8222 ***Organic Act 8/2015, dated 22nd July, on amendment of the system for protection of childhood and adolescence.***

FELIPE VI

KING OF SPAIN

To all those who the presents may see and understand:

Be it known: That the Cortes have approved and do I hereby give My Royal Assent to the following Organic Act:

PREAMBLE

I

Article 39 of the Constitution establishes the obligation for the public authorities to ensure social, economic and legal protection of the family, especially of minors, pursuant to the international agreements that safeguard their rights.

In fulfilment of this mandate, within the scope of its competences, the State legislator has regulated the public and private legal institutions on which protection of minors is based.

The result, the maximum example of which is Organic Act 1/1996, dated 15th January, on Legal Protection of Minors, that partially amends the Civil Code and Civil Procedure Act, hereinafter Organic Act on Legal Protection of Minors, is a regulatory framework that guarantees minors uniform protection throughout Spain, and that has acted as a reference for the legislation that the Autonomous Communities have enacted pursuant to their powers in matters of social care, social services and public protection of minors.

However, once twenty years have elapsed from approval of that Act, there have been major social changes that affect the status of minors and require improvement of the instruments for their legal protection in order to ensure effective fulfilment of said Article 39 of the Constitution.

Thus, it is set forth in the Recommendations contained in the Report on "Centres for Protection of Minors with Behaviour Disorders and in a situation of Social Disadvantage" in 2009 and in the "Study on hearing and the best interest of minors, judicial review on measures for protection and family procedures in 2014" by the Ombudsman. The State Prosecutor General issued a similar opinion in the Recommendations contained in the Annual Report for 2010 of the Children's Rights Committee, in the final remarks for Spain on 3rd November 2010, and the Senate Special Commission to study the issues of national adoption and other related matters, the report of which was published in the "Official Parliamentary Journal", Senate, on 17th November 2010. Moreover, there are various international conventions that have come into force in Spain during this period and that require regulatory adaptation.

Pursuant to the proposals and recommendations stated, the aim of this Act is to introduce the necessary legal-procedural and substantive changes in the fields considered subject to organic ruling, as these affect the fundamental rights and public liberties established in Articles 14, 15, 16, 17.1, 18.2 and 24 of the Constitution. The aim of this is to improve those protective instruments, for the purposes of continuing to guarantee minors uniform protection throughout Spain, to act as a framework for the Autonomous Communities to develop their respective legislation to protect minors, regardless of their administrative status in the case of aliens. To that end, by means of two Articles and three Final Provisions, it proceeds to amend the main acts that regulate the institutions to protect minors.

Article One establishes the amendments in the Organic Act on Legal Protection of Minors; Article Two determines the amendments that affect Act 1/2000, of 7th January, on Civil Procedure, hereinafter Civil Procedure Act; Final Provision One records the relevant

amendments to Organic Act 6/1985, of 1st July, on the Judiciary, hereinafter Organic Act on the Judiciary; Final Provision Two amends Organic Act 4/2000, of 11th January, on rights and liberties of aliens in Spain and their social integration; and Final Provision Three amends Organic Act 1/2004, of 28th December, on Measures for Comprehensive Protection against Gender Violence.

II

The changes included in the Organic Act on Legal Protection of Minors develop and reinforce minors' rights given their best interest priority, a fundamental principle in these matters, although an indeterminate legal concept that has been subject to diverse interpretations, over these years. Due to this, in order to provide content to the concept mentioned, Article 2 is amended, including both the Case Law handed down by the Supreme Court in recent years, as well as the criteria of General Comment no. 14, of 29th May 2013, of the United Nations Committee on the Rights of Children, on the right of the child to have his or her best interests taken as a primary consideration. This concept is defined based on a triple content. On one hand, it is a substantive right in the sense that minors are entitled to have their best interests evaluated when a measure that concerns them is adopted and, in the event of there being other interests present, to have these weighed up when reaching a solution. On the other, it is a general principle for the purposes of interpretation, so that if a legal provision may be interpreted in more than one way, one must opt for the interpretation that best responds to the minor's interests. Moreover, lastly, this principle is a procedural rule. In these three dimensions, the best interest of the minor has the same purpose: to assure complete, effective respect for all the rights of children, as well as their comprehensive development.

With these considerations in mind, it is clear that determining the minor's best interest in each case must be based on an array of accepted criteria and values that are universally recognised by the legislator, that must be taken into account and assessed according to diverse elements and the circumstances of the case, and that must be specified in the explanation of the decision adopted, in order to know whether the principle has been applied correctly or not.

Article 3 is amended to include the appropriate reference to the Convention on the Rights of Persons with Disabilities, dated 13th December 2006, signed by Spain on 30th March 2007, the ratification instrument whereof was published in the "Official State Gazette" on 21st April 2008; and thus to adapt the linguistic terms, replacing that of deficiency for disabled.

The amendment of Article 9 provides a more detailed development of the fundamental right of minors to be heard and taken into account pursuant to the terms established in the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, made in Lanzarote on 25th October 2007, signed by Spain on 12th March 2009, the ratification instrument of which was published in the "Official State Gazette" on 12th November 2010; and with the criteria set forth in General, on the right of the child to be heard. The term judgment is replaced by that of maturity, both in this Organic Act as well as in the Ordinary Act on amendment of the system for protection of childhood and adolescence, due to it being a term more in keeping with legal and forensic language that was already included at an earlier date in Act 54/2007, of 28th December, on Intercountry Adoption, and that is generally used in diverse international conventions on the matter, such as the United Nations Convention on the Rights of the Child, the Convention for Protection of Children and Co-operation in Respect of Intercountry Adoption, made in The Hague on 29th My 1993, or the Optional Protocol to the Convention on the Rights of the Child, on a communications procedure, made in New York on 19th December 2011, among others. It is specifically established that there may not be any kind of discrimination in the exercise of this right due to disability, both within the family as well as in any administrative, judicial or mediation procedure in which they may be directly involved, in line with the United Nations Convention

on the Rights of Persons with Disabilities of 13th December 2006. Moreover, the special needs the minor has are detailed in order to be able to adequately exercise this right and the relevant means to satisfy it. This regulation also takes into account the Case Law handed down by the European Court of Human Rights (cases SN vs. Sweden on 2nd July 2002, Magnusson vs. Sweden on 16th December 2003 and Bellerín vs. Spain on 4th November 2003) and the Supreme Court (Judgment number 96/2009, of 10th March).

Section 2 of Article 10 is also amended, adding the possibility of allowing minors access to adequate mechanisms adapted to their needs to raise their complaints to the Ombudsman or equivalent regional institutions. Effective judicial protection for minors is also reinforced by introducing the possibility of requesting legal assistance and appointing a legal counsel.

As an important novelty, the new Chapter IV of Title II regulates admission of minors to specific protection centres for minors with behavioural issues where it is foreseen, as the last resort, to use measures of security and restriction of fundamental liberties or rights, as well as the actions and interventions that may be carried out there. Its specific regulation is in line with the requests made by relevant institutions such as the Ombudsman, the State Prosecutor General and the Committee on the Rights of Children, among others, a situation that was also considered by the Senate Special Commission to study the issues of national adoption and other related matters, as well as the terms indicated by the Constitutional Court in its Judgments 131 and 132/2010, dated 2nd December 2010, that resolved several matters of unconstitutionality raised, respectively, in relation to Article 211 of the Civil Code and Final Provision Twenty-three of the Organic Act on Legal Protection of Minors and Article 763 of the Civil Procedure Act.

These centres to protect children take into account the special characteristics, complexity, conditions and needs of these minors, who require specialised intervention, when under protection of the Public Institution.

Spanish society has undergone a process of accelerated change in recent years that has given rise to a new profile in users of social services and of the services to protect childhood and families.

This is the case of minors admitted to protection centres, in an increasingly higher number, at the request of their own families, faced with highly conflictive situations arising from issues of aggressive behaviour, dysfunctional families, situations of child to parent violence and severe difficulties to exercise parental authority. Their psychological and social situation requires different solutions to those provided by ordinary protection centres or their families, and they require admission to specialised centres, with a prior report on their social situation and regarding their psychiatric condition.

On occasions, their regulation may affect the fundamental rights of the minors, which requires provisions that determine the limits to intervention and that regulate, among others, the security and containment measures, isolation or body and material searches, as well as other measures such as administering medication, the visitation regime, leave permits or communications, in each case.

In all cases, these centres may never be conceived as instruments for social defence against conflictive minors, also bearing in mind that the intervention does not arise from prior evidence of criminal offences being committed. These centres must provide minors with problems of conduct, when ordinary family and educational resources do not exist, or have failed, an adequate framework for education, normalisation of their conduct and free and harmonic development of their personality. The justification of specific resources assigned to address to severe behavioural issues, as well as crisis situations, lies in the need to provide these minors a more structured social-educational and psycho-therapeutic context, which only a specific programme may offer them, treating the issue from a positive approach and

opportunities, in addition to from the educational principles and projects designed in general terms.

III

Article Two amends the Civil Procedure Act to introduce procedural reforms that guarantee the effectiveness of the substantive novelties stated, as well as to secure the most effective protection possible from the Courts for the rights and interests of the minors.

Introduction of new Article 778 bis provides an agile, simple, detailed procedure to secure judicial leave to intern the minor in a centre for specific protection of minors with behavioural issues, in order to legitimate restriction of their liberty and fundamental rights to the extent that may be relevant. Admission of a minor to such centres at the request of the Public Institution or State Prosecutor requires due judicial control that shall be implemented by requiring prior leave by the Judge of First Instance of the domicile of the Public Institution, except in urgent cases, when the admission shall be ratified afterward, with intervention by the State Prosecutor and the minor.

In addition, amendments are introduced in the regulation of leaves to enter homes and other places to which access requires consent by the owner for mandatory enforcement of measures to protect a minor. The necessary guarantee of the fundamental liberties concerned leads to introduction, by means of new Article 778 ter of the Civil Procedure Act, of a special procedure to examine applications to enter a domicile to enforce administrative resolutions to protect minors.

To date, the competence has been attributed to the contentious-administrative jurisdiction, there being no specific procedure to fully guarantee the balance of interests concerned: on one hand, the best interest of the minor affected by the administrative resolution whose execution requires entry to a home; and for the other, the fundamental right to the inviolability of the home consecrated in Article 18.2 of the Constitution. Faced with the existing situation, the option applied is to attribute to the Court of First Instance the competence to authorise entry to the home, as its remit is to hear the appeals against resolutions issued by the competent Public Institutions in the matter, and the Court must weigh up the interests concerned, a competence that is beyond the essential function of the Contentious-Administrative Court, which concentrates on controlling correction of the administrative activity submitted to its control.

An agile, detailed summary procedure is regulated. It is true that these leaves are normally requested in circumstances in which the protection measures must be executed urgently, requiring swift resolution, which is guaranteed by the possibility of the Judge immediately adopting such a resolution, as long as that need is justified.

Territorial competence is attributed according to the overall criteria on procedures to protect minors, in order to favour the unity of criteria of the Courts involved, and avoiding the dispersion that would arise from adopting any other jurisdictional competence. The procedure guarantees both intervention by the State Prosecutor, as well as hearing the holder of the home concerned, without that formality being capable of constituting an obstacle or cause undue delay in the judicial resolution, considering the urgency of each case.

IV

Likewise and to complement the amendments performed in the Civil Procedure Act, Final Provision One amends the Organic Act on the Judiciary in relation to the competence to grant the judicial leave to enter a home for mandatory enforcement of measures to protect minors resolved by the competent Public Institution in the matter.

V

Final Provision Two performs an amendment to Organic Act 4/2000, dated 11th January, on rights and liberties of aliens in Spain and their social integration, for protection of aliens in an irregular situation and their children, who have been victim to trafficking with human beings.

VI

Final Provision Three performs amendment of Organic Act 1/2004, dated 28th December, on Measures for Comprehensive Protection against Gender Violence.

All kind of violence against a minor is unjustifiable. Among these, violence suffered by those who live and grow in a family setting where gender violence is present is especially atrocious. This type of violence affects minors in many ways. Firstly, it affects their well-being and development. Secondly, it causes them severe health problems. Thirdly, it turns them into an instrument to exercise control and violence over women. Finally, it favours intergenerational transmission of such violent conducts against women by their partners or former partners. Exposing minors to such violence in the home, precisely the place where they should be most protected, also turns them into victims thereof.

Due to this, it is necessary, first of all, to recognise minors who are victims of gender violence by their consideration in Article 1, in order to make this type of violence that may be committed against them visible.

Their recognition as victims of gender violence involves amendment of Article 61 to achieve greater clarity and emphasise the obligation of the Judges to find on injunctive measures and ensure, in particular, the civil measures that affect minors dependent on the woman subject to violence.

Likewise, Article 65 is amended in order to increase the situations subject to protection in which minors may be under the charge of a woman who is a victim of gender violence.

Lastly, the text of Article 66 is improved, exceeding the concept of visitation regime and understanding it generally, such as stays or ways to conduct relations or communicate with minors.

VII

An Additional Provision One is introduced that establishes use of the expression “Public Institution”; Additional Provision Two contains an enablement of the Government to encourage the Autonomous Communities to establish common criteria and minimum standards to apply this Act, and the Transitional Provision regulates the regulations that, according to the amendments made, must be applied to judicial proceedings already commenced.

A general repeal clause is established by including a Repealing Provision.

Final Provision Four regulates the titles of powers by virtue of which this reform is performed, all of its Articles and Final Provisions One, Two and Three having organic status; Final Provision Five regulates there being no increase in the budget expenditure; Final Provision Six enables the Government to hand down implementing regulations; and, finally, Final Provision Seven provides for the entry into force of this Act twenty days after it is published in the “Official State Gazette”, a sufficiently ample period of time to be able to make the content of the novelties it involves adequately known.

Article one. *Amendment of Organic Act 1/1996, dated 15th January, on Legal Protection of Minors, and on partial amendment of the Civil Code and of the Civil Procedure Act.*

Organic Act 1/1996, dated 15th January, on Legal Protection of Minors, and on partial amendment of the Civil Code and of the Civil Procedure Act, is hereby amended and shall henceforth be worded as follows:

One. Amendment of the heading of Chapter I of Title I, which shall henceforth be drafted as follows:

"CHAPTER I
Scope and best interest of the minor"

Two. Article 2 is hereby amended and shall henceforth be drafted as follows:

"Article 2. *Best interest of the minor.*

1. All minors have the right to have their best interest valued and considered primary in all the actions and decisions concerning them, both in the public scope as well as in the private one. In application of this Act and the other provisions affecting them, as well as in the measures concerning minors that are adopted by public or private institutions, the Courts, or the legislative bodies, priority shall be given to their best interest above any other legitimate interest that might concur.

The limitations on the capacity to act of minors shall be interpreted in a restrictive manner and, in all cases, always in the best interest of the minor.

2. The following general criteria shall be taken into account for purposes of interpretation and application of each case of best interest of the minor, as well as any others that may be deemed adequate according to the specific circumstances of the case:

a) Protection of the right to life, survival and growth of minors and satisfaction and their basic needs, whether material, physical and educational, as well as emotional and affective.

b) Consideration of the desires, feelings and opinions of the minors, as well as their rights to participate, progressively according to their age, maturity, development and personal evolution, in the process of determining their best interest.

c) The convenience that their life and development take place in an adequate family environment, free from violence. Priority shall be given to remaining with their original family and maintenance of family relations to be preserved, as long as this is possible and positive for the minor. If a protection measure is resolved, priority shall be given to family fostering rather than residential. When the minor has been separated from the original family, the possibilities and convenience of return shall be evaluated, taking into account the evolution of the family since the protection measure was adopted and always prioritising the needs of the minor over those of the family.

d) Preservation of the identity, culture, religion, convictions, orientation and sexual identity or language of minors, as well as non-discrimination for these or any other conditions, including disability, guaranteeing harmonic development of their personality.

3. These criteria shall be weighed up taking the following general elements into account:

a) The age and maturity of the minor.

b) The need to guarantee equality and non-discrimination due to special vulnerability, either due to lack of a family environment, sufferance of abuse, disability, sexual orientation and identity, refugee status, applicant for asylum or subsidiary protection, belonging to an ethnic minority, or any other relevant characteristic or circumstance.

c) The irreversible effect of time elapsed on their development.

d) The need for stable solutions adopted to promote effective integration and development of minors in society, as well as minimising the risks that any change in the material or emotional situation may cause in their personality and future development.

e) Preparation of the transit to independent adulthood, according to the personal capacities and circumstances.

f) Any other elements to be assessed that, in the specific case, are considered pertinent and that respect the rights of the minors.

The above elements must be evaluated jointly, pursuant to the principles of need and proportionality, so the measure adopted in the best interest of the minor does not restrict or limit more rights than those it protects.

4. In the event of any other legitimate interest concurring along with the best interest of the minor, the measures shall be prioritised that, responding to that interest, also respect the other legitimate interests present.

In the event of not being able to respect all the legitimate interests concurring, the best interest of the minor shall be placed above any other legitimate interest that may co-exist.

The decisions and measures adopted in the best interest of the minor shall value the fundamental rights of other persons who may be affected in all cases.

5. All measures taken in the best interest of the minor shall be adopted with respect for due procedural guarantees and, in particular:

a) The rights of the minor to be informed, listened to and heard, and to participate in the procedure pursuant to the regulations in force.

b) Intervention in the procedure by qualified professionals or experts. Where necessary, these professionals shall have sufficient training to determine the specific needs of children with disabilities. Especially relevant decisions that affect the minor shall require a collegiate report by a technical, multidisciplinary group specialised in adequate environments.

c) Participation by the biological parents, legal representatives of the minor, or by a legal councillor if there is a dispute or discrepancy between them, and the State Prosecutor, in the procedure to defend their interests.

d) Adopting a decision that is based on the criteria used, the elements applied in weighting the criteria, and with other interests present and future, and the procedural guarantees respected.

e) The existence of resources that allow review of the decision adopted that has not considered the best interest of the minor to be primary, or in the event that the actual development of the minor or significant changes in the circumstances that gave rise to that decision make it necessary to review it. Minors shall enjoy the right to free legal counsel in the cases legally foreseen."

Three. Article 3 is hereby amended and shall henceforth be worded as follows:

"Article 3. *Reference to International Instruments.*

Minors shall enjoy the rights they are recognised by the Constitution and the International Treaties to which Spain is a party, especially the United Nations Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, and other rights guaranteed in the legislation, without any discrimination whatsoever due to birth, nationality, race, sex, disability or illness, religion, language, culture, opinion, or any other personal, family or social circumstance.

This Act, the implementing regulations thereof and other legal provisions regarding minors shall be interpreted pursuant to the International Treaties to which Spain is a party, especially, pursuant to the United Nations Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

The public authorities shall guarantee respect for the rights of minors and adapt their actions to this Act and to the aforesaid international provisions."

Four. Article 9 is hereby amended and shall henceforth be worded as follows:

"Article 9. *Right to be listened to and heard.*

1. Minors are entitled to be listened to and heard without any discrimination whatsoever due to age, disability or any other circumstance, both within the family setting, as well as in any administrative, judicial or mediation proceedings that affect them and that may lead to a decision that affects their personal, family or social environment, duly taking their opinions into account, according to their age and maturity. To that end, the minor shall receive information that allows exercise of that right, in an understandable language, in accessible formats, adapted to their circumstances.

In judicial or administrative proceedings, the appearances or hearings of minors shall have preferential status, and shall be performed adequately for their situation and age, with assistance, if necessary, of qualified professionals or experts, ensuring preservation of their privacy and using understandable language, in accessible formats and adapted to their circumstances, explaining both what is being asked as well as the consequences of their opinion, with full respect for all the procedural guarantees.

2. When sufficient maturity is attained, minors shall be guaranteed exercise of this right for themselves, or through the person appointed to represent them. Maturity shall be assessed by specialised personnel, taking the minor's development into account, as well as the capacity to understand and evaluate the specific matter to be dealt with in each case. It is considered, in all cases, that minors have sufficient maturity on reaching the age of twelve years.

In order to guarantee that minors may exercise this right themselves, they shall be aided by interpreters where necessary. Minors may express their opinion verbally or by non-verbal forms of communication.

Notwithstanding this, when it is not possible, or is not in the interest of the minor, the minor's opinion may be known through his legal representatives, as long as these do not have interests that clash with his own, or through other persons who, due to their profession or relation of special confidence with them, may convey this objectively.

3. Whenever appearance or hearing of minors, directly or by representative, is refused at the administrative or judicial instances, the resolution shall be reasoned in the best interest of the minor and notified to the State Prosecutor, to the minors and, where appropriate, their representatives, specifically stating the appeals that exist against such a decision. The resolutions on the underlying matter shall record, where appropriate, the result of the hearing with the minor, as well as the appraisal thereof."

Five. Paragraph c) is hereby amended and a new Paragraph e) is introduced in Section 2 of Article 10, drafted as follows:

"c) Submit their complaints to the Ombudsman, or to similar regional institutions. To that end, one of the Ombudsman's Assistants shall permanently take charge of matters related to minors, providing them access to adequate mechanisms adapted to their needs and guaranteeing them confidentiality."

"e) Request legal counsel and appointment of legal counsel, where appropriate, to undertake the necessary judicial and administrative actions aimed at protection and defence of their rights and interests. In all cases, the State Prosecutor may act in defence of the rights of the minors."

Six. A Chapter IV is included under Title II, including Articles 25 to 35, both inclusive, that shall henceforth be drafted as follows:

"CHAPTER IV

Specific protection centres for minors with behavioural issues

Article 25. *Residential internment in specific protection centres for minors with behavioural issues.*

1. The revenue, actions and interventions of specific protection centres for minors with behavioural issues dependent on the Public Institutions, or on private entities that collaborate with these, where it is foreseen to use security measures and restriction of fundamental liberties or rights shall be subject to the provisions foreseen in this Chapter.

These centres, subject to international standards and to quality control, shall be assigned to residential internment of minors who are under the guardianship or protection of the Public Institution, diagnosed with behavioural issues, who have recurrent disruptive or antisocial conduct, transgress against the social rules and rights of third parties, when this is also justified by their need for protection and determined by a specialised psychosocial assessment.

2. Residential internment in such centres shall only be applied when it is not possible to act through other protection measures, and it shall have the purpose of providing minors with an adequate framework for education, standardisation of their conduct, family reintegration where possible, and free and harmonic development of their personality, within a structured context and with specific programmes within the framework of an educational project. Thus, interning the minor in these centres and the security measures that apply to these shall be used as the last resource and shall always have an educational nature.

3. In cases of voluntary guardianship foreseen in Article 19, commitment by the family to submit to professional intervention shall be necessary.

4. These centres shall have an adequate ratio between the number of minors and the staff assigned to attend them, to guarantee individualised treatment of each minor.

5. In the case of minors with disabilities, they shall continue with the specialised support they have been receiving, or other, more adequate ones shall be adopted, including accessibility measures in the centres where interned where appropriate, and in the actions carried out.

Article 26. *Internment of minors with behavioural issues in specific protection centres.*

1. The Public Institution that holds the protection or guardianship of a minor, and the State Prosecutor, shall be entitled to apply for judicial leave to intern the minor in specific protection centres for minors with behavioural issues. Such application for internment shall be reasoned and based on psychosocial reports previously issued by personnel specialised in protection of minors.

2. Minors who have medical conditions or psychiatric disorders that require specific treatment by the competent mental health services or attention to persons with disabilities may not be interned in such centres.

3. In order to intern a minor in such centres, it shall be necessary for the Public Institution or State Prosecutor to previously obtain the relevant judicial leave, guaranteeing, in all cases, the right of the minor to be heard as established in Article 9. The leave shall be granted after completing the procedure regulated under Article 778 bis of Act 1/2000, dated

7th January, on Civil Procedure, and it shall include a finding on the possibility of applying safety measures, as well as a temporary limit to the visitation regime, that of communications and exits from the centre that may be adopted.

Notwithstanding this, if for duly explained reasons of urgency, it were to become necessary to immediately order internment, the Public Institution or the State Prosecutor may decide so prior to the judicial leave, that they shall notify to the competent Court as soon as possible and, in any case, within the term of twenty-four hours, in order to proceed to the requisite ratification thereof, for which the available information shall be provided, and a justification for the immediate internment. The Court shall issue its finding within the maximum term of seventy two-hours from receiving the notification, immediately declaring the internment without effect if it is not authorised.

4. On admission to the centre, minors shall receive written information on their rights and duties, the operating rules of the centre, matters of general organisation, on the educational regime, the disciplinary regime and the means to submit requests, complaints and appeals. The information shall be conveyed so as to guarantee its comprehension according to the age and circumstances of the minor.

5. Minors shall not remain in the centre more time than that strictly necessary to attend to their specific needs. Cessation shall be ordered by the judicial body that is hearing on the internship, on its own motion, or on the proposal of the Public Institution or State Prosecutor. This proposal shall be based on a psychosocial report.

Article 27. *Safety measures*.

1. Safety measures may consist of mechanical containment, or physical containment of the minor, isolation or body and material searches.

These measures shall have an educational purpose and shall respond to the principles of exceptionality, need, proportionality, provisional status and prohibition of excess, applied with the minimum intensity possible and for the time strictly necessary, and they shall be carried out with due respect for the dignity, privacy and rights of the minor.

2. Safety measures shall be applied by specialised .personnel with training in protection of minors. Such personnel may only use security measures with minors as a last resort, in self-defence or in cases of attempts to escape, physical resistance to an order or direct risk of self-harm, of injuring others or severe damage to property.

3. It is the remit of the Director of the Centre, or person upon whom he may have delegated, to adopt decisions on the security measures, that shall be reasoned and immediate notice shall be given to the Public Institution and the State Prosecutor, and they may be appealed by the minor, the State Prosecutor and the Public Institution, before the judicial body hearing the internment proceedings, that shall issue its finding after obtaining a report from the centre and with prior hearing of the minor and the State Prosecutor.

4. The safety measures applied shall be recorded in the Incident Record Book, which shall be supervised by the centre management.

Article 28. *Containment measures*.

1. Containment measures may be verbal and emotional, physical and mechanical in nature, according to the circumstances concurring.

2. The staff at the centres may only use physical or mechanical containment measures following attempts at verbal and emotional containment, without use of physical force, if the situation allows.

3. Physical containment may only consist of standing between the minor and the person or object that is in danger, physical restriction of spaces and movements and, as a last resort, subject to a strict protocol, physical immobilisation.

4. Mechanical containment shall only be admissible to avoid severe risk to life or the physical integrity of the minor or third parties, and in the event of it not being possible to reduce the minor's level of stress or distress by other means. It shall be performed with homologated mechanical containment equipment, subject to a strict protocol.

Article 29. *Isolation of minors*.

1. Isolation of minors by having them remain in an adequate space which they are prevented from leaving may only be used to prevent violent acts, self-harm, and injury to other minors resident in the centre, to its staff, or to third parties, as well as severe damage to the facilities. It shall be applied punctually at the moment when necessary and under no case as a disciplinary measure, and it shall preferably take place in the minor's own room, and if this is not possible, shall be implemented in another space with a similar habitability and size.

2. The isolation may not exceed six consecutive hours, without prejudice to the right of the minor to rest. The minor shall be accompanied or supervised by an educator during the time spent in isolation.

Article 30. *Body and material searches*.

1. Body and material searches shall be carried out with due respect for the dignity, privacy and fundamental rights of the person.

2. Body searching and patting down the minor shall be performed by the indispensable personnel, which shall require at least two professionals from the centre of the same gender as the minor.

When any bodily exposure is involved, it shall be performed in an adequate place, without the presence of other minors, and preserving the minor's privacy as much as possible.

Use of electronic means shall be preferred.

3. The centre staff may search the minors' belongings, being able to withdraw objects in their possession that may have an unlawful origin, be harmful to them or to others, or to the facilities of the centre, or that are not authorised for minors. Minors shall previously be informed of material searches whenever they cannot be conducted in their presence.

Article 31. *Disciplinary regime*.

1. The disciplinary regime at these centres shall always be based on the social-educational project at the centre and be tailor-made for each minor, who shall be informed regarding it.

2. Disciplinary proceedings shall be the last resort to use, giving priority to restorative dispute-resolving systems and educational interaction. No restrictions of an equal or greater entity may be established than those foreseen in the legislation that regulates the criminal liability of minors.

3. Under no circumstance may the containment measures set forth in Articles 27 to 30 be used for disciplinary purposes.

4. The regional regulations on disciplinary regime shall be sufficient and adequately in keeping with the provisions of the Constitution, this Act and Title IX of Act 30/1992, dated 26th November, on the Legal Regime for Public Administrations and the Common Administrative Procedure, guaranteeing the minor legal counsel by an independent solicitor,

respecting the dignity and rights of the minors at all times and without them being able to be deprived of these in any case.

Article 32. *Supervision and control*.

Notwithstanding inspections of centres that may be carried out by the Ombudsman, the equivalent regional institutions and the State Prosecutor, the measure of interning a minor in a specific protection centre shall be reviewed at least each quarter by the Public Institution, that shall send the competent judicial body that authorised the internment and the State Prosecutor, the appropriate reasoned monitoring report, with that frequency, which shall include the entries in the Incident Ledger.

For the purposes of the inspections and reports to which the preceding Paragraph refers, the Incident Ledger shall respect adoption of the medium level safety measures established in the laws in force on matters of personal data protection with regard to the data subjects.

Article 33. *Administration of medication*.

1. Administration of medication to minors, when necessary for health, shall take place according to professional healthcare practice, respecting the provisions on informed consent, and the terms and conditions foreseen in Act 41/2002, dated 14th November, on basic regulation of the autonomy of the patient and rights and obligations in matters of clinical information and documentation.

2. In all cases, a licensed medical practitioner shall prescribe medicines subject to medical prescription and monitor their correct administration and evolution of the treatment. A medical record of each of the minors shall be kept for such purposes.

Article 34. *Visitation and exit regime.*

1. Visits by relatives and other persons with such affinity may only be restricted or suspended in the interest of minors by the Director of the centre, duly reasoned, when advisable for their educational treatment and pursuant to the terms set forth in the judicial leave for internment.

The right to visits may not be restricted by application of disciplinary measures.

2. The Director of the specific protection centre for minors with behavioural issues may restrict or suppress leave for the persons interned there, always in the interest of the minor and duly reasoned, when advisable for their educational treatment, pursuant to the terms recorded in the judicial leave on internment.

3. The persons concerned, the minor and State Prosecutor shall be notified of measures to limit the visitation regime and exit, pursuant to the applicable legislation.

Such measures may be appealed by the State Prosecutor and the minor, who shall be guaranteed legal counsel by an independent solicitor, before the judicial body that is hearing the internment case, which shall issue its finding after obtaining a report from the centre and a prior hearing of the persons concerned, the minor and the State Prosecutor.

Article 35. *Regime of communications with the minor*.

1. Minors interned in centres shall be entitled to send complaints confidentially to the State Prosecutor, to the competent judicial authority and to the Ombudsman, or to their regional counterpart institutions. Such right may not be restricted due to application of disciplinary measures.

2. Communications between the minor and relatives and other persons with such affinity shall be free and secret.

They may only be restricted or suspended by the Director of the centre in the interest of the minor, duly reasoned, when advisable for the educational treatment and pursuant to the terms set forth in the judicial leave for internment. Restriction or suspension of the right to maintain communications or the secrecy of such shall be adopted pursuant to the applicable legislation and the persons concerned, the minor and the State Prosecutor shall be informed, and they may appeal this before the jurisdictional body that authorised the internment, which shall issue its finding after obtaining a report from the centre and with prior hearing of the persons concerned, the minor and the State Prosecutor."

Seven. Final Provision twenty-three is hereby amended and shall hereinafter be drafted as follows:

"Final Provision twenty-three.

Ordinary Act status is conferred to Articles 1; 5, Sections 3 and 4; 7, Section 1; 8, Section 2, Paragraph c; 9 bis; 9 ter; 9 quater; 9 quinquies; 10, Sections 1, 2, Paragraphs a, b, d and f, 3, 4 and 5; 11, 12, 13, 14, 15, 16, 17, 18, 19, 19 bis, 20, 20 bis, 21, 21 bis, 22, 22 bis, 22 ter, 22 quater, 22 quinquies, 23 and 24; Additional Provisions one, two and three; the Transitional Provision; the Repealing Provision, and Final Provisions one to twenty-two and twenty-four.

The provisions listed in the preceding Paragraph shall be applied pursuant to Final Provision twenty-one."

Article Two. *Amendment of Act 1/2000, dated 7th January, on Civil Procedure.*

Act 1/2000, of 7th January, on Civil Procedure, is hereby amended and shall henceforth be worded as follows:

One. A new Article 778 bis is introduced, which shall henceforth be drafted as follows:

"Article 778 bis. *Internment of minors with behavioural issues in specific protection centres.*

1. The Public Institution charged with protection or guardianship of the minor and the State Prosecutor shall be entitled to request judicial leave to intern the minor in the specific protection centres for minors with behavioural problems stated in Article 25 of the Organic Act 1/1996, dated 15th January, on the Legal Protection of Minors and on partial amendment of the Civil Code and of the Act on Civil Procedure, in an application that shall be accompanied by a psycho-social assessment to justify this.

2. The Courts of First Instance of the place where the centre is located shall be competent to authorise internment of the minor in such centres.

3. Judicial leave shall be mandatory and shall be prior to such internment, except if immediate adoption of the measure is necessary for urgent reasons. In that case, the Public Institution or State Prosecutor shall notify the competent court within twenty-four hours thereafter, in order to proceed to the requisite ratification of the measure, that shall be performed within the maximum term of seventy-two hours from the internment coming to the knowledge of the Court, and the internment shall immediately cease to take effect if not authorised.

In the cases foreseen in this Section, the competence to ratify the measure and to continue to hear the proceedings shall lie with the Court of First Instance of the place where the centre for internment is located.

4. In order to grant the leave or to ratify the internment already performed, the Court shall examine and hear the minors, who shall be informed of the internment in accessible formats and in understandable terms adapted to their age and circumstances, the Public Institution, the parents or tutors who hold parental or protective rights, and any other person whose appearance is deemed convenient or requested, and a report by the State Prosecutor shall be issued. The Court shall gather at least an opinion by a professional it has appointed, without prejudice to it being able to obtain any other evidence it may consider relevant to the case or that is required of it. The leave or ratification of internment shall only be appropriate when it is not possible to adequately attend to the minor under less restrictive conditions.

5. A remedy of appeal may filed by the minor affected, the Public Institution, State Prosecutor, or the parents or tutors who still have the authority to oppose resolutions in matters of protection of minors, against the resolution adopted by the Court in relation to leave or ratification of the internment. The remedy of appeal shall not cause suspension.

6. The same resolution that orders internment shall state the obligation of the Public Institution and the Director of the centre to periodically inform the Court and the State Prosecutor of the circumstances of the minor and the need to maintain the measure, without prejudice to the other reports that the Judge may require when it is deemed appropriate.

The periodic reports shall be issued every three months, unless the Judge, according to the nature of the behaviour that gave rise to the internment, specifies a shorter period.

Once the term has elapsed and the reports are received from the Public Institution and the Director of the centre, once the Court has carried out the actions it deems indispensable and heard the minor and State Prosecutor, it shall resolve as appropriate on whether or not the internment is to continue.

Periodic control of internments shall lie with the Court of First Instance of the place where the centre is located. In the event of the minor being transferred to another centre for specific protection of minors with behavioural issues, further judicial leave shall not be required, and the proceedings shall be heard by the Court of First Instance of the place where the new centre is located. The persons concerned, the minor and the State Prosecutor shall be informed of the transfer, which they may appeal before the body hearing the internment case, which shall issue its finding after obtaining a report from the centre and prior hearing of the persons concerned, the minor and the State Prosecutor.

7. Minors shall not remain in the centre for longer than strictly necessary to attend to their specific needs.

Cessation shall be ordered by the competent judicial body, of its own motion or as proposed by the Public Institution or the State Prosecutor. The proposal shall be based on a psychological, social and educational report.

8. The minor shall be informed of the resolutions adopted."

Two. Article 778 ter is hereby introduced, which shall henceforth be drafted as follows:

"Article 778 ter. *Entry to homes and remaining places for mandatory enforcement of measures to protect minors.*

1. The Public Institution shall apply to the competent Court of First Instance in the place where its domicile is located, for an authorisation to enter homes and remaining buildings and places where access requires consent by the owner or occupant, if necessary for mandatory enforcement of measures adopted by it to protect a minor. In the case of

enforcement of an act confirmed by a judicial resolution, the application shall be addressed to the body that has handed it down.

2. The application shall be initiated in writing and shall record at least the following particulars:

a) The administrative resolution or proceedings that have given rise to the application;

b) The specific home or place to which access is sought, the identity of its holder or occupant whose consent is required for access;

c) The reason for which an attempt has been made to obtain that consent without result, or with a negative result. In the event of it not being appropriate, this circumstance shall be recorded and reasoned in the writ of application, without it being necessary to produce such justification;

d) The need for such entry to enforce the resolution by the Public Institution.

3. Once the Public Institution has presented the application, on the same day the Court Clerk shall notify the owner or occupant of the home or building to allege whatever is considered relevant to his/her rights, within a term of 24 hours thereafter, exclusively regarding the appropriateness of granting the leave.

Notwithstanding this, when the Public Institution applying asks for such in a reasoned manner and proves that there are urgent reasons to order the entry, either because delay in enforcement of the administrative resolution may cause risk to the safety of the minor, or because there is a real, immediate effect on the minor's fundamental rights, the Judge may resolve such, by order handed down immediately and, in all cases within the maximum term of 24 hours following receipt of the application, following a report by the State Prosecutor. The order handed down shall provide separate reasons for the requisites of the measure concurring and the reasons that have made it advisable to order it without hearing the party concerned.

4. Once the writ of allegations is submitted by the party concerned, or should the term elapse without it being done, the Judge shall order or refuse the entry by court order within the maximum term of 24 hours thereafter, with prior report by the State Prosecutor, after evaluating the concurrence of the particulars mentioned in Section 3 of this Article, the power of the Public Institution to order the act it is intended to execute, and the legality, need and proportionality of the entry requested to achieve the purpose intended by the protection measure.

5. The order that authorises the entry shall record the material and time limits to perform it, which shall be those strictly necessary to execute the protection measure.

6. An attested copy of the order that authorises entry shall be delivered to the Public Institution applying in order for it to proceed to perform it. The order shall be notified without delay to the parties who have intervened in the procedure and, if they have not intervened, or if notification is not possible before performing the entry procedure, the Court Clerk shall proceed to notify this to perform the diligence.

7. A remedy of appeal may be filed against the order resolving or refusing the leave, even when it has been handed down without a prior hearing of the party concerned, a remedy of appeal shall be appropriate, without suspension effect, that shall be filed within the term of three days thereafter, from notification of the order, that shall be granted preferential processing.

Even when the application is refused, the Public Institution may reproduce it if the existing circumstances change at the moment of the request.

8. Entry to the domicile shall be performed by the Court Clerk within the limits established, being able to obtain aid by the public forces, if necessary, and being accompanied by the Public Institution requesting. Once the diligence has concluded, filing the proceedings shall be decreed."

Three. Additional Provision one is amended, that shall be drafted as follows:

"Additional Provision one. *Ordinary status and Title of Competence*.

1. This Act is ordinary with the exception of Articles 763, 778 bis and 778 ter that have organic status and are handed down pursuant to Article 81 of the Constitution.

2. This Act is handed down under the relevant power of the State pursuant to Article 149.1.6.a of the Constitution, without prejudice to the necessary specialities in this order concurring from the particular features of substantive law of the Autonomous Communities."

Additional Provision one. *References to regulations from prior dates.*

References recorded in regulations from prior dates to this Act, regarding the competent Public Institution for protection of minors, shall be understood to refer to the Public Institution, an expression that shall be used in the successive legal texts.

Additional Provision two. *Common coverage, quality and accessibility criteria.*

The Government shall encourage the Autonomous Communities to establish common criteria and minimum standards of coverage, quality and accessibility in application of this Act and, in all cases, with regard to centres to protect minors with behavioural problems.

Sole Transitional Provision. *Regulation applicable to judicial proceedings already commenced.*

Judicial proceedings initiated prior to enactment of this Act shall be governed by the regulations in force at the moment when commenced.

Sole Repealing Provision. *Repeal of provisions*.

All provisions that oppose or are incompatible with the terms set forth in this Act are hereby repealed.

Final Provision one. *Amendment of Organic Act 6/1985, dated 1st July, on the Judiciary.*

Section 2 of Article 91 of Organic Act 6/1985, dated 1st July, on the Judiciary, is hereby amended and shall henceforth be drafted as follows:

"2. It is also the remit of the Contentious-Administrative Courts to authorise, by order, entry to homes and other buildings or places where access requires the consent of the holder, if this is appropriate for mandatory execution of acts by the Administration, except for execution of measures to protect minors resolved by the competent Public Institution in the matter."

Final Provision two. *Amendment of Section 2 of Article 59 bis of Organic Act 4/2000, dated 11th January, on rights and liberties of aliens in Spain and their social integration.*

Section 2 of Article 59 bis of Organic Act 4/2000, dated 11th January, on the rights and liberties of aliens in Spain and their social integration is hereby amended and shall henceforth be drafted as follows:

"2. When the competent administrative bodies consider there are reasonable motives to believe that an alien in an irregular situation has been victim of trafficking with persons, they shall inform the person concerned of the provisions of this Article and provide the competent authority the appropriate proposal for resolution on granting a period for reestablishment and reflection, pursuant to the proceedings foreseen in the regulations.

Said reestablishment and reflection period shall last at least ninety days and shall be sufficient for the victim to be able to decide whether he wishes to cooperate with the authorities in investigation of the crime and, where appropriate, in the criminal proceedings. Both during the phase of identifying the victims, as well as during the period of reestablishment and reflection, no penalisation proceedings shall be taken due to breach of Article 53.1.a) and the penalisation proceedings that may have been filed shall be suspended or, if appropriate, execution of deportation or repatriation eventually ordered. Likewise, during the reestablishment and reflection period, their temporary stay shall be authorised and the competent administrations shall ensure their subsistence and, if necessary, safety and protection of the victim and minor or disabled children who are in Spain at the moment of identification, who shall covered by the provisions of Section 4 of this Article in relation to assisted repatriation or residence permits, and where appropriate, labour permits, if over the age of 16 years, due to exceptional circumstances. Once the reflection period has concluded, the public administrations shall assess the personal circumstances of the victim for the purposes of determining possible extension of said period.

Under extraordinary circumstances, the competent Public Administration shall ensure the safety and protection of any other persons who are in Spain with whom the victim has family or any other kind of bonds, when it is proven that them being made defenceless before the suspected traffickers constitutes an insurmountable obstacle to the victim agreeing to cooperate."

Final Provision three. *Amendment of Organic Act 1/2004, dated 28th December, on Measures for Comprehensive Protection against Gender Violence.*

Organic Act 1/2004, dated 28th December, on Measures for Comprehensive Protection against Gender Violence, is hereby amended and shall henceforth be worded as follows:

One. Section 2 of Article 1 is hereby amended and shall henceforth be drafted as follows:

"2. This Act establishes integral protection measures for the purpose of preventing, penalising and eradicating such violence and providing assistance to women, their children, minors, and to minors subject to protection, guardianship and custody, who are victims of such violence."

Two. Section 2 of Article 61 is hereby amended and shall henceforth be drafted as follows:

"2. In all procedures related to gender violence, the competent Judge shall issue a finding, of his own motion, or at the request of the victims, their children, the persons who live with them or are subject to their guardianship or custody, the State Prosecutor or the Administration assigned services to attend to the victims or their accommodation, regarding whether it is appropriate to adopt the injunctive and assurance measures covered by this Chapter, especially those recorded in Articles 64, 65 and 66, determining their term and their regime of fulfilment and, if appropriate, the complementary measures for these that may be required."

Three. Article 65 is hereby amended and shall henceforth be drafted as follows:

"Article 65. *On measures to suspend parental rights or custody of minors.*

The Judge may suspend the exercise of parental rights, guardianship and custody, fostering, protection, *de facto* care or keeping with regard to minors dependent on those charged with gender violence.

If suspension is not ordered, the Judge shall find in all cases on the way in which the parental rights shall be exercised and, where appropriate, the guardianship and custody, fostering, protection, *de facto* care or keeping of the minors; also adopting the necessary measures to guarantee the safety, integrity and recovery of the minors and the woman, and shall perform periodic monitoring of their evolution."

Four. Article 66 is hereby amended and shall henceforth be drafted as follows:

"Article 66. *On the measure of suspension of visitation, stays, relations or communications with minors.*

The Judge may order suspension of the regime of visitation, stays, relations or communications with minors for those charged with gender violence against the minors dependent on him.

If the suspension is not ordered, the Judge shall issue a finding, in all cases, regarding the way in which the regime of stay, relations or communication with the person charged with gender violence with regard to the minors dependent on him shall be exercised; also adopting the necessary measures to guarantee the security, security, integrity and recovery of minors and the woman, and shall perform periodic monitoring of their evolution."

Final Provision four. *Organic status and titles of competence.*

1. This Organic Act is handed down pursuant to Article 81 of the Spanish Constitution, all its Articles and Final Provisions one, two and three having organic status.

2. This Organic Act is handed down under the exclusive power to issue civil legislation attributed to the State by Article 149.1.8. of the Spanish Constitution, except for Article Two, the Sole Transitional Provision, Final Provision One and Final Provision Three, which are handed down pursuant to the terms of Article 149.1.6. of the Spanish Constitution, that attributes the State exclusive power to order procedural legislation.

3. Final Provision two, that amends Organic Act 4/2000, dated 11th January, on the rights and liberties of aliens in Spain and their social integration, is issued pursuant to Article 149.1.2. of the Spanish Constitution that attributes the State's exclusive power in matters of immigration.

Final Provision five. *No increase in expenditure.*

The measures included in this provision may not cause an increase in public expenditure.

Final Provision six. *Amendments and implementing regulations.*

1. The Government shall carry out the regulatory amendments and developments that are necessary for application of this Act.

2. Within the scope of their respective competences, the State and the Autonomous Communities shall adopt the necessary measures for effectiveness of this Act.

Final Provision seven. *Entry into force.*

This Organic Act shall be enter force twenty days after is published in the "Official State Gazette".

Thus,

I order all Spaniards, individuals and authorities, to abide by and ensure compliance with this Organic Act.

Madrid, 22nd July 2015.

PHILLIP R.

The President of the Government
MARIANO RAJOY BREY