance with the Organic Law 4/2000 of 11 January on rights and freedoms of non-nationals in Spain and their social reintegration, Article 35.4. It is not necessary to wait for the nine-month period established by law (Royal Decree 2393/2004, of 30 December), to elapse. This period, according to one legal interpretation, should be considered as a deadline.
3. **Minors should not be repatriated to their country of origin unless the reintegration into their social environment of origin (family, care institution or other)** is ensured to be in their best interests. The decision should take into account the views of the minor, who has the right to be heard- and only after careful assessment of the resources available in their country of origin.
4. **Medical age assessments should only take place in cases of serious doubt**, using the evaluation of independent experts, modern technological tools and including a combination of physical, social and psychological maturity tests. The range of reference should be the lowest one determined by the medical tests.
5. **Minors should be given legal assistance that is independent of the Administration's**, like free legal aid, with the main aim to ensure that administrative and legal procedures are being carried out that take into account their best interests.
6. **Regional Governments should coordinate their models of assistance of unaccompanied immigrant minors** in order to prevent children from escaping to the regions where guardianship and residence procedures are best ensured and better socio-educational services are offered.
7. In addition, **Regional Governments and regional offices of the State Government should also coordinate their actions** in their respective fields of competence to avoid inefficiency and to make sure the proposals are in the best interests of the minor.
8. In order to **facilitate coordination between institutions** it is necessary to have access to a unified register of unaccompanied immigrant

minors that **can be shared by all the public administrations with competence in this area.**

9. **In the care of unaccompanied foreign minors the necessary resources should be designed and planned** to make easier their **full development and allow their integration into the host society.**
10. **All the Public Administrations should take responsibilities for the care of unaccompanied minors.** It is important that Regional Governments and local administrations enter into agreements in order to provide the resources and design the strategies necessary to best ensure the unaccompanied minors' care and integration. It is particularly important to overcome attitudes of social rejection that sometimes go with the measures that provide care and protection for these minors.
11. **The care institutions for unaccompanied immigrant minors must meet adequate standards with regard to space, health and education.** Regional Governments should ensure the minors be cared for by the existing social service system, focusing on 24-hours centres that offer a stable, caring and formative environment.