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*Act 26/2015, dated 28<sup>th</sup> July, on amendment of the protection system for 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 Act:

PREAMBLE

I

Article 39 of the Spanish 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.

Among these international agreements and instruments two United Nations Conventions stand out, the Convention on the Rights of the Child, dated 20<sup>th</sup> November 1989, ratified on 30<sup>th</sup> November 1990 and its Optional Protocols, and the Convention on the Rights of Persons with Disabilities, dated 13<sup>th</sup> December 2006, ratification instrument dated 23<sup>rd</sup> November 2007. Moreover, there are two notable Conventions arising from The Hague Conference on Private International Law: the Convention regarding Protection of Children and Co-operation in Respect of Intercountry Adoption, dated 29<sup>th</sup> May 1993, ratified on 30<sup>th</sup> June 1995 and the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of parental authority and measures to protect children, dated 28<sup>th</sup> May 2010, ratified on 6<sup>th</sup> September 2010. On the other hand, the three Conventions by the Council of Europe, that on adoption of minors, made in Strasburg on 27<sup>th</sup> November 2008, ratified on 16<sup>th</sup> July 2010, that on protection of children against sexual exploitation and abuse, made in Lanzarote on 25<sup>th</sup> October 2007, ratified on 22<sup>nd</sup> July 2010, as well as the European Convention on Exercise of the Rights of Children, made in Strasbourg on 25<sup>th</sup> January 1996, ratified on 11<sup>th</sup> November 2014. And, finally, Council Regulation (EC) no. 2201/2003, of 27<sup>th</sup> November 2003, concerning jurisdiction and the recognition of judgments in matrimonial matters and matters of parental authority, repealing Regulation (EC) no. 1347/2000, ought to be emphasised.

Organic Act 1/1996, dated 15<sup>th</sup> January, on Legal Protection of Minors, of partial amendment of the Civil Code and of the Civil Procedure Act, hereinafter Organic Act for Legal Protection of Minors, constitutes, along with the provisions of the Civil Code on this matter, the main regulatory framework for the rights of minors, guaranteeing them uniform protection throughout Spain. This Act has been the reference for the legislation the Autonomous Communities have subsequently approved, pursuant to their powers in such matters.

However, as nearly twenty years have elapsed since its publication, there have been major social changes that affect the situation of minors and that require improvement in the instruments for legal protection, in order to effectively comply with said Article 39 of the Constitution and the rules of an international nature mentioned.

This is recorded in diverse proposals and observations formulated in past years by the United Nations Committee for the Rights of the Child (specifically General Observation no. 13 in 2011, on the rights of children not to suffer any kind of violence, and the final

observations to Spain of 3<sup>rd</sup> November 2010), by the Ombudsman (in his documents “Minors or adults. Procedures to determine age” in 2011 and “Trafficking with persons in Spain: invisible victims” in 2012), by the State Prosecutor General (in his Circulars 8/2011, dated 16<sup>th</sup> November, on criteria for unity of specialised action by State Prosecutors in matters of protection of minors, and 1/2012, dated 3<sup>rd</sup> October, on substantive and procedural treatment regarding blood transfusions and other medical intervention on minors in the case of severe risk) and in the conclusions and recommendations by the Senate Special Committee to study the issues of national adoption and other related matters (BOCG. Senate, series I, no. 545, dated 17<sup>th</sup> November 2010).

Pursuant to all the foregoing, this Act has the object of introducing the necessary changes in the Spanish legislation on protection of childhood and adolescence that allows a continued guarantee for minors of uniform protection throughout Spain and that constitutes a reference for the Autonomous Communities in the development of their respective legislation in the matter. Moreover, and reciprocally, this Act includes some novelties that had already been introduced by some regional regulations in these past years.

The reform consists of four Articles, twenty-one Final Provisions, in addition to seven Additional Provisions, five Transitional Provisions and a Repealing Provision. Article one records the amendments to Organic Act, on Legal Protection of Minors; the second, those that affect the Civil Code; the third, those of Act 54/2007, dated 28<sup>th</sup> December, on Intercountry Adoption, hereinafter Intercountry adoption Act; the fourth, those regarding Act 1/2000, dated 7<sup>th</sup> January, on Civil Procedure, hereinafter Civil Procedure Act; Final Provision one those that affect Act 29/1998, dated 13<sup>th</sup> July, regulating the Contentious-Administrative Jurisdiction, hereinafter, Contentious-Administrative Jurisdiction Act; Final Provision two those regarding Act 41/2002, dated 14<sup>th</sup> November, on basic regulation of patient autonomy and on rights and obligations in matters of clinical information and documentation, hereinafter Patient Autonomy Act; Final Provision three that regarding Royal Legislative Decree 1/1995, dated 24<sup>th</sup> March, that approves the consolidated text of the Workers’ Statute; Final Provision four affecting Act 7/2007, dated 12<sup>th</sup> April, on the Basic Statute of Public Employees; Final Provision five those that affect Act 40/2003, dated 18<sup>th</sup> November, on Protection of Large families; Final Provisions six and seven, those regarding Organic Act 2/2006, dated 3<sup>rd</sup> May, on Education, and Organic Act 8/2013, dated 9<sup>th</sup> December, for Improvement of Educational Quality; Final Provision eight those of Act 43/2006, dated 29<sup>th</sup> October, to improve growth and employment; Final Provision nine, that affecting Act 39/2006, dated 14<sup>th</sup> December, on promotion of personal autonomy and attention to persons with dependent status; Final Provisions ten to fourteen, those that affect amendment of the consolidated text of the General Social Security Act, approved by Royal Legislative Decree 1/1994, dated 20<sup>th</sup> June, on the Criminal Procedure Act, and Act 35/2011, dated 10<sup>th</sup> October, regulating the Social Jurisdiction, and the consolidated text of the State Passive Classes Act, approved by Royal Legislative Decree 670/1987, dated 30<sup>th</sup> April. The last seven Final Provisions refer to the title of competence, regulatory enablement of the Cities of Ceuta and Melilla and the Government in general, to creation of the Central Register of Sex Offenders, to the regulatory amendments and developments, to inclusion of the European regulations, and to there being no increase in the budgetary expenditure and to entry into force.

Additional Provision one records the reference to the use in the legal texts of the expression “Public Institution” with regard to the territorially competent Public Institution for protection of minors; Additional Provision two, the references to pre-adoptive fostering, to simple fostering and to Intercountry Adoption Collaboration Entities; Additional Provision three enables the Government to act with the Autonomous Communities to promote establishment of common criteria and minimum standards of coverage, quality and accessibility in application of this Act; Additional Provision four establishes the legal regime of specific centres for protection of minors with behavioural issues run by private entities that

collaborate with the competent public institutions; Additional Provision five establishes in inter-territorial mechanism for foster family assignments, or, in the event, for adoption; and Additional Provision six establishes an equivalence of legal fostering regimes foreseen under this Act in relation to the previously existing regulations, and the relevant legislations of the Autonomous Communities. The first two Transitional Provisions establish the regulations applicable to judicial procedures already commenced on the date of its enactment, as well as cessation of judicially established fostering.

## II

The amendments to the Organic Act for Legal Protection of Minors basically refer to adaptation of the principles of administrative action to the new needs of childhood and adolescence in Spain, such as the situation of foreign minors, those who are victims of violence, and regulation of certain rights and duties. On the other hand, a profound review is carried out of the institutions in the system to protect childhood and adolescence.

Articles 5 and 7 undergo amendments arising from Spain's ratification of the Convention of the Rights of Persons with Disabilities and the need to adapt the regulations in keeping.

A specific mention is also included to digital and media literacy as an essential tool for minors to be able to develop their critical thought and to take an active part in a participative society and in a present world that cannot be understood outside the framework of new information and communication technologies.

A new Chapter III is introduced in Title I with the heading "Duties of the minor", in line with diverse international and also regional regulations, in which, based on minors being conceived as citizens, they are recognised to be jointly responsible with the societies in which they participate and, thus, not only holders of rights, but also of duties. In that sense, four new Articles are introduced that regulate the duties of minors in general and within the family, school and social environments in particular.

Article 10 reinforces the measures to facilitate exercise of minors' rights and establishes an adequate regulation framework for those related to foreign minors, recognising, with regard to those located in Spain and regardless of their administrative status, their rights to education, to healthcare and social services, as recorded in Organic Act 4/2000, of 11<sup>th</sup> January, on rights and liberties of aliens in Spain and their social integration, and in Act 16/2003, dated 28<sup>th</sup> May, on cohesion and quality of the National Health System.

All foreign minors under protection by the Public Institutions are also recognised the right to obtain the relevant resident's permits, once it is proven that it is impossible for them to return to their family or country of origin.

Article 11 introduces protection of minors against any kind of violence as a governing principle for administrative action, including that arising in the family environment, due to gender, slavery and trafficking with persons and feminine genital mutilation, among others. In line with this, the public authorities shall implement awareness, prevention, assistance and protection actions against any kind of abuse of children, establishing the procedures to assure coordination between the competent Public Administrations.

Closely related to the foregoing, Article 12 guarantees the necessary support for minors under parental care, protection, guardianship or fostering of a victim of gender or domestic violence to be able to remain there. Likewise, the presumption of being a minor is introduced in the case of persons whose age it has not been possible to securely establish, until it is finally determined.

That same Article records the governing principles to reform the institutions to protect childhood and adolescence, stating that priority shall be given to stable over temporary measures, to relatives over residential solutions, and to consensual ones over those imposed.

These principles, that vertebrate the system, had already been established in the Directives on alternative means to care for children by the Assembly General of the United Nations, on 24<sup>th</sup> February 2010, and in diverse documents approved by International Social Services. Moreover, Article 12 records another of the axes to this reform, which is the obligation of Public Institutions to review the protection measures adopted within specific terms. Thus, they are bound to perform personal monitoring of each boy, girl or adolescent and a review of the protective measure.

Article 13 includes two new Sections regarding offences against sexual liberty and indemnity, trafficking with persons and exploitation of minors. On one hand, it establishes the duty all those have information of an act that may constitute an offence against sexual liberty or indemnity, of trafficking with persons or exploitation of minors, to notify the State Prosecutor. A further requisite is established, in order to access and practice a profession or activity that implies usual contact with minors, of not having been found guilty for offences against sexual liberty and indemnity, trafficking with persons or exploitation of minors, thus complying with the commitments undertaken in Spain on ratifying the Convention on Protection of Children against Sexual Exploitation and Abuse, dated 25<sup>th</sup> October 2007, and the Directive by the European Parliament and Council, 2011/93/EU, dated 13<sup>th</sup> December 2011, on combating sexual abuse and sexual exploitation of children and child pornography, that substitutes Framework Decision 2004/68/JHA of the Council.

Directly related to the above and for the purposes of prevention, the Central Register of Sex Offenders is created along with the system of administrative records to support the Judicial Administration, which that shall contain the identity of those sentenced for offences against sexual liberty and indemnity, trafficking with persons, or exploitation of minors, and information on their DNA genetic profile. The aim of this is to make it possible to monitor and control individuals sentenced for such offences not only in Spain, but also in other countries. Moreover, the General State Administration shall collaborate with the competent authorities of the Member States of the European Union to facilitate exchange of information within that sphere.

Reform of the institutions to protect childhood and adolescence is performed pursuant to the principles mentioned above and a more complete State regulation is established for situations of risk and distress, indeterminate judicial terms that are defined for the first time in regulations of State rank that basically include, as substantive content thereof, what the regional Case Law and legislation had embodied over these years.

Thus, Article 14 regulates the institution of provisional guardianship pursuant to the measures for immediate attention, which shall subsequently be developed in Article 172 of the Civil Code.

With regard to situations of risk, and by reform of Article 17, this figure and its procedure are developed comprehensively, both matters that were not regulated at State level. The adequate intervention to palliate and intervene in situations of risk that may affect minors has become absolutely essential to preserve their best interest, on many occasions avoiding the situation becoming more severe, and having to adopt much more traumatic decisions with greater individual, family and social cost, such as separating the minor from his family.

The provisions foresee that the project for action may be consensual with the parents or other legal guardians, thus ensuring the aforesaid principle of prioritising consensual solutions over imposed ones. In the event of them refusing to sign or subsequently not collaborating in this, the situation of risk shall be declared by administrative resolution, in order to guarantee them the information on how they should act to avoid subsequent declaration of distress.

Special relevance is granted to intervention in situations of possible prenatal risk for the purposes of subsequently avoiding an eventual declaration of situation of risk or distress of the new born child. A solution is also foreseen in cases of healthcare being required by the

minor that is not consented by the parents or other legal guardians, which also involves amendment of the Patient Autonomy Act.

There are two main novelties with regard to regulation of distress. Article 18 completes the definition of the situation of distress regulated in Article 172 of the Civil Code, establishing the circumstances that determine such for the first time in a State Law, which introduces a major clarification and unification of the criteria to declare such. It ought to be noted that the effects of Section d), that establishes habitual consumption of substances with addictive potential by parents, tutors or keepers as a cause of distress; habitual being pursuant to the criteria for harmful consumption, abuse or dependence, as defined by the World Health Organisation or the American Psychiatric Association.

Moreover, the power of the Public Institutions is regulated for the first time with regard to protection of Spanish minors in an unprotected situation in a foreign country and the procedure to follow in the case of transfer of a protected minor from one Autonomous Community to another one, matters that had not been considered to date.

Article 19 establishes a maximum term of two years of keeping minors requested by their parents, except if the best interest exceptionally makes it advisable to extend it. Thus, the aim is to avoid there being chronic situations of voluntary care in which the parents cede care of their children to the Public Administrations “*sine die*”, thus depriving such children of permanent family solutions, precisely during the key years of early infancy.

The principle of priority for the family of origin ought to be underscored, both through the aforesaid regulation of the situation of risk, as well as that stated in the new Article 19 bis that, in the cases of guardianship or administrative protection of the minor, the Public Institution must prepare an individual plan for protection that shall include a family reintegration schedule, when the latter is possible. This Article includes the criteria that Judgment 565/2009, of 31<sup>st</sup> July 2009, of the Supreme Court, has established to decide whether family reintegration is appropriate in the best interest of the minor, among which the passing of time or integration within the foster family stand out. This same Article foresees family reunion of unaccompanied foreign minors.

In order to favour agility and preserve the interest of the minors, establishment of fostering is simplified, establishing equivalence to residential care, even though there may not be prior approval by the parents or tutors, without prejudice to the jurisdictional control thereof. On the other hand, and for reasons of legal technique and improvement of location, the terms established up to date in Article 173 of the Civil Code on formalisation of fostering and content of the attached document that must accompany it is transferred to Article 20, and the need is introduced, as occurs with adoption, to evaluate the adequacy of the foster family, and it defines the criteria for such, criteria that were not recorded in State law until now. Moreover, the two types of fostering are defined in a manner that is more in keeping with the reality of present day protection of minors, in relation to the characteristics of the foster family, referring to fostering within the actual extended family of the minor or with another family.

For the first time, Article 20 bis regulates the statute of family fostering as a set of rights and duties. The transcendental function performed by foster families makes it highly convenient for a general provision to describe their status and this is what had been pointed out in the conclusions by the Senate Special Committee to Study the Issues of National Adoption and Other Related Matters. Moreover, an Article 21 bis has been included, that records the rights of the minors fostered.

In relation to residential care, Article 21 records the provision of prioritising family fostering over residential care. It is an ambitious provision, the grounds of which lie in minors requiring a family environment for adequate development of their personality, an aspect regarding which there is total consensus among psychologists and educators. Whilst this objective is common to all, when under the age of six years, this is even more acute, and it is

indispensable if under the age of three; convenience becomes an unavoidable need, without prejudice to introducing a flexible provision to provide coverage to cases in which, for duly justified reasons, internment in a centre for protection may be the sole measure available, or when residential care is convenient for the best interest of the minor.

On the other hand and in relation to residential care services (up to date called specialised services and now called “residential care” to use the equivalent terminology to “foster family care”), their basic characteristics are established in general terms, their necessary adjustment to quality criteria and the preferential nature of family solutions.

Likewise, all residential care centres that provide services intended for minors under the scope of protection must always have an administrative licence from the Public Institution.

On the other hand, Article 22 bis records the obligation of the Administration to prepare formerly protected youths for an independent life, a matter of great social importance and regarding which there are already proper practices defined for Public Institutions and the Third Sector for social action in Spain.

Article 22 ter establishes creation of a State information for protection of minors, to be implemented by the Public Institutions and General State Administration, that shall allow knowledge and monitoring the situation of protection of childhood and adolescence in Spain, not only for statistical purposes, but also for specific monitoring of the protection measures adopted with regard to each minor, as well as the persons who offer to foster and adopt. Article 22 quater introduces rules that regulate personal data processing regarding minors according to their best interest and Article 22 quinquies establishes the obligation to evaluate the impact on childhood and adolescence in all the regulatory projects.

Finally, Articles 23 and 24 undergo terminological reforms.

### III

The main amendments of the Civil Code refer to the Spanish system for protection of minors and, thus, they are closely related to those already stated in the preceding Section. Notwithstanding this, they also amend other aspects related to these matters.

Firstly, they reform the rules of Conflict of Laws, specifically Sections 4, 6 and 7 of Article 9, rules on conflict regarding the law applicable to filiation, to protection of minors and elders and the obligation to provide food. These amendments respond, on one hand, to inclusion of Community or international rules and terminological adaptations thereof, and on the other hand, technical improvements in determining cases of fact or points of connection and their timing specification.

A new Section is introduced in Article 19 to foresee recognition of double nationality by the Spanish legal provisions, in cases of Intercountry Adoption, in which the laws of the country of origin of the minor foresee conservation of the nationality of origin.

On the other hand, the regulations on actions of filiation are amended. The regulation proposed responds to the fact that the first Paragraph of Article 133 has been declared unconstitutional, as it prevents non-marital parents from claiming filiation in cases where apparent state does not exist (Judgments by the Constitutional Court number 273/2005, dated 27<sup>th</sup> October 2005, and number 52/2006, dated 16<sup>th</sup> February).

Under similar terms, the first Paragraph of Article 136 has been declared unconstitutional, as it involves the term to exercise the action to impugn marital paternity beginning to elapse even though the husband ignores not being the biological parent of the person registered as his child at the Civil Registry (Judgments of the Constitutional Court 138/2005, of 26<sup>th</sup> May 2005 and 156/2005, of 9<sup>th</sup> June 2005), that being the main reason for the reform proposed. The table of reforms is completed at this point with those recorded in Articles 137, 138 and 140 of the Civil Code.

An amendment is performed in Article 158 of the Civil Code, based on the principle of agility and immediacy applicable to injunctive incidents that affect minors, to avoid unnecessary harm that may arise from procedural rigidity or narrow interpretation, allowing protection mechanisms to be adopted both with regard to minors who are victims of abuse, as well as in relation to those who, without being victims, may be in a situation of risk. Amendment of Article 158 enables adoption of new measures, prohibition to approach and of communication, in parent-child relations.

Article 160 extends the right of the minors to relations with their relatives, specifically with their siblings.

In relation to regulation of the visitation and communications regime, with the amendment made in Article 161, the powers of the Public Institution are clarified, to establish the visitation and communications regime with a reasoned resolution, regarding minors in a situation of protection or guardianship, as well as temporary suspension thereof, informing the State Prosecutor thereof. It must be borne in mind that international recognition of the right of children to maintain regular direct contact with both parents, except if that is contrary to their best interest (Article 9.3 of the Convention of the Rights of the Child), also covers minors separated from their family by the Public Institution.

With regard to regulation of distress, and also the terms foreseen in Article 18 of the Organic Act for Legal Protection of Minors aforesaid, former Article 172 of the Civil Code is broken down into three Articles in order to separate the regulation of situations of distress (Article 172), on keeping at the request of parents or tutors (Article 172 bis) and of the measures for intervention in both cases (Article 172 ter) by residential and family care.

With regard to Article 172, the legitimacy of the parents remains to promote revocation of the administrative resolution on distress and to oppose the decisions adopted with regard to protection of the minor during the term of two years from the notification, adding that, after those two years have elapsed, only the State Prosecutor shall have the power to challenge the resolutions on the minor handed down by the Public Institution. On the other hand, it is stated that, during that two-year period, the Public Institutions, assessing the situation, may adopt any measure for protection that they consider necessary, including the proposal for adoption, when there is a prognostic of irreversibility.

That same Article establishes the possibility of undertaking provisional keeping without prior declaration of distress, or specific application by the parents, whilst the necessary diligences are conducted to identify the minor, to investigate the circumstances and ascertain the real situation of distress. Provisional keeping, although indispensable to deal with emergency situations, must have time limits as, otherwise, they could give rise to situations of legal insecurity. This is why the obligations of the Institutions and role to be performed by the State Prosecutor are foreseen, for greater surveillance over the administrative action. Moreover, new cases are foreseen of cessation of administrative protection that are due to the growing mobility of some protected minors.

With regard to voluntary care, closely linked to Article 19 of the Organic Act for Legal Protection of Minors, Article 172 bis establishes keeping requested by the parents may not exceed the maximum term of two years, except for extension due to exceptional circumstances concurring, after which, or following the extension, minors must return to their parents or tutors, or a further permanent protection measure be handed down.

Article 172 ter records the priority of foster family over residential care, and also regulates the possibility of the Public Institutions ordering stays, weekend or holiday leave with original or alternative families, or adequate institutions for fostered minors, and establishes the possibility that, in cases of distress or keeping requested by the parents, the Public Institution may set a sum to be paid by the parents or tutors for upkeep and care expenses for attending to the minor.

Following some slight amendments to Article 173, Article 173 bis redefines the modes of foster family care according to their duration. Provisional care is suppressed, as this shall no longer be necessary due to simplification of foster family care, as well as pre-adoptive fostering that, definitively, is now a phase of the adoption procedure. This introduces clarity in true cases of foster family care, that shall be specified as emergency care, temporary care (called simple up to present), with a maximum duration of two years, except if the best interest of the minor makes extension and permanent care advisable.

The high functions entrusted to the State Prosecutor, as high guardian of the administrative action in protection of minors, must be accompanied by sufficient resources in order that these may be exercised effectively, avoiding their efforts being limited to simple voluntarism lacking in practical operativity, or their action being merely symbolic. To those ends, they are specifically assigned the possibility of requesting additional reports to those submitted by the Public Institution.

In Article 175, with regard to the capacity of adoptive parents, incapacity to adopt is established for those who could not be tutors, and apart from the rule on a minimum age difference between party adopting and adopted, a maximum age difference is also established to avoid the discrepancies that exist in the regional provisions on maximum ages for eligibility may cause undesirable distortions.

On the other hand, Article 176 includes a definition of eligibility to adopt in order to strengthen judicial security, and it specifically includes a provision according to which persons deprived of parental authority, or who have the exercise thereof suspended, or who have entrusted their child to the keeping of a Public Institution may not be declared fit. With regard to the action by the Public Institution in the judicial adoption procedure, two important novelties arise. Firstly, a declaration of eligibility of the adoptive parents must necessarily be prior to the proposal for adoption that the Public Institution submits to the Judge, this being a matter that had not been clearly established, and secondly, the cases in which a prior proposal by the Public Institution for protection of minors is not required to initiate the judicial proceedings for adoption are amended.

An Article 176 bis is introduced, that regulates “*ex novo*” keeping for the purposes of adoption. This legal provision shall allow provisional cohabitation between the minor and persons considered eligible for such adoption to commence prior to the Public Institution submitting the appropriate proposal to the Judge to constitute the adoption, until the appropriate judicial resolution is handed down, in order to avoid the minor having to remain in a protection centre or with another family during that time. This may take place by the relevant delegation of keeping by the Public Institution.

In relation to the adoption procedure, Article 177 adds, among those who must consent the adoption, the person to whom the party is bound in a similar relation of affection to the marital one. On the other hand, in order to provide coherence to the system, it is pointed out that, without prejudice to the right to be heard, it shall not be necessary for parents to consent to adoption if two years have elapsed without actions having been taken to revoke the situation of distress, or if, these having been exercised, these have been rejected. Likewise, it is established in this Article that consent by the mother may not be granted until 6 weeks have elapsed since childbirth, instead of the 30 days now in force, thus complying with the terms set forth in the European Convention on Adoption made in Strasbourg on 27<sup>th</sup> November 2008 and ratified by Spain.

Article 178 includes, as an important novelty, the possibility that, in spite of the legal bonds between adoptees and family of origin being extinguished on constitution of the adoption, they may maintain some kind of relation or contact with it through visits or communications, which may be called an open adoption. To that end, it shall be necessary that the resolution constituting the adoption be resolved thus by the Judge, at the proposal of the Public Institution, with positive prior assessment of the interest of minor by the

professionals appointed by that Public Institution, and consented by the adoptive family and minors with sufficient maturity and, in all cases, if more than twelve years old. The professionals of the Public Institution must provide a basis for their reports and participate in monitoring that relation, reporting on whether or not this may remain over time, based on assessment of the results and consequences it may have for the minor, as an absolute priority, beyond the interest that might be held by the adoptive parents and the original family.

It is a figure established with a different scope and content in the legislation of diverse countries, such as the United States of America, Great Britain, Austria, Canada or New Zealand. In some cases, it is configured as “a private agreement between the parties”, with supervision and support by the Public Institutions, and in others it must be confirmed by a Judge, whose duty it is to decide on possible amendment or conclusion thereof, which is the model included in this Act.

The opportunity to introduce this figure in our legislation is due to the search for consensual, family and permanent alternatives to allow family stability to be provided to some minors, especially older ones, whose adoption gives rise to more difficulties. Open adoption makes the institution of adoption more flexible, allowing the family of origin to accept the “loss” better, and for minors to be able to benefit from a stable family with the adoptive family, maintaining bonds with the family they are from, especially with their siblings, and with which, in many cases, they have maintained a relation during fostering, a relation that, although not formalised, continues *de facto*.

Article 180 reinforces the right of access to the origins of adopted persons, obliging the Public Institutions to guarantee this and to store the information for the term foreseen in the European Convention on Adoption, and the rest of entities to collaborate with the former and with the State Prosecutor.

Article 216 contains a limitation on active legitimacy to request the measures and provisions foreseen in Article 158 of the Civil Code, in the case of minors who under protection by the Public Institution, at its request, that of the State Prosecutor or of the actual minor.

The appropriate amendments are introduced in the regulation of ordinary protection of minors and persons with judicially modified capacity in a situation of distress foreseen in Articles 239 and 239 bis. On the other hand, Article 303 includes the possibility to judicially grant protective powers to *de facto* guardians. Cases of *de facto* guardianship are also established, that must provide reasons for the declaration of distress and cases in which one must proceed to deprive the parents of their parental authority or appoint a tutor.

Finally, a new drafting is given to Articles 1263 and 1264, in relation to consent provided by minors in certain scopes.

#### IV

The amendments proposed in the Act on Intercountry Adoption respond to various needs. On one hand, it clarifies the scope of application of the Act that, as initially drafted, only referred to the content of Titles II and III, ignoring Title I, and that defines the concept of Intercountry Adoption for the purposes thereof as set forth in The Hague Convention of 1993, whilst with the definition recorded in Section 2 of Article 1, the provisions of Title I were not applicable to many of the cases of intercountry adoptions without international displacement of the minors, having caused confusion in specific situations.

The powers of the diverse Public Administrations are defined. Thus, it determines that a decision to initiate, suspend or limit processing of adoptions with certain countries is a power of the General State Administration, due to it affecting foreign policy, as well as accreditation of the bodies that are to act as intermediaries in intercountry adoptions, in the terminology of The Hague Convention aforesaid, called intercountry adoption collaboration

bodies, without prejudice to the necessary intervention by the Public Institutions of the Autonomous Communities.

On the other hand, regional power is maintained for control, inspection and monitoring the authorised bodies with regard to their actions within the territory, although it is foreseen that the General State Administration shall be competent for control and monitoring with regard to the intermediation the accredited body carries out abroad.

Emphasis is placed on the best interest of the minor as a fundamental consideration in the adoption and the future adoptive parents are defined, not as applicants, but as persons offering to adopt. According to the terminology

Moreover, the provisions to guarantee intercountry adoptions are reinforced, stating that they may only be performed through intermediation by accredited bodies and in the cases of countries that are signatories of The Hague Convention and under certain conditions by intermediation by the Public Institutions. Reinforcement of controls regarding undue financial benefit is implemented in Articles 4, 6 and 26.

Article 11 provides clearer detail of the obligations of the adoptive parents, both in the pre-adoptive phase, as prior information and training is the best guarantee for success in adoptions, as well as in the post-adoptive phase, by establishment of the judicial consequences of breach of the post-adoptive obligations that the parents and the Public Administrations are bound to comply with according to the countries of origin of the minors.

Major amendments are introduced in the rules of Conflict of Laws that are basically cover the following matters: suppressing references to amendment and review of the adoption, legal figures that do not exist under our Law (Article 15); improving the regulation on consular adoption, including it in the cases in which a proposal by the Public Institution is not required (Article 17); establishing the impossibility of constituting adoptions of minors whose national law prohibits this, with some specifications, to avoid the existence of partially recognised adoptions that are severely detrimental to the legal security of the minor (Article 19.4); amendment of the cases of recognition of adoptions constituted by foreign authorities, reformulating control of the international power of the foreign authority by determining reasonable bonds with the foreign State whose authorities have constituted these, that may be valued through bilateralisation of the Spanish rules on jurisdiction foreseen in Articles 14 and 15 of the Act, which allow the authority recognising to perform its duty without having to resort to a complex, unnecessary proof of foreign law. On the other hand, the case of control of the law applied or applicable is substituted, this being beyond the scope of the Spanish system to recognise foreign decisions and resolutions, by that of adoptions constituted abroad not contradicting Spanish public order, specifying this undetermined legal concept in cases of adoptions in which consent by the family of origin has not existed, where it has not been informed, or has been obtained by means of a price, to avoid cases of “stolen children” arising within this scope of intercountry adoption.

Finally, Article 24 is amended to regulate international cooperation by authorities in cases of adoptions performed by a Spanish adoptive parent resident in the country of origin of the child adopted.

Lastly, and with regard to the other measures for protection of minors, the appropriate reference is introduced to the two European Community Regulations and to The Hague Convention, that are essential in this matter, and the system for recognition of these measures in Spain is improved, in a similar way to that foreseen under French law, that has recently been backed by the European Court of Human Rights in the case of “Harroudj vs. France”, of 4<sup>th</sup> January 2013.

The Civil Procedure Act is amended in order to reinforce effective judicial protection of defence of the rights and interests of the minors, introducing improvements in the existing proceedings, aimed at making them more effective and clarifying points that, in practice, have given rise to contradictory interpretations.

In order to strengthen the principle of swiftness that is vital to proceedings concerning the interests of minors, and in order to avoid contradictory resolutions, provisions are introduced in line with the provisions of the Organic Act on Legal Protection of Minors, to promote accumulation if there are various procedures to impugn administrative resolutions in ongoing matters of protection that affect the same minor.

Due to this, in Article 780 of the Civil Procedure Act the general rule of accumulation of procedures is introduced and a special provision is included in Article 76, to determine that, in general terms, all the procedures of opposition to administrative resolutions that are followed with regard to a same minor are accumulated to the oldest of them and are followed and resolved with the due procedural economy, by the same Court. This is guaranteed by foreseeing that the accumulation shall be promoted, even of its own motion, by the Court that is hearing the existence of second or subsequent proceedings.

The need to clarify procedural aspects of protection of childhood and adolescence is shown in the present regime of provisional enforcement of judgments handed down in proceedings to oppose administrative resolutions in matters of protection of minors. Although the widespread interpretation of Article 525 of the Civil Procedure Act presently leads to impossibility of provisional enforcement of such judgments and, in particular, those handed down as a consequence of proceedings among those foreseen by Article 780 of the Civil Procedure Act, the fact is that the literal text of Section 1 of said Article 525 does not clearly and specifically refer to these.

Thus, this Article specific, clearly and decisively introduces prohibition of provisional enforcement of judgments handed down in proceedings to oppose administrative resolutions in matters of protection of minors, in order to avoid harm to minors that would be caused by revocation of a judgment of such a nature under provisional enforcement. When the judgment handed down at first instance decides to revoke a protection measure and the Public Institution or State Prosecutor appeal, the best interest of minors requires no change in their status until the matter is resolved at second instance, as another approach could severely harm the rights and disturb the necessary stability of the family relations. This more than sufficiently justifies the specific provision of excluding provisional enforcement of such judgments.

On the other hand, Articles 779 and 780, in addition to including the necessary terminological adaptations in keeping with the Organic Act on Legal Protection of Minors, it unifies the term of two months to lodge opposition with regard to all the administrative resolutions in matters of protection of minors, eliminating the distinction made with regard to declarations of distress.

A same procedure is established to oppose all administrative resolutions, regardless of their content or the persons affected, increasing the active legitimacy.

And, finally, with the reform of Article 781, cases in which, during the adoption proceedings, the parents of the adoptee call to be recognised the need for their consent to the adoption to be granted, shall be concentrated in single proceedings, in order to provide a unity of action to such claims, which shall ensure the proceedings are expedited.

## VI

Final Provision One amends the Contentious-Administrative Jurisdiction Act. Attribution of the competence to authorise entry to a home to enforce an administrative resolution in matters of protection of minors to the Court of First Instance instead of the

Contentious-Administrative Courts, as up to present, makes it necessary to amend the competences attributed to these in said law.

The Patient Autonomy Act is reformed in Final Provision Two, including the criteria recorded in Circular 1/2012 by the State Prosecutor General on substantive and procedural treatment of disputes regarding blood transfusions and other medical intervention on minors in the case of severe risk. The conclusions of the Circular consider the necessary introduction of the subjective criteria of maturity of the minor along with the objective ones, based on age. This mixed criterion is set forth in the legal text.

For greater clarity, a new Section 4 is introduced in Article 9 regarding emancipated minors or those over the age of 16 in relation to whom consent may not be granted by representation, except in the case of an action involving severe risk to life or health.

Moreover, that Article 9 adds a Section 6 that establishes that in cases when the consent has to be granted by the legal representative or persons bound by a family or *de facto* relationship, the decision must always be taken in the best interests of the life or health of the patient, and otherwise the judicial authority must be informed, directly or through the State Prosecutor, to adopt the relevant resolution.

Final Provision Three amends the Workers' Statute, Article 37, Section 3.f), foresees worker's leave "for the indispensable time to perform prenatal examinations and techniques for preparation for childbirth that must be carried out during the working day". This Article only takes into account the biological maternity and not adoptive maternity/paternity and, in some cases, foster family care. The families adopting, carers for the purposes of adoption and foster families, in some Autonomous Communities, are required to attend mandatory information and preparation sessions and, in the case of adoption, they must obtain a requisite certificate of eligibility after a psycho-social study that, on occasions, involves more than five interviews. These legal requisites may be considered, in themselves, a preparation for adoption and must thus be considered in the provisions as paid leave, as they are mandatory for all families adopting, on the contrary to preparation for childbirth, which is not. Moreover, in these cases, both parents must attend the preparation and interviews, on the contrary to prenatal examinations and techniques to prepare for childbirth, if it is only strictly necessary for the mother to attend. Due to all this, the amendment establishes equivalence between adoptive or foster families and biological ones.

In relation to this initiative, it must be pointed out, although the amendment introduced would be applicable to the employees of the Public Administrations, it is not applicable to civil servants, which are governed by the terms set forth in Act 7/2007, dated 12<sup>th</sup> April. Thus, Final Provision Four includes amendment of Article 48, letter e), of this Act, which envisages the same provision as in the Workers' Statute, in order that civil servants may also enjoy such leave.

Final Provision Five amends Act 40/2003, dated 18<sup>th</sup> November, on Protection of Large families, to reform the maintenance conditions for the purposes of the Official Title of Large Family. The present regulations condition the currency of the title to the fact the number of children fulfilling the requisites foreseen is the minimum established. This means that if the elder siblings leave the category due to ceasing to fulfil the requisite of age, the family may fundamentally forfeit the right to the status if less than three or two siblings who fulfil the requisites are left, giving rise to the paradox that the minor siblings who have generated the right to the status for the family subsequently not being able to enjoy those benefits. Bearing in mind that an extremely high percentage of the current large family titles are held by those with two or three children, the eldest reaching the maximum age most frequently leads to loss of the title and of the benefits for the whole family. Due to this, this reform aims to accommodate the effective situation of large families and to avoid a situation of discrimination between the siblings.

Final Provisions Six and Seven introduce sundry amendments to Organic Act 2/2006, dated 3<sup>rd</sup> May, on Education, and of the Organic Act 8/2013, dated 9th December, for Improvement of Educational Quality, to review the criteria for assignment of school places with a view to taking into account the legal status of a large family and situation of foster family care regarding a pupil, as well as increasing number of reserved places at schools for cases of commencement of a foster family care measure regarding a pupil.

Final Provision Eight amends Act 43/2006, dated 29<sup>th</sup> October, to improve growth and employment, as a consequence of the need for protection of persons who have been victims of trafficking with persons.

Final Provision Nine amends Act 39/2006, dated 14<sup>th</sup> December, on Promotion of Personal Autonomy and Attention for persons in a situation of dependence in order that financial pensions may not be seized, except in the case of payment of allowances, in which the Court shall set the sum that may be seized. This preserves the interest of the minor, to whom the person in a situation of dependence might owe a maintenance allowance.

Due to its transcendence and importance, emphasis must be given to Final Provisions Ten to Fourteen that introduce amendments to General Social Security Act, State Passive Classes Act, Criminal Procedure Act and Act regulating the Social Jurisdiction, in order to regulate the consequences of the offence of culpable homicide within the scope of pensions due to death and survival in the Social Security system, in favour of relatives under the Regime of State Passive Classes, from a global perspective that reinforces combating gender violence and guarantees the rights of the most vulnerable groups, especially minors.

More specifically, the new regulations prevent access to said pensions and maintenance of their enjoyment by those sentenced by a final judgment for having committed a culpable offence of homicide, in any of its forms, if the victim is the subject causing the subsidy. And all this is accompanied by instruments that, from respect for the necessary legal guarantees, allow the Administration to injunctively suspend payment of the pensions that, in the event, may have been recognised prior to the moment of the court decision against the applicant having been handed down, giving rise to prima facie evidence of that offence, as well as review, of its own motion, of the rights recognised, if a final judgment in that regard is handed down. Moreover, the necessary communication and coordination mechanisms are articulated with the Courts of Law for more adequate application of the new provisions, within a context that also pays attention to the rights of the orphans, in order to avoid persons sentenced for the crime of culpable homicide being able to receive the relevant pension on their behalf, also considering the relevant increases in amount if the widowhood pension is refused or withdrawn from those sentenced.

A new regulatory environment is thus considered, that improves that which previously existed, and amounts to a major additional step from the perspective of social protection mechanisms within an especially sensitive area, in which there must be initiatives and actions from the different areas to guarantee a framework of integral protection.

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

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

One. The heading of Title I is hereby amended and shall henceforth be drafted as follows:

“TITLE I

## **On the rights and duties of minors”**

Two. Sections 1 and 3 of Article 5 are hereby amended and shall henceforth be drafted as follows:

“1. Minors are entitled to seek, receive and use adequate information for their development.

Special care shall be paid to digital and media literacy, in a manner adapted to each stage of evolution, to allow minors to act in line with safety and responsibility and, in particular, to identify situations of risk arising from use of new information and communication technologies, as well as tools and strategies to deal with those risks and to protect themselves from them.”

“3. The Public Administrations shall incentivise production of informative and other materials intended for minors, that respect the criteria stated, whilst providing minors access to services of information, documentation, libraries and other cultural services, including adequate awareness of the legal leisure and cultural offer on the Internet and regarding defence of intellectual property rights.

In particular, they shall ensure the messages intended for minors in the media promote values of equality, solidarity, diversity and respect for others, avoid images of violence, exploitation in interpersonal relations, or that portray degrading or sexist treatment, or discriminatory treatment of persons with disability. Within the scope of self-regulation, the competent authorities and bodies shall encourage generation and supervision and fulfilment of codes of conduct among the media aimed at safeguarding promotion of the aforesaid values, limiting access to digital images and content that is harmful for minors, pursuant to the terms considered in the codes for self-regulation of approved content. Accessibility shall be ensured with the required reasonable adjustments in those materials and services, including those of a technological kind, for minors with disability.

The public authorities and providers shall encourage full enjoyment of audiovisual communication by minors with disability and use of good practices to avoid discrimination of or negative repercussions to such persons.”

Three. Section 1 of Article 7 is hereby amended and shall henceforth be drafted as follows:

“1. Minors are entitled to full participation in social, cultural, artistic and recreational life in their environment, as well as progressive inclusion as active citizens.

The public authorities shall promote constitution of participatory bodies for minors and social organisations for childhood and adolescence.

Accessibility shall be guaranteed for environments and provision of reasonable adjustments so minors with disability may develop their social, cultural, artistic and recreational life.”

Four. A new Chapter III is hereby introduced in Title I, drafted as follows, and the present Chapter III becomes Chapter IV:

### **“CHAPTER III Duties of minors**

Article 9 bis. *Duties of minors.*

1. Minors, according to their age and maturity, shall accept and fulfil the duties, obligations and responsibilities inherent or arising from holding and exercising the rights they are recognised in all the scopes of life, both family, school as well as social.

2. The public authorities shall promote performance of actions aimed at encouraging knowledge and fulfilment of the duties and responsibilities of minors under conditions of equality, non-discrimination and universal access.

*Article 9 ter. Duties regarding the family environment.*

1. Minors shall participate in family life, respecting their parents and siblings, as well as other relatives.

2. Minors shall participate and accept joint responsibility in caring for the home and in performing domestic tasks according to their age, their level of personal autonomy and capacity, regardless of their gender.

*Article 9 quater. Duties regarding the school environment.*

1. Minors shall respect the rules of cohabitation in schools, study during the stages of compulsory education and have a positive attitude to learning during the educational process.

2. Minors shall respect their teachers and other school employees, as well as the rest of their colleagues, avoiding situations of conflict and bullying in all their forms, including cyber-bullying.

3. The educational system shall implement awareness that minors must have of their rights and duties as citizens, which shall include those arising from the use of information and communications technologies within the teaching environment.

*Article 9 quinquies. Duties regarding the social environment.*

1. Minors shall respect the individuals they interact with and the environment in which they interact.

2. In particular, their social duties include:

a) Respecting the dignity, integrity and privacy of all persons with which they have relations, regardless of their age, nationality, racial or ethnic origin, religion, gender, sexual orientation and identity, disability, physical or social characteristics, or appurtenance to certain social groups, or any other personal or social circumstance.

b) Respecting the laws and rules applicable to them and the fundamental rights and liberties of other persons, as well as undertaking a responsible, constructive attitude towards society.

c) Preserve and make good use of public or private resources, facilities and equipment, urban fixtures and any others where their activity takes place.

d) To respect and know the environment and animals and collaborate in their conservation within sustainable development.”

Five. Sections 1, 3 and 4 are hereby amended and a new letter f) is hereby included in Section 2 and a Section 5 in Article 10, which shall henceforth be drafted as follows:

“1. Minors are entitled to receive information in an accessible format from the Public Administrations, or through collaborating entities, and adequate assistance to effectively exercise their rights, as well as to ensure their respect is guaranteed.”

“2. (...)

f) To submit individual complaints to the Committee for Children’s Rights, pursuant to the terms of the Convention on the Rights of the Child and the implementing provisions thereof.”

“3. Foreign minors who are in Spain are entitled to education, healthcare and basic social services, under the same conditions as Spanish minors. The Public Administrations shall safeguard especially vulnerable groups such as unaccompanied foreign minors, those who have needs for international protection, minors with disability and those who are victims of sexual abuse, sexual exploitation, child pornography, of slavery or trafficking with persons, guaranteeing compliance with the rights foreseen by law.

In designing and preparing public policies, the public authorities shall have the objective of achieving full integration of foreign minors in Spanish society, whilst they remain in Spain, pursuant to the terms established in Organic Act 4/2000, of 11<sup>th</sup> January, on the rights and liberties of aliens in Spain and their social integration.

4. If a Public Institution undertakes protection of a foreign minor who is in Spain, the General State Administration shall provide the documentation to prove his status and a resident’s permit, if he does not have one, as swiftly as possible, once it has been proven that it is impossible for them to return to their family or country of origin, and as provided in the regulations in force on matters of alien citizens and immigration.

5. With regard to minors who are under protection or guardianship of the Public Institutions, recognition of their status as insured with regard to healthcare shall be performed at the institution’s own initiative, on production of the certification of protection or keeping issued by the Public Institution, during the period this lasts.”

Six. Article 11 is hereby amended and shall henceforth be drafted as follows:

“Article 11. *Principles governing administrative action.*

1. The Public Administrations shall provide minors adequate assistance to exercise their rights, including the supporting resources required.

In the fields inherent to them, the Public Administrations shall articulate comprehensive policies aimed at developing childhood and adolescence and, especially, those related to the rights listed in this Act. Minors shall be entitled to access those services themselves or through their parents, tutors, keepers or foster parents who, in turn, shall have the duty to use them in the interest of the minors.

Compensatory policies shall be promoted, aimed at correcting social inequality. In all cases, the essential content of the rights of the minor cannot be affected by lack of basic social resources. Minors with disability and their families shall be guaranteed the specialised social services their disability requires.

The Public Administrations shall take into account the needs of minors in exercising their powers, especially in matters of control over food products, consumption, housing, education, health, social services, culture, sport, shows, the media, transport, free time, play, open spaces and new technologies (ICTs).

The Public Administrations shall particularly take into consideration adequate regulation and supervision of the spaces, centres and services where minors are usually to be found, with regard to their physical and environmental, hygienic and health conditions, accessibility and universal design and human resources, as well as their inclusive educational projects, to participation by minors and other conditions that contribute to assure their rights.

2. The governing principles of action by the public authorities in relation to minors are:

- a) The primacy of their best interest.
- b) Remaining with their family of origin, except if it is not convenient for their interest, in which case adoption of stable family protection measures shall be guaranteed, with priority, in these cases, for foster family over institutional care.
- c) Their family and social integration.
- d) Prevention and early detection of all situations that may harm their personal development.
- e) Awareness of situations of lack of protection among the population.
- f) The educational nature of all the measures adopted.
- g) Promotion of participation, voluntary work and social solidarity.
- h) Objectivity, impartiality and legal security in protective actions, guaranteeing the collegiate, interdisciplinary nature in adoption of the measures that affect these.
- i) Protection against all kinds of violence, including physical or psychological abuse, humiliating and denigrating physical punishment, lack of care or negligent treatment, exploitation, that performed through the new technologies, sexual abuse, corruption, gender violence or that within the family, healthcare, social or social setting, including harassment in school, as well as slavery and trafficking with persons, feminine genital mutilation and any other kind of abuse.
- j) Equal opportunities and non-discrimination due to any circumstance.
- k) Universal access for minors with disability and reasonable adjustments, as well as their inclusion and full and effective participation.
- l) Free development of their personality according to their sexual orientation and identity.
- m) Respect for and positive consideration of ethnical and cultural diversity.

3. The public authorities shall perform actions aimed at awareness-raising, prevention, detection, notification, assistance and protection against any kind of violence against childhood and adolescence through procedures that assure coordination and collaboration between the different Administrations, collaborating entities and competent services, both public as well as private, to guarantee comprehensive action.

4. The Public Institutions shall provide programmes and resources intended to support and advice for those in care who come of legal age and are no longer within the protection system, with special attention to those with disabilities.”

Seven. Article 12 is hereby amended and shall henceforth be drafted as follows:

“Article 12. *Actions for protection.*

1. Protection of minors by the public authorities shall be performed by prevention, detection and repair of situations of risk, with establishment of the appropriate services and resources for that purpose, exercise of keeping and, in cases of declaration of distress, by guardianship being taken by operation of the law. In all cases, protection actions shall give priority to family measures over residential ones, stable over temporary and consensual over imposed ones.

2. The public authorities shall ensure that parents, tutors, keepers or fosterers adequately fulfil their responsibilities and they shall be provided accessible services for prevention, advice and to accompany them in all the areas that affect development of the minors.

3. If minors are under parental authority, guardianship, keeping or fostering a victim of gender or domestic violence, the actions by the public authorities shall be aimed at

guaranteeing the necessary support to ensure the minors remain with them, regardless of their age, as well as for their protection, specialised care and recovery.

4. If the legal age of a person cannot be established, he shall be considered a minor for the purposes foreseen in this Act, until his age is determined. To that end, the State Prosecutor shall make a proportionally based judgment that adequately weighs up the reasons due to which it is considered that the passport or equivalent identity document produced, if appropriate, is not reliable. Performing medical tests to determine the age of minors shall be subject to the principle of swiftness, shall require prior informed consent from the persons concerned and shall be carried out with respect for their dignity, without it involving risk to their health, and may not be applied indiscriminately, especially if invasive.

5. Any non-permanent protection measure that is adopted with regard to minors under three years of age shall be reviewed every three months, and with regard to children over that age, shall be reviewed every six months. In permanent fostering, the review shall take place every six months in the first year, and every twelve months after the second year.

6. Moreover, of the different functions attributed by law, the Public Institution shall convey to the State Prosecutor a justificatory report on the situation of a specific minor when in temporary residential or foster family care for a period exceeding two years, and the Public Institution shall justify the reasons due to which a protective measure of a more stable nature has not been adopted during that interval.

7. The public authorities shall guarantee the rights and obligations of minors with disability with regard to their custody, guardianship, keeping, adoption or similar institutions, safeguarding the best interest of the minor to the greatest extent. They shall also guarantee that minors with disability have the same rights with regard to family life. In order to make these rights effective and in order to prevent their concealment, abandonment, negligence or segregation, they shall ensure that information, services and general support are provided in advance to minors with disability and their families.”

Eight. Section 1 is hereby amended, and Sections 4 and 5 are hereby added to Article 13, which shall henceforth be drafted as follows:

“1. All persons or authorities, and especially those who, due their profession or function, detect a situation of abuse, of risk or possible distress of a minor, shall notify the authority or its nearest agents, without prejudice to providing the immediate help required.”

“4. All persons who obtain information, through any source of information, of an act that may constitute an offence against sexual liberty and indemnity, of trafficking with persons, or exploitation of minors, shall be bound to make it known to the State Prosecutor, without prejudice to the terms set forth in the criminal procedural legislation.”

“5. It shall be a requisite for access to and exercise of professions, trades and activities that involve habitual contact with minors not to have been sentenced by final judgment for any offence against sexual liberty and indemnity, that includes aggression and sexual abuse, sexual harassment, exhibition and sexual provocation, prostitution and sexual exploitation and corruption of minors, as well as trafficking with persons. To that end, those wishing access to such professions, trades or activities shall prove that circumstance by producing negative certification issued by the Central Register of Sex Offenders.”

Nine. Article 14 is hereby amended and shall henceforth be drafted as follows:

“Article 14. *Immediate attention.*

The public authorities and services shall be bound to provide immediate attention that is required by any minor, to act if it corresponds to their scope of competences, or otherwise

to transfer the case to the competent body and to notify the legal representatives of the minor of the facts or, if necessary, the Public Institution and State Prosecutor.

In fulfilment of the obligation to provide immediate attention, the Public Institution may undertake immediate care, with provisional keeping of minors pursuant to Article 172.4 of the Civil Code, of which the State Prosecutor shall be notified, simultaneously proceeding to investigating their circumstances and to verify, in the event, the real situation of distress.”

Ten. Article 17 is hereby amended and shall henceforth be drafted as follows:

“Article 17. *Actions in a situation of risk.*

1. A situation of risk is that in which, due to circumstances, failings or family, social or educational conflict, minors are harmed in their personal, family, social or educational development, in their well-being, or in their rights so that, without attaining the importance, intensity or persistence on which the declaration of their situation of distress would be based and guardianship would be undertaken by the State Prosecutor, it is necessary for the competent public administration to intervene to eliminate, reduce or compensate the difficulties or lack of adaptation that affect them and to avoid their distress and social exclusion, without having to be separated from their family environment. To those ends, it shall be considered a sign of risk, among others, to have a sibling declared in such a situation, except if the family circumstances have evidently changed. Concurrence of material circumstances or shortfalls shall be considered a risk indicator, but it may never lead to separation from the family environment.

2. In a situation of risk of any kind, intervention by the competent public administration shall guarantee the rights of the minor in all cases, and guidance shall be provided to decrease the indicators of risk and difficulty of these affecting the personal, family and social situation they are experiencing, and to promote measures for protection and preservation of the family environment.

3. Intervention in the situation of risk corresponds to the competent public administration pursuant to the terms set forth in the applicable State and regional legislation, in coordination with schools and social and healthcare services, and in the event, with collaborating entities within the respective territorial scope, or any others.

4. The assessment of the situation of risk shall involve preparation and start-up of a family social intervention and education project that shall include the objectives, actions, resources and schedule of terms, promoting factors for protection of minors and maintaining them within their family environment. Participation by the parents, tutors, carers or foster families shall be sought in preparing the project. In any event, their opinion shall be heard and taken into account in attempting to establish a consensus regarding the project, which shall be signed by the parties, for which they shall receive understandable notice in an accessible format. The minor shall also be notified and consulted if sufficiently mature and, in all cases, as of twelve years of age.

5. Parents, tutors, carers or fosterers, within their respective functions, shall collaborate actively, according to their capacity, in implementation of the measures stated in said project. Failure to collaborate as foreseen therein shall give rise to the minor being declared at risk.

6. The situation of risk shall be declared by the competent public administration pursuant to the terms set forth in the applicable State and regional legislation, by means of a reasoned administrative resolution, with prior hearing of the parents, tutors, carers or fosterers and of the minor if sufficiently mature and, in all cases, as of the age of twelve years. The administrative resolution shall include the measures tending to correct the situation of risk for the minor, including those related to respect for parents, tutors, carers or fosterers. An appeal

may be filed against the administrative resolution that declares the situation of risk to the minor, pursuant to the Civil Procedure Act.

7. If the competent public administration is performing an intervention regarding a situation of risk for a minor and obtains news that the child is to be transferred to the scope of another territorial entity, the public administration of origin shall notify that of destination in order that, if appropriate, it may continue with the intervention it had been performing, forwarding the necessary information and documentation. If the public administration of origin ignores the destination, it may request aid from the Security Forces and Corps in order to proceed to ascertain this. Once the location of the minor, is known, it shall inform the competent Public Institution in that territory, which shall continue the intervention.

8. In cases in which, in order to assess and intervene in a matter of risk, the competent public administration deems there is a situation of risk that may require the minor to be separated from the family environment, or if no changes have been achieved in performing the duties of keeping that guarantee that the minor has the necessary moral or material assistance after the period foreseen in the intervention project or Convention has concluded, the Public Institution shall be notified in order for it to appraise the appropriateness of proceeding to declare the situation of distress, notifying the State Prosecutor.

If the Public Institution considers it is not appropriate to declare a situation of distress, in spite of the proposal in that sense submitted by the competent public administration for it to assess the situation of risk, it shall notify the public administration that has intervened in the situation of risk and the State Prosecutor. The latter shall supervise the situation of the minor, to which end it may obtain collaboration from schools, the social health, or any other services.

9. The competent public administration to intervene in the situation of risk shall adopt the adequate measures for prevention, intervention and monitoring situations of possible prenatal risk, in collaboration with the relevant health services, in order to subsequently avoid an eventual situation of risk or distress of the new born child. To these ends, a prenatal situation of risk shall be understood as lack of physical care of the pregnant women, or abusive consumption of substances with addictive potential, as well as any other action by the woman herself, or third parties tolerated by her, that is harmful to normal development, or that may cause the new born child illnesses or physical, mental or sensorial anomalies. The health services and health personnel shall notify the competent public administration and State Prosecutor of such a situation. After childbirth, intervention shall continue with the minor and family unit so that, if necessary, a situation of risk or distress of the minor may be declared to ensure adequate protection.

10. Refusal by parents, tutors, carers or fosterers to provide consent regarding the necessary medical treatment to safeguard the life or physical or mental integrity of a minor constitutes a situation of risk. In such cases, the health authorities shall immediately inform the judicial authority of such situations, directly or through the State Prosecutor, in order for the appropriate decision to be made to safeguard the best interest of the minor.”

Eleven. Article 18 is hereby amended and shall henceforth be drafted as follows:

“Article 18. *Actions in a situation of distress.*

1. If the Public Institution becomes aware of a minor in a situation of distress, it shall act in the manner foreseen in Article 172 and following of the Civil Code, undertaking protection thereof pursuant to the law, adopting the appropriate protective measures and notifying the State Prosecutor and, in the event, the Judge who ordered the ordinary guardianship.

2. Pursuant to the terms set forth in Article 172 and following of the Civil Code, a situation of distress shall be considered as arising de facto due to a breach, or to the exercise

of the protective duties established in the laws on keeping of minors being impossible or inadequate, if they are deprived of the necessary moral or material assistance.

The situation of poverty of parents, guardians or carers may not be taken into account to evaluate a situation of distress. Likewise, under no circumstance shall a minor be separated from their parents due to the minor's disability, that of both parents or one of them.

Among others, having a sibling declared in such a situation shall be considered a sign of distress, except of the family circumstances have evidently changed.

In particular, there shall be understood to be a situation of distress when any one or more of the following circumstances concur with sufficient severity that, if evaluated and pondered pursuant to the principles of need and proportionality, these amount to a threat to the physical or mental integrity of the minor:

a) Abandoning the minor, either because the persons who are legally required to provide care are missing, or because they do not or cannot exercise such care.

b) Should the term of voluntary care elapse, either when those legally responsible are in conditions to take charge of caring for the minor and do not wish to undertake this, or when they wish to, but do not fulfil the conditions to do so, notwithstanding exceptional cases in which voluntary care may be extended beyond the term of two years.

c) Risk to the life, health and physical integrity of the minor. In particular, when there is severe physical abuse, sexual abuse or severe negligence in fulfilling the obligations to provide food and healthcare by persons within the family unit or third parties with their consent; also when the minor is identified as a victim of trafficking with persons and there is a conflict of interests with the parents, guardians and carers; or when there is reiterated consumption of substances with addictive potential or other kinds of addictive conduct that takes place repeatedly by the minor with the knowledge, consent or tolerance of the parents, tutors or carers. Such consent or tolerance is understood to exist when the necessary effort has not been made to palliate such conduct, as well as to request advice, or not having collaborated sufficiently in the treatment, once it is known. Distress is also understood to exist when severe damage is caused to the new born child by prenatal abuse.

d) Risk to the mental health, moral integrity and development of personality of the minor, due to continued psychological abuse, or severe, chronic lack of attention of affective or educational needs by parents, tutors or carers. If such lack of attention is conditioned by severe mental disorder, by usual consumption of substances with an addictive potential, or by other usual addictive conduct, absence of treatment facilitated by parents, tutors or carers or failure to collaborate sufficiently during its administration, shall be considered a sign of distress.

e) Breach of, or impossible or inadequate exercise of the duties of care as a consequence of severe deterioration of the family environment or the living conditions, when these give rise to circumstances or behaviours that harm the minor's development or mental health.

f) Encouragement to begging, criminal offences or prostitution, or any other exploitation of the minor of a similar nature or severity.

g) Absence of schooling or repeated failure to attend school that is not adequately justified, and continued permissiveness, or encouraging absenteeism during the stages of mandatory schooling.

h) Any other situation that is extremely harmful to the minor that arises from breach or it being impossible or inadequate to exercise parental authority, guardianship or care, the consequences of which cannot be avoided whilst remaining in that cohabitation environment.

3. Each Public Institution shall appoint a body that shall exercise guardianship according to its organic operating structures.

4. In the event of permanent transfer of residence of a minor subject to a protection measure from the Autonomous Community that adopted it to another one, it is their remit of

the latter to undertake that measure or to adopt the appropriate one within the maximum term of three months from the latter being informed of the transfer by the former. Notwithstanding the foregoing, when the family of origin of the minor remains in the Autonomous Community of origin and family reunion is foreseeable in the short or medium term, the measure adopted shall be maintained and the Public Institution of the place of residence of the minor shall collaborate in monitoring progress. It shall not be necessary to adopt new protection measures in cases of temporary transfer of a minor to a residential centre located in another Autonomous Community, or when fostering with a family resident there is established, with agreement between both Autonomous Communities.

5. In cases in which a situation of possible lack of protection of a minor of Spanish nationality who is abroad is detected, the relevant Public Institution in the Autonomous Community where the parents or tutors of the minor reside shall be competent to provide protection in Spain. Failing that, the relevant Public Institution in the Autonomous Community with which the minor or relatives have the closest bonds shall be competent. When, according to such criteria, it is not possible to determine the competence, the Public Institution of the Autonomous Community where the minor or relatives had their last usual residence shall be competent.

In all cases, when minors who are abroad have been subject to protection measure in Spain prior to travel, the Public Institution that holds the guardianship or protection shall be competent.

Possible conflicts of competence that may arise shall be resolved pursuant to the principles of swiftness and best interest of the minor, avoiding delay in making decisions that may cause the minor harm.

The General State Administration shall take charge of transferring the minor to Spain. The relevant Autonomous Community shall take on responsibility from the moment when the minor arrives in Spain.

6. In cases in which the protection measures adopted in a foreign State are to be fulfilled in Spain, one shall first attend to the terms set forth in Regulation (EC) no. 2201/2003, of the Council, of 27<sup>th</sup> November 2003, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental authority, repealing Regulation (EC) no. 1347/2000, or European regulation that may substitute it. In cases that are not regulated by European provisions, the international Treaties and Conventions in force for Spain shall apply, and especially, the Convention on competence, the applicable law, recognition and enforcement of co-operation in matters of parental authority and measures to protect children, made in The Hague on 19<sup>th</sup> October 1996, or convention that may replace it. In the absence of all international provisions, Spanish domestic law on effectiveness in Spain of measures to protect minors shall apply.”

Twelve. Article 19 is hereby amended and shall henceforth be drafted as follows:

“Article 19. *Care of minors.*

1. In addition to caring of minors who are in a situation of distress, the Public Institution shall undertake keeping pursuant to the terms foreseen in Article 172 bis of the Civil Code, if the parents or tutors cannot care for a minor due to severe transitional circumstances, or if ordered by a Judge in the legally appropriate cases.

2. Voluntary care shall have a maximum duration of two years, notwithstanding exceptional cases when the best interest of the minor makes it advisable to extend the measure due to foreseeable family reunion within a brief period of time.

In such cases of voluntary care, commitment by the family to submit to professional intervention if appropriate shall be necessary.”

Thirteen. An Article 19 bis is hereby included, drafted as follows:

“Article 19 bis. *Common provisions for care and guardianship.*

1. If a Public Institution undertakes guardianship or care for a minor, it shall prepare an individualised protection plan that shall establish the objectives, the outlook and the term of the intervention measures to be adopted with the family of origin, including, in the event, the programme for return to the family.

In cases involving minors with disabilities, the Public Institution shall guarantee continuity of the support that they have been receiving, or adoption of other more adequate ones for their needs.

2. If the prognostic gives rise to return to the family of origin, the Public Institution shall apply the family integration programme, all without prejudice to the terms set forth in the regulations on unaccompanied foreign minors.

3. To resolve to return a minor in distress to the family of origin shall necessarily verification of the positive evolution of the family, objectively sufficient to re-establish family life, as well as that the bonds have been maintained, that the intention of performing parental responsibilities adequately concurs and that it is verified that returning the minor to the family shall not entail significant risks for the minor, as set forth in the relevant technical report. In cases of foster family care, the decision on return shall weigh up the time elapsed and integration in the foster family and its environment, as well as development of affective bonds with it.

4. If family reunion is appropriate, the Public Institution shall carry out subsequent monitoring to support the minor’s family.

5. In the case of unaccompanied foreign minors, searching for their family and reestablishment of family life shall be attempted, initiating the relevant procedure, as long as it is deemed that said measure is in their best interest and does not place the minor or the family in a situation that would endanger their safety.

6. Minors and young women subject to protection who are pregnant shall receive advice and adequate support for their situation. The individual protection plan shall consider that circumstance, as well as protection of the new born child.”

Fourteen. Article 20 is hereby amended and shall henceforth be drafted as follows:

“Article 20. *Foster family care.*

1. Foster family care, in line with its purpose and regardless of the procedure resolving it, shall comply with the modes established in the Civil Code and, according to the bonds the minor has with the foster family, may take place within the minor’s actual extended family or with an unrelated family.

Fostering by an unrelated family may be specialised, this being understood as it taking place in a family where some of its members have qualification, experience and specific training to carry out that function with regard to minors with special needs or circumstances, with full availability and receiving the relevant financial compensation for this, without it giving rise to a labour relation in any case.

Professional specialised foster care may be established if, fulfilling the requisites stated above of qualification, experience and specific training, there is a labour relation between the fosterer or fosterers and the Public Institution.

2. Foster family care shall be formalised by resolution by the Public Institution that has the guardianship or care, with prior assessment of the adequacy of the family to foster.

Such assessment shall take into account their family situation and skill as educators, their capacity to adequately attend the needs of all kinds of the minor or minors concerned, the congruence between their motivation and the nature and purpose of the fostering according to its mode, as well as willingness to facilitate fulfilment of the objectives of the individual care plan and, if such exists, the family reunion plan, encouraging the minor's relation with the original family. The visitation regime may take place at the family encounter points provided, if this is advisable in the best interest of the minor and the right to privacy of the original and foster families. If the type of foster care makes this advisable, the adequacy of the age of the foster parents and that of the minor taken in shall be considered, as well as the prior relationship between them, prioritising, except if the interest of the minor advises otherwise, persons who, belonging to the extended family, fulfil adequate conditions for fostering.

3. The resolution on formalisation of the foster family care referred to in the preceding Section, resolved according to the terms foreseen in the Civil Code, shall be accompanied by an attached document that shall include the following particulars:

- a) The identity of the fosterer or fosterers and of the minor fostered;
  - b) The necessary consents and hearings;
  - c) The mode of care, duration foreseen for it, as well as its status as fostering in the extended family, or with an unrelated family due to the bonds of the minor with the family or person fostering;
  - d) The rights and duties of each one of the parties and, in particular:
    1. The visitation, stay, relations or communication regime, in cases of declaration of distress, for the family of origin, which may be amended by the Public Institution to attend to the best interest of the minor;
    2. The coverage system by the Public Institution for harm suffered by the minor, or that third parties may be caused;
    3. The fosterers bearing the expenses of upkeep, education and social and healthcare;
  - e) The content of monitoring that, according to the purpose of the care, is to be carried out by the Public Institution and the commitment to collaborate with that monitoring by the foster family;
  - f) In the case of minors with disability, the supporting resources required;
  - g) Financial compensation, technical support and other kinds of aid that, in the event, the fosterers are to receive;
  - h) The term after which the measure is to be reviewed.
- The resolution and the attached document shall be sent to the State Prosecutor within the maximum term of one month.”

Fifteen. Article 20 bis is hereby included, drafted as follows:

“Article 20 bis *Rights and duties of the foster families.*

1. Foster families shall be entitled to:
  - a) Receive information on the nature and effects of the fostering, as well as prior preparation, monitoring and specialised technical support during and on conclusion thereof. In the case of minors with disability, the fosterers shall be entitled to orientation, accompaniment and support in keeping with the minor's disability.
  - b) To be heard by the Public Institution before it adopts any resolution that affects the minor, especially prior to amendment temporary or suspension of the visitation regime or relation or communication with the family of origin.
  - c) To be informed of the individual protection plan as well as the protection measures related to the fostering that are adopted with regard to the minor fostered, on periodic reviews and to obtain information on the protection proceedings regarding the minor that are

necessary to exercise their functions, except for the matters related to the right to third party privacy and to protection of personal data.

d) To be party to all procedures to oppose protection measures and declaration of a situation of distress of the minor fostered and in all opposition procedures related to the measure of permanent foster family care with functions of protection that have been formalised.

e) To cooperate with the Public Institution in the plans of action and monitoring established for the foster care.

f) To obtain the identification, healthcare and educational documentation of the minor fostered.

g) To exercise all the rights inherent to guardianship.

h) To be respected by the minor fostered.

i) To obtain help from the Public Institution in exercising their functions.

j) To travel with the minor, as long as the Public Institution is informed and there is no opposition by it.

k) To receive economic compensation and other kinds of aid that have been stipulated, in the event.

l) To provide the minor fostered the same conditions as biological or adopted children, in order to make use of the family rights or obligations during the time the minor lives with them.

m) To continue relations with the minor when the fostering concludes, if the Public Institution understands this to be convenient to the minor's best interest and if this is consented by the family of origin or, if appropriate, the adoptive family or that of permanent fostering, and the minor if sufficiently mature and, in all cases, if more than twelve years old.

n) To have their personal data protected with regard to the family of origin, pursuant to the laws in force.

ñ) To submit formal complaints or suggestions to the Public Institution, that shall be processed within a term of less than 30 days and, if a hearing is requested, to be heard prior to that term.

o) The foster family shall have the same rights as the Administration recognises all other family units.

## 2. Family fosterers shall have the following duties:

a) To safeguard the well-being and best interest of the minors, having them in their company, feeding, educating and ensuring them comprehensive training in an affectionate environment. In the case minors with disabilities, they shall continue to provide the specialised support previously received or adopt others more in keeping with their needs.

b) To hear the minors before making decisions that affect them, if sufficiently mature and, in all cases, if over the age of 12 years, without any exclusion whatsoever due to disability, and to notify the Public Institution of the requests they may make, within the scope of their maturity.

c) To assure the minor full participation in family life.

d) To inform the Public Institution of any transcendental fact regarding the minor.

e) To respect and facilitate relations with the family of origin of the minor, to the extent of the possibilities of the foster family, within the setting of the visitation regime established in its favour, and family reunion, if appropriate.

f) To collaborate actively with the Public Institutions in performing the individual intervention with the minor and monitoring the measure, observing the indications and orientation it provides.

g) To respect the confidentiality of the entire minor's personal and family related data.

h) To notify the Public Institution of any change in the family situation with regard to the data and circumstances that were considered as the basis for fostering.

i) To guarantee the right to privacy and identity of the minors fostered and respect for their own image, as well as to ensure fulfilment of their fundamental rights.

j) To participate in the training actions proposed.

k) To collaborate in the transition from the measure to protect the minor to return to the original environment, adoption, or other mode of fostering, or to the environment established after implementing a more stable protection measure.

l) Family fosterers shall have the same obligations with regard to the minor fostered as those the law establishes for holders of parental authority.”

Sixteen. Article 21 is hereby amended and shall henceforth be drafted as follows:

“Article 21. *Residential care.*

1. With regard to minors in residential care, Public Institutions, services and centres where they are located shall act pursuant to the governing principles of this Act, with full respect for the rights of the minors fostered, and they shall have the following basic obligations:

a) They shall assure coverage of the daily life needs and guarantee the rights of the minors, adapting their general project to the personal characteristics of each minor, through an individual, social and educational project that aims to ensure the well-being of the minor, and his physical, psychological, social and educational development within the setting of the individualised protection plan defined by the Public Institution.

b) They shall have the individual protection plan for each minor that clearly establishes the purpose of the internment, the objectives to be achieved and the term to achieve it, which shall foresee preparation of the minor, both on arrival as well as when leaving the centre.

c) They shall adopt all their decisions regarding residential care of the minors in their interest.

d) They shall encourage cohabitation and relations between siblings, as long as that is in the interest of the minors and shall ensure the residential stability of the minors, as well as the fostering preferentially taking place in a centre located in the province of origin of the minor.

e) They shall promote family relations and collaboration, to which end they shall schedule the necessary resources to enable return to the family of origin, if it is considered in the interest of the minor.

f) They shall encourage comprehensive, inclusive education of the minors, with special consideration for the needs of minors with disability, and shall ensure their preparation for a full life, especially their schooling and training.

In the case of minors from sixteen to eighteen years, one of the priority objectives shall be preparation for an independent life, labour orientation and inclusion.

g) They shall have internal rules of functioning and cohabitation that respond to the educational and protection needs and shall have laid down a procedure to submit complaints and claims.

h) They shall administer medicines the minors may require, in the event, under medical prescription and monitoring, pursuant to professional healthcare practice. The medical health records of each one of the minors shall be kept for these purposes.

i) They shall periodically review the individual protection plan in order to evaluate the adequacy of the residential resource to the personal circumstances of the minor.

j) They shall encourage the minors to take weekend and holiday leave with their families of origin or, when that is not possible or appropriate, with alternative families.

k) They shall promote standardised integration of the minors in the leisure, cultural and educational services and activities that take place in the community environment where they are located.

l) They shall establish the necessary coordination mechanisms with the specialised social services to monitor and adjust the protection measures.

m) They shall ensure preparation for independent life, promoting participation in the decisions that affect them, including the actual management of the centre, the autonomy and progressive undertaking of responsibilities.

n) They shall establish educational and supervisory measures to guarantee protection of the minor's personal data, on accessing the information and communication technologies and social networks.

2. All residential care centres that provide services aimed at minors within the scope of protection shall always have an administrative licence from a Public Institution, and the licensing regime shall respect the terms set forth in Act 20/2013, dated 9<sup>th</sup> December, that guarantees market unity. There shall also be quality and accessibility standards for each type of service.

Public Institutions shall regulate the operating regime of residential care centres and shall register them on the relevant register of entities according to their provisions, providing special attention to the safety, health, accessibility for persons with disability, number, ratio and professional qualification of their staff, educational project, participation by minors in their internal operation, and other conditions that contribute to assure their rights.

Public Institutions shall also promote residential care models with small core groups of minors living together in similar conditions to family ones.

3. In order to favour the minor's life taking place in a family environment, the foster family care measure shall be prioritised over residential care for any minor, especially for minors under six years old. Residential care shall not be ordered for those under three years old except in cases of duly proven impossibility to adopt the foster family care measure at that moment, or when that measure is not in the best interest of the minor. Such limitation to order residential care shall also apply to those under the age of six years within the shortest possible term. In all cases, and in general terms, residential care of such minors shall not last more than three months.

4. For the purposes of assuring protection of the rights of minors, Public Institutions shall perform inspection and supervision of the centres and services every half-year and always when required by the circumstances.

5. Moreover, the State Prosecutor shall exercise surveillance over decisions on residential care that are adopted, as well as inspection of all residential care services and centres, analysing, among others, the Individual Educational Projects, the Educational Project of the Centre and the Internal Regulations.

6. The competent public administration may adopt the appropriate measures to guarantee cohabitation within the centre, using educational measures to deal with behavioural issues that may not harm the dignity of the minors in any case. In cases of severe disturbance of the cohabitation, leave from the care centre may be limited. These measures shall be implemented immediately and in proportion to the conduct of the minors, taking their personal circumstances into account, their attitude and the results arising from their behaviour.

7. Parents, tutors or legal representatives of the minor and the State Prosecutor shall immediately be informed of measures imposed due to conduct or attitudes that are contrary to the rules for cohabitation in the residential centre.”

Seventeen. Article 21 bis is hereby included, drafted as follows:

“Article 21 bis. *Rights of minors fostered.*

1. Regardless of the mode of care to which they are subject, minors fostered shall be entitled to:

a) Be heard pursuant to the terms of Article 9 and, in the event, to be a party to the process to oppose protection measures and declaration of a situation of distress pursuant to the applicable regulations, according to their age and maturity. To that end, they are entitled to be informed and notified of all resolutions to formalise and cease fostering.

b) To be recognised as a beneficiary of the right to free legal aid when in a situation of distress.

c) To directly address the Public Institution and be informed of any important fact regarding the fostering.

d) To have relations with their family of origin within the framework of the visitation, relation and communication regime established by the Public Institution.

e) To progressively know their social and family reality and circumstances to facilitate their acceptance.

f) To receive the necessary information, services and general support that is necessary to apply the rights of minors with disability.

g) To inform the State Prosecutor of complaints or claims they may wish to raise regarding the circumstances of their care.

h) To receive educational and psychotherapeutic support from the Public Institution, to overcome original psychosocial disorders, a measure that is applicable both in residential care, as well as in foster family care.

i) To receive the necessary educational and psychotherapeutic support.

j) To access their file and know the data on their origins and biological parents, once they have come of legal age.

2. In cases of foster family care, they also have the following rights:

a) To fully participate in the life of the foster family.

b) To maintain relations with the foster family after the fostering has ceased, if the Public Institution understands it is in their best interest and as long as this is consented by minors who have sufficient maturity and, in all cases, if over the age of twelve, the foster family and that of origin or, in the event, the adoptive or permanent foster family.

c) To request information or request cessation of the foster family care, if sufficiently mature.

3. In cases of residential care, they shall also have the following rights:

a) With regard to privacy and conserving their personal belongings, as long as these are not inadequate in the educational context.

b) Participation in preparing programming of activities at the centre and in their development.

c) Being heard in the case of complaint and being informed of all the systems for attention and complaints available to them, including the right to hearing by the Public Institution.”

Eighteen. Article 22 bis is hereby added, drafted as follows:

“Article 22 bis. *Programmes to prepare for an independent life.*

Public Institutions shall provide programmes to prepare for independent life aimed at youths who are subject to a protection measure, particularly in residential care or in a situation of special vulnerability, from two years prior to coming of age; and once they have reached that age, whenever they need such, with a commitment by them of active participation and taking advantage thereof. The programmes shall encourage social and educational monitoring, accommodation, social and labour inclusion, psychological support and financial aid.”

Nineteen. Article 22 ter is hereby added, drafted as follows:

“Article 22 ter. *Information system on protection of childhood and adolescence.*

The Autonomous Communities and General State Administration shall establish a shared information system allowing uniform knowledge of the situation of protection for childhood and adolescence in Spain, and with offers of fostering and adoption, with the data broken down by gender and disability, for the purposes of monitoring the specific measures for protection of minors and for statistical purposes. A Unified Child Abuse Register shall be created for that purpose.”

Twenty. Article 22 quater is hereby added, drafted as follows:

“Article 22 quater. *Treatment of personal data.*

1. In order to fulfil the purposes foreseen in Chapter I of Title II of this Act, the competent Public Administrations may proceed, without consent of the data subject, to collect and process the data that may be necessary to evaluate the situation of the minor, including both that related to him as well as that related to his family or social environment.

Professionals, public and private institutions and, in general, any person, shall facilitate the Public Administrations the reports and antecedents on minors, their parents, tutors, carers or fosterers, that may be required by them for this purpose, without requiring consent of the data subject.

2. The entities referred to in Article 13 may process the information that is indispensable to fulfil the obligations established in that provision without consent from the data subject, for the sole purpose of making that data known to the competent Public Administrations or the State Prosecutor.

3. The data gathered by the Public Administrations may solely and exclusively be used to adopt the protection measures established in this Act, attending in all cases to guaranteeing the best interest of the minor and they may only be communicated to the Public Administrations that shall adopt the relevant resolutions, to the State Prosecutor and the judicial bodies.

4. The data may also be disclosed to the State Prosecutor without the consent of the data subject, who shall process this to perform the functions established in this Act and the regulations applicable thereto.

5. In all cases, processing such data shall be subject to the terms set forth in Organic Act 15/1999, dated 13<sup>th</sup> December, on Personal Data Protection and its implementing regulations, with implementation of the high level security measures specified in that Act being required.”

Twenty-one. Article 22 quinquies is hereby added, drafted as follows:

“Article 22 quinquies. *Impact of the rules on childhood and adolescence.*

The memoranda on analysis of regulatory impact that shall accompany the legislative bills and proposed regulations shall include the impact of the regulations on childhood and adolescence.”

Twenty-two. Article 23 is hereby amended and shall henceforth be drafted as follows:

“Article 23. *Protection index.*

In order to perform the surveillance function assigned to the State Prosecutor in the Civil Code with regard to the protection undertaken by the Public Institution pursuant to the law, each State Prosecutor shall keep a Protection Index of Minors.”

Twenty-three. Article 24 shall henceforth be drafted as follows:

“Article 24. *Adoption of minors.*

National or intercountry adoption shall comply with the terms established by the applicable civil legislation.”

**Article two.** *Amendment of the Civil Code.*

The Civil Code is hereby amended and shall henceforth be worded as follows:

One. Sections 4, 6 and 7 of Article 9 are hereby amended and shall henceforth be drafted as follows:

“4. Determination and the character of natural filiation shall be governed by the law of the usual residence of the child at the moment of the filiation being established. In the absence of usual residence of the child, the national law of the child at that moment shall apply. If that law does not allow establishment of the filiation, or if the child lacks usual residence and nationality, Spanish substantive law shall apply. With regard to establishment of filiation by adoption, the terms set forth in Section 5 shall apply.

The law applicable to the content of the filiation, by nature or adoption, and exercise of parental responsibility, shall be determined pursuant to The Hague Convention, dated 19<sup>th</sup> October 1996, on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.”

“6. The law applicable to protection of minors shall be determined pursuant to The Hague Convention, of 19<sup>th</sup> October 1996, to which reference is made in Section 4 of this Article.

The law applicable to protection of persons who are of legal age shall be determined by the law of their usual residence. In the event of changing residence to another country, the law of the new usual residence shall apply, without prejudice to recognition of protection measures resolved in other States in Spain. However, Spanish law shall apply to adoption of provisional or urgent protection measures.

7. The law applicable to the obligation of providing maintenance between relatives shall be determined pursuant to The Hague Protocol of 23<sup>rd</sup> November 2007, on the Law Applicable to Maintenance Obligations, or legal text that may substitute it.”

Two. A new Section 3 is hereby included in Article 19, drafted as follows:

“3. Without prejudice to the terms set forth in Section 1, if according to the legal system of the country of origin, minors adopted maintain their nationality, this shall also be recognised in Spain.”

Three. Article 133 is hereby amended and shall henceforth be drafted as follows:

“Article 133.

1. Children shall be entitled to action to claim non-marital filiation, in the absence of the respective possession of apparent state, for the whole of their lives.

If a child were to die before four years elapse from reaching the majority of age, or if sufficient capacity is recovered for such purposes, or during a year following discovery of the proof on which the suit is based, the action shall lie with the heirs for the time remaining until such terms expire.

2. Such filiation action may also be exercised by the parents within the term of one year from when they have obtained knowledge of the facts on which the claim is to be based.

This action may not be transmitted to the heirs, who may only continue the action the parent may have initiated whilst alive.”

Four. Article 136 is hereby amended and shall henceforth be drafted as follows:

“Article 136.

1. A husband may exercise action to challenge paternity within the term of one year from inscription of the filiation at the Civil Registry. However, the term shall not elapse whilst the husband has no knowledge of the birth. Should the husband have died without knowing of the birth, the year shall be counted from when known to the heir.

2. In the event of the husband knowing of the birth of the person registered as his child, but ignoring the lack of biological paternity, calculation of the term of one year shall begin from the date of him obtaining such knowledge.

3. If the husband were to die before the term stated in the preceding paragraphs has elapsed, the action shall lie with each heir, for the time remaining to completion of that term.”

Five. Article 137 is hereby amended and shall henceforth be drafted as follows:

“Article 137.

1. Paternity may be challenged by the son during the year following inscription of the filiation. If a minor or with judicially modified capacity, the term shall start elapsing as from reaching legal age or recovering sufficient capacity for such purposes.

Exercise of the action, in the interest of a child who is a minor or has judicially modified capacity, shall also lie, during the year following inscription of the filiation, with the mother who holds parental authority, with the legal representative or the State Prosecutor.

2. In spite of more than one year having elapsed from the inscription at the registry, from reaching legal age or from recovery of sufficient capacity for such purposes, if the child ignores the lack of biological paternity of the party registered as his parent, calculation of the term of one year shall commence from obtaining such knowledge.

3. Should the child die before the terms established in the preceding paragraphs elapse, the action shall lie with the heirs for the time remaining until said terms elapse.

4. If the family relations are lacking possession of apparent state of marital filiation, the suit may be filed at any time by the child or heirs thereto.”

Six. Article 138 is hereby amended and shall henceforth be drafted as follows:

“Article 138.

The recognition and other judicial acts that determine a marital or non-marital filiation pursuant to the law may be impugned due to flawed consent, pursuant to the terms set forth in Article 141. Challenging paternity for other reasons shall be according to the rules contained in this Section.”

Seven. The final Paragraph of Article 140 is hereby amended and shall henceforth be drafted as follows:

“In all cases, children are entitled to take action for one year after reaching legal age or recovering sufficient capacity to those ends.”

Eight. Article 154 is hereby amended and shall henceforth be drafted as follows:

“Article 154.

Non-emancipated children remain under the parental authority of their parents.

Parental authority, as well as parental responsibility, shall always be exercised in the interest of the children, according to their personality and with respect for their rights, as well as their physical and mental integrity.

This function includes the following duties and powers:

1. To safeguard them, have them in one’s company, to feed, educate and ensure them a comprehensive education.
2. To represent them and administer their assets.

If the children have sufficient maturity, they shall always be heard before adopting decisions that affect them.

Parents may request help from the public authorities to perform their duties.”

Nine. Number 4 is hereby amended, numbers 5 and 6 are hereby added, and the last Paragraph of Article 158 is hereby amended and all shall henceforth be drafted as follows:

“4. The measure of prohibiting parents, guardians, other relatives or third persons to approach minors and their home, school and other places they frequent, with respect for the principle of proportionality.

5. The measure of prohibiting communication with the minor preventing parents, guardians, or other relatives or third parties from establishing written, verbal or visual contact by any means of communication, or computer or telematic means, with respect for the principle of proportionality.

6. In general, the other provisions considered appropriate, in order to separate the minor from a hazard or avoid harm to their family environment or against third parties. The Judge shall guarantee minors may be heard under suitable conditions to safeguard their interests.

In a case of possible distress of the minor, the Court shall notify the Public Institution of the measures.

All these measures may be adopted within any civil or criminal proceedings, or in voluntary jurisdiction proceedings.”

Ten. Article 160 is hereby amended and shall henceforth be drafted as follows:

“Article 160.

1. Minor children are entitled to relations with their parents, even though the latter do not exercise their parental authority, except if something else is provided by judicial resolution or by the Public Institution in the cases established in Article 161. In the case of imprisonment of the parents, and whenever the best interest of the minor makes visiting them recommendable, the Administration shall facilitate accompanied transfer of the minor to the penitentiary centre, either by a relative appointed by the competent administration, or by a professional who shall ensure the minor is prepared for the visit. Likewise, the visit to a penitentiary centre shall take place outside school hours and in an adequate environment for the minor.

Minors adopted by another person may only have relations with their family of origin pursuant to the terms foreseen in Article 178.4.

2. Personal relations of the minor with siblings, grandparents and other relatives and those with affinity may not be prevented without due cause.

In the case of opposition, the Judge, at the request of the minor, siblings, grandparents, relatives or those with affinity, may decide according to the circumstances and, especially, shall ensure the measures that may be set to favour relations between siblings and between grandparents and grandchildren, to not enable breach of judicial resolutions that restrict or suspend relations between the minors and any of their relatives.”

Eleven. Article 161 is hereby amended and shall henceforth be drafted as follows:

“Article 161.

The Public Institution that is entrusted protection of minors in the respective territory shall regulate the visits and communications to which parents, grandparents, siblings and other relatives and those with affinity are entitled with regard to the minors in situation of distress, being able to issue reasoned resolutions, in the interest of the minor, for temporary suspension thereof, with prior hearing of the parties affected and of the minor, if sufficiently mature and, in all cases, if over twelve years old, immediately notifying thereof the State Prosecutor. To that end, the Director of the residential care centre or foster family, or other agents or professionals involved shall inform the Public Institution of any sign of harmful effects of these visits on the minor.

The minor, those affected and the State Prosecutor may oppose such administrative resolutions pursuant to the Civil Procedure Act.”

Twelve. The text of point one of Article 162 is hereby amended and shall henceforth be worded as follows:

“Parents who hold parental authority have the legal representation of their non-emancipated minor children.

The following exceptions exist:

1. Acts related to personality rights that children, according to stage of maturity, may exercise on their own.

Notwithstanding this, parental authority shall intervene in these cases by virtue of the duties of care and assistance.

2. Those in which there is a conflict of interest between parents and child.
3. Those related to assets that are excluded from administration by the parents.

In order to enter into contracts that bind children to provide personal services, prior consent thereof shall be required if they have sufficient judgement, without prejudice to the terms established in Article 158.”

Thirteen. Article 172 is hereby amended and shall henceforth be drafted as follows:

“Article 172.

1. When the Public Institution entrusted with protection of minors within the respective territory has knowledge that a minor is in a situation of distress, pursuant to the law it shall take on guardianship and shall adopt the necessary protection measures to ensure care, notifying the State Prosecutor and, when appropriate, the Judge who ordered ordinary protection. The administrative resolution that declares the situation of distress and the measures adopted shall be notified in the legal manner to the parents, guardians or carers and the minor affected if sufficiently mature, and in all cases if over twelve years old, immediately, without exceeding the maximum term of forty-eight hours. The information shall be clear, understandable and in an accessible format, including the causes that gave rise to intervention by the Administration and the effects of the decision adopted and, in the case of the minor, adapted to his degree of maturity. Whenever it is possible and especially in the case of the minor, that information shall be provided personally.

A situation of distress is considered that which arises *de facto* due to breach or impossibility or inadequate exercise of the duties of protection established in the laws on care for minors, when the latter are deprived of the necessary moral or material assistance.

Undertaking the protection attributed to the Public Institution involves suspending parental authority or ordinary guardianship. Notwithstanding this, acts related to assets performed by the parents or guardians on behalf of minors and that are in their interest shall be valid.

The Public Institution and State Prosecutor may promote deprivation of parental authority and removal of protection, if appropriate.

2. During the term of two years from notification of the administrative resolution that declares the situation of distress, parents who continue to hold their parental authority but have this suspended pursuant to the terms foreseen in Section 1, or guardians who, pursuant to the same Section, have their protection suspended, may apply to the Public Institution to cease suspension and for revocation of the declaration of situation of distress of the minor if, due to a change in the circumstances that gave rise thereto, they understand they are able to resume their parental authority or guardianship.

Likewise, during the same term, they may oppose decisions made with regard to protection of the minor.

Once that term has elapsed, the right of the parents or guardians to request or oppose decisions or measures adopted to protect the minor shall lapse. Notwithstanding this, they may request information from the Public Institution and State Prosecutor regarding any change in the circumstances that gave rise to declaration of the situation of distress.

In any event, once the two years have elapsed, only the State Prosecutor shall be entitled to oppose the resolution by the Public Institution.

During that term of two years, once the Public Institution has assessed the situation and made it known to the State Prosecutor, it may adopt any protective measure, including a proposal for adoption, when there are grounds to foresee that return to the family of origin shall be definitively impossible.

3. The Public Institution, of its own motion or at the request of the State Prosecutor or a person or entity with a legitimate interest, may revoke the declaration of situation of distress and decide to return the minor to the family, as long as this is understood to be the most adequate for the minor's interest. The State Prosecutor shall be notified of that decision.

4. In fulfilment of the obligation to provide immediate attention, the Public Institution may undertake provisional care of a minor by administrative resolution and shall notify this to the State Prosecutor, simultaneously proceeding to perform the necessary actions to identify the minor, investigate the circumstances and record, in the event, the real situation of distress.

Such actions shall be performed within the shortest possible term, during which it shall proceed, in the event, to declare a situation of distress and thus to undertake guardianship or to implement the appropriate measure for protection. If there are persons who, due to their relations with the minor or due to other circumstances, may undertake guardianship in the interests thereof, appointment of the guardian shall be promoted pursuant to the ordinary rules.

If the term stated has elapsed and protection has not been formalised or another resolution adopted, the State Prosecutor shall promote the appropriate actions to assure the Public Institution adopts the most adequate protection measure for the minor.

5. The Public Institution shall cease its protection of the minors declared in situation of distress when it ascertains, by means of the relevant reports, disappearance of the causes that gave rise to this being undertaken, due to any of the cases foreseen in Articles 276 and 277.1, and if ascertaining beyond doubt any of the following circumstances:

a) That the minor has voluntarily moved to another country.

b) That the minor is in the territory of another Autonomous Community whose Public Institution has handed down a resolution on declaration of the situation of distress and has undertaken guardianship or a relevant protection measure, or understands that it is no longer necessary to adopt protective measures according to the situation of the minor.

c) That six months have elapsed from when the minor voluntarily abandoned the protection centre and whose whereabouts are then unknown.

Provisional care shall cease for the same reasons as guardianship.”

Fourteen. Article 172 bis is hereby included, drafted as follows:

“Article 172 bis.

1. When, due to severe, transitional circumstances that are duly proven, the parents or guardians are unable to care for the minor, they may apply to the Public Institution for it to undertake care for the necessary time, which may not exceed the maximum term of two years, temporary care for the minor, except if the best interest of the minor makes it exceptionally advisable to extend the measures. Once the term or extension has elapsed, in the event, the minor shall return to the parents or guardians or, if the appropriate circumstances for this do not concur, be declared in a legal situation of distress.

Voluntary delivery into care shall be formalised in writing, leaving a record that the parents or guardians have been informed of the responsibilities they continue to maintain with regard to the minor, as well as the way in which that care is to be exercised by the Public Institution, in particular guaranteeing minors with disability continuity of the specialised support they have received until then, or adoption of another that is more adequate for their needs.

The administrative resolution on care being undertaken by the Public Institution, as well as regarding any subsequent variation of its form of exercise, shall be reasoned and notified to the parents or guardians and the State Prosecutor.

2. Likewise, the Public Institution shall undertake care when so resolved by the Judge in the legally appropriate cases, adopting the relevant protective measure.”

Fifteen. Article 172 ter is hereby added, drafted as follows:

“Article 172 ter.

1. Care shall be provided by foster family care and, where that is not possible or convenient in the interest of the minor, by residential care. Foster family care shall be provided by the person or persons determined by the Public Institution. Residential care shall be exercised by the Director or person responsible for the centre where the minor is interned, pursuant to the terms established in the legislation on protection of minors.

Those who may not be guardians pursuant to the terms set forth in the law may not be fosterers.

Notice of the resolution by the Public Institution that provides written formalisation of the care measure shall be delivered to the parents or guardians who are not deprived of their parental or guardianship rights, as well as to the State Prosecutor.

2. The interest of the minors shall always be sought and priority given, when not contrary to that interest, to return to their own family and that care of siblings be entrusted to the same institution or person so they remain together. The situation of minors with regard to their family of origin, both with regard to care as well as the visitation regime and other means of communication, shall be reviewed at least every six months.

3. With regard to minors subject to family or residential care, the Public Institution may order weekend or holiday leave with families or institutions dedicated to such functions for the minor when in his interest. To that end, only adequate persons or institutions for the needs of the minor shall be selected. Such measures shall be resolved once the minor has been heard, if sufficiently mature and, in all cases, if over twelve years of age.

Delegation of guardianship for such stays, weekend or holiday leave shall contain the terms thereof and the information that may be necessary to assure the well-being of the minor, especially including all the restrictive measures that have been established by the Public Institution or the Judge. Parents or guardians shall be informed of the measure, as long as they have not been deprived of exercise of parental authority or removed from exercise of protection, as shall the fosterers. The data of such carers shall be preserved when convenient for the interest of the minor or when a fair reason concurs.

4. In cases of declaration of a situation of distress or undertaking care due to an administrative or judicial resolution, the Public Institution may establish the sum the parents or guardians shall pay to contribute for maintenance and, according to their possibilities, for the expenses arising from care and attention to the minor, as well as those arising from civil liability that may be attributed to minors for acts performed by them.”

Sixteen. Article 173 is hereby amended and shall henceforth be drafted as follows:

“Article 173.

1. Foster family care shall entail full participation by the minor in family life and imposes the obligations to safeguard such upon the host, to have the minor in his company, as well as to feed, educate and ensure comprehensive training in an affectionate environment of such minor. In the case of minors with disabilities, the specialised support they have been receiving shall be continued, or another, more adequate one for their needs shall be established.

2. Care arrangements shall require consent by the fosterers and the minor fostered, if sufficiently mature and, in all cases, if over twelve years old.

3. If severe problems of cohabitation between the minor and person or persons who have been entrusted guardianship in foster family care arise, that party, the fosterer, the State Prosecutor, the parents or tutor who are not deprived of parental authority, or protection of any person concerned, may apply to the Public Institution for removal of guardianship.

4. The foster family care of the minor shall cease:

a) Due to judicial resolution.

b) By resolution by the Public Institution, of its own motion or as proposed by the State Prosecutor, the parents, guardians, fosterers or the actual minor if sufficiently mature, if considered necessary to safeguard the minor's interest, having heard the fosterers, the minor, the parents or tutor.

c) Due to death or declaration of death of the fosterer or fosterers of the minor.

d) On the minor coming of legal age.

5. All actions to formalise and cease care shall be performed with the necessary reserve.”

Seventeen. Article 173 bis is hereby amended and shall henceforth be drafted as follows:

“Article 173 bis.

1. Foster family care may take place within the actual extended family of the minor or in an unrelated family, and it may be specialised in the latter case.

2. Foster family care may adopt the following modes, according to its duration and objectives:

a) Urgent family care, mainly for children under six years old and shall have a duration not exceeding six months, whilst deciding the relevant family protection measure.

b) Temporary family care, which shall have a transitional status, either because it is foreseen that the minor shall return to his own family, or until a protection measure with a more stable nature is adopted, such as permanent foster family care or adoption. Such care shall have a maximum duration of two years, except if the best interest of the minor makes it advisable to extend the measure due to the foreseeable, immediate return to the family, or adoption of another definitive protection measure.

c) Permanent family care, which shall be constituted either at the end of the two year term of temporary care, due to return to the family not being possible, or directly in cases of minors with special needs or when the circumstances of the minor and the family make this advisable. The Public Institution may apply to the Judge to assign the permanent fosterers the powers of guardianship to facilitate performance of their responsibilities, attending to the best interest of the minor in all cases.”

Eighteen. Article 174 is hereby amended and shall henceforth be drafted as follows:

“Article 174.

1. The State Prosecutor is assigned higher oversight of the protection, care or keeping of minors to which this Section refers.

2. To that end, the Public Institution shall provide immediate news of new internment of minors and send a copy of the administrative resolutions formalising constitution, variation

and cessation of protection, guardianship and care. It shall also notify the State Prosecutor of any novelty of interest in the circumstances of the minor.

The State Prosecutor shall verify the situation of the minor at least every half-year and shall submit proposals to the Public Institution, or Judge as appropriate, for the protection measures he may deem necessary.

3. Surveillance by the State Prosecutor shall not exempt the Public Institution of its responsibility with the minor and of its obligation to inform the State Prosecutor of the anomalies it may observe.

4. In order to fulfil the function of higher surveillance of guardianship, care or keeping of minors, if necessary, the State Prosecutor may gather reports prepared by the relevant services of the competent Public Administrations.

To these ends, the relevant services of the competent Public Administrations shall comply with applications for information conveyed by the State Prosecutor during the course of investigations tending to determine the situation of risk or distress to which a minor may be subject.”

Nineteen. Article 175 is hereby amended and shall henceforth be drafted as follows:

“Article 175.

1. Adoption shall require the party adopting to be over twenty-five years old. If there are two adoptive parents, it shall suffice for one of them to have reached that age. In any event, the age difference between the adopter and adoptee shall be at least sixteen years and may not exceed forty-five years, except in the cases foreseen in Article 176.2. When there are two adoptive parents, it shall be sufficient for one of them not to have that maximum age difference with the adoptee. If the future adopters are willing to adopt groups of siblings or minors with special needs, the age difference may be greater.

Those who may not be guardians according to the terms foreseen in this Code may not adopt.

2. Only non-emancipated minors may be adopted. As an exception, it shall be possible to adopt a person of legal age or an emancipated minor when, immediately prior to the emancipation, there has been a situation of care with the future adopters, or stable cohabitation with them for at least one year.

3. One may not adopt:

1) A descendent;

2) A relative in the second degree by the collateral line of blood relationship or affinity;

3) A pupil by a guardian, until the justified general account of the guardianship has been definitively approved.

4. Nobody may be adopted by more than one individual, except if the adoption is performed jointly or successively by both spouses, or by a couple joined by a similar relation of affection to the marital one. Marriage entered into after the adoption shall allow the spouse to adopt the spouse’s children. Such provision shall also be applicable to couples formed thereafter. In the case of death of the adopter, or when the adopter suffers the exclusion foreseen in Article 179, another adoption of the adoptee shall be possible.

5. In the event of the adoptee being subject to permanent care or guardianship for the purposes of adoption by two spouses or a couple joined by a similar relation of affection to the marital one, legal separation or divorce or break-up of their relation that is certifiable on record prior to the proposed adoption shall not prevent it being possible to promote joint adoption, as long as effective cohabitation of the adoptee with both spouses, or with the

partner joined by a similar relation to that of the marital bond may be proven, for at least two years prior to the adoption proposal.”

Twenty. Article 176 is hereby amended and shall henceforth be drafted as follows:

“Article 176.

1. The adoption shall be constituted by judicial resolution, which shall always take the interest of the adoptee and eligibility of the adopter or adopters to exercise parental authority into account.

2. In order to commence adoption proceedings, a prior proposal by the Public Institution shall be required, in favour of the adopter or adopters that the Public Institution has declared eligible to exercise parental authority. The declaration of eligibility shall be prior to the proposal.

However, such a proposal shall not be required when the adoptee fulfils any of the following circumstances:

1) Being an orphan and relative of the adopter in the third degree of blood relationship or affinity;

2) Being the child of the spouse or person who is bound to the adopter by a similar relation of affection to the marital one;

3) Having spent more than one year in care for the purposes of adoption, or having been under the guardianship of the adopter for the same time;

4) Being of legal age or an emancipated minor.

3. Eligibility is understood as the capacity, skill and adequate motivation to exercise parental responsibilities, according to the needs of the minors to be adopted, and to bear the peculiarities, consequences and responsibilities involved in adoption.

The declaration of eligibility by the Public Institution shall require a psychosocial assessment of the personal, family, relational and social situation of the adoptive parents, as well as their capacity to establish stable and safe bonds, their educational skills and their attitude to attend to a minor according to his individual circumstances. Such declaration of eligibility shall be formalised by the relevant resolution.

Those who are deprived of parental authority or have exercise thereof suspended may not be declared eligible, or those who have delivered their child in care to a Public Institution.

Persons who offer to adopt shall attend the information and preparation sessions organised by the Public Institution or the authorised Collaborating Entity.

4. When any of the circumstances 1), 2) or 3) foreseen in Section 2 concur, the adoption may be constituted, although the adopter may have died, if the Judge has granted consent, or if it has been granted in a public deed or last will and testament. The effects of the judicial resolution in this case shall be backdated to the date of provision of the consent.”

Twenty-one. Article 176 bis is hereby added, drafted as follows:

“Article 176 bis.

1. A Public Institution may delegate guardianship of a minor declared in a situation of distress upon persons who fulfil the requisites of capacity to adopt foreseen in Article 175 and who have provided their consent, have been trained, declared eligible and assigned for adoption. To those ends, prior to submitting the adoption proposal, the Public Institution shall delegate the guardianship for purposes of adoption until the judicial resolution of adoption is

handed down, by duly reasoned administrative resolution, with prior hearing of the parties affected and of the minor, if sufficiently mature and, in all cases, if over the age of twelve years, with notice being given to parents or guardians who have not been deprived of parental authority or guardianship.

Carers for the purposes of adoption shall have the same rights and obligations as foster families.

2. Except if the interest of the minor suggests otherwise, the Public Institution shall proceed to suspend the regime of visitation and relations with the family of origin when the period of pre-adoptive cohabitation referred to in the preceding Section commences, except in the cases foreseen in Article 178.4.

3. The proposal of adoption shall be submitted to the Judge within the shortest possible term and, in all cases, before three months have elapsed from the day when delegation of guardianship for the purpose of adoption has been resolved. Notwithstanding this, if the Public Institution considers it necessary, according to the age and circumstances of the minor, to establish a period of adaptation of the minor to the family, that three month period may be extended up to a maximum of one year.

In the event of the Judge not considering the adoption appropriate, the Public Institution shall determine the most adequate protective measure for the minor.”

Twenty-two. Article 177 is hereby amended and shall henceforth be drafted as follows:

“Article 177.

1. The adoption shall be consented in the presence of the Judge by the adopter or adopters and by adoptees over the age of twelve years.

2. The adoption must be consented by:

1) The spouse or person bound to the adopter by a similar relation of affection to the marital one, except in the case of legal separation or divorce, or break-up of the couple proven beyond doubt, except in cases in which the adoption is to be formalised jointly.

2) Parents of the adoptee who is not emancipated, unless they are deprived of parental authority by a final judgment or have incurred a legal reason for such deprivation. Such situation may only be appreciated by contradictory judicial procedure that shall be formalised pursuant to the Civil Procedure Act.

Consent shall not be necessary when those who must provide it are barred from doing so, an impossibility that shall be deemed so, in the event, and reasoned in the judicial resolution constituting the adoption.

Nor shall consent be required from parents who have their parental authority suspended if two years have elapsed from notification of the declaration of a situation of distress, pursuant to the terms foreseen in Article 172.2, without opposition thereto or if, having been filed on time, such opposition has been rejected.

Consent by the mother may not be provided until six weeks have elapsed after childbirth.

In adoptions that require a prior proposal, consent by parents regarding specific adopters shall not be admitted.

3. The following parties shall be heard by the Judge:

1) Parents who have not been deprived of their parental authority, when their consent is not necessary for the adoption;

- 2) The guardian and, in the event, the foster family, and the keeper or carers;
- 3) Adoptees under the age of twelve years, according to their age and maturity.

4. Consent and assent must be granted freely, in the required legal manner and in writing, with prior information regarding the consequences thereof.”

Twenty-three. Article 178 is hereby amended and shall henceforth be drafted as follows:

“Article 178.

1. Adoption produces extinction of the legal bonds between the adoptee and family of origin.

2. As an exception, the relevant legal bonds with the parental family that may be appropriate shall subsist as follows:

a) If the adoptee is the son of the spouse, or of the person bound to the adopter by a similar relation of affection to the marital one, even though the spouse or partner may have died.

b) If only one of the parents has been legally determined, as long as that effect has been requested by the adopter, the adoptee over twelve years of age and the parent whose bond has ceased to persist.

3. The terms established in the preceding Paragraphs shall be understood to be without prejudice to the provisions on marital impediments.

4. When the interest of the minor makes it advisable, due to the family situation, age or any other significant circumstance appraised by Public Institution, maintenance of any other kind of relation or contact may be decided through visits or communications between the minor, the members of the family of origin considered and the adoptive one, especially favouring, where possible, relations between biological siblings.

In these cases, when the Judge constitutes the adoption, he may order maintenance of such relations, determining their frequency, duration and conditions, at the proposal of the Public Institution or the State Prosecutor, with the consent of the adoptive family and the adoptee, if sufficiently mature and always if over the age of twelve years. Adoptees under the age of twelve years shall be heard according to their age and maturity in all cases. If necessary, the relation shall be conducted with intermediation by the Public Institution or entities endorsed to that end. The Judge may also resolve their modification or conclusion according to the best interest of the minor. The Public Institution shall convey to the Judge periodic reports regarding performance of the visits and communications, as well as proposals to maintain or amend these during the first two years and, after these have elapsed, as requested by the Judge.

Legitimacy to apply for suspension or suppression of such visits or communications shall lie with the Public Institution, the adoptive family, the family of origin and the minor, if sufficiently mature and, in all cases, if over the age of twelve years.

The declaration of eligibility shall state if the persons who offer to adopt would agree to adopt a minor who is to maintain the relation with the family of origin.”

Twenty-four. Sections 2 and 5 are hereby amended and Section 6 is hereby introduced in Article 180, all drafted as follows:

“2. The Judge shall order extinction of the adoption at the request of either of the parents who, without being to blame, has not intervened in the proceedings pursuant to the terms stated in Article 177. It shall also be necessary for the suit to be filed within the two years following the adoption and for the extinction requested not to seriously harm the minor.

If of legal age, extinction of the adoption shall require the adoptee’s specific consent.”

“5. The Public Institutions shall assure conservation of the information they have available on the origins of the minor, in particular the information on the identity of their parents, as well as the medical record of the minor and his family, and these shall be conserved for at least fifty years after the moment when the adoption became definitive. The conservation shall be carried out for the sole purposes of the person adopted being able to exercise the right to which the following Section refers.

6. Once individuals adopted have come of legal age, or while minors through their legal representatives, they shall be entitled to know the data regarding their biological origins. Public Institutions, with prior notification to the persons affected, shall provide the necessary advice and aid to exercise that right, through their specialised services.

To these ends, any private or public entity shall have the obligation to provide the Public Institutions and State Prosecutor the necessary reports and records on the minor and family of origin if so requested.”

Twenty-five. Article 216 is hereby amended, by addition of the following Paragraph:

“In the case of minors who are subject to protection by Public Institution, these measures may only be ordered of its own motion, or at its request, of the State Prosecutor or of the actual minor. The Public Institution shall be a party to the proceedings and the measures agreed shall be notified to the Public Institution, who shall provide notification to the Director of the residential centre or adoptive family.”

Twenty-six. Article 239 is hereby amended and shall henceforth be drafted as follows:

“Article 239.

1. Protection of minors who are in a situation of distress shall lie with the Public Institution pursuant to the law.

2. Notwithstanding this, a guardian shall be appointed pursuant to the ordinary rules if there are persons who, due to their relations with the minor or due to other circumstances, may undertake protection in the interest of the child.

In such cases, prior to the judicial appointment of an ordinary guardian, or in the actual resolution, suspension or deprivation of parental authority or removal of the guardian shall be ordered, as appropriate.

3. The State Prosecutor, the Public Institution and those called to provide protection shall be authorised to file the actions for deprivation of parental authority, removal of the guardian and to apply for appointment of a guardian for minors in a situation of distress.”

Twenty-seven. Article 239 bis is hereby added, being drafted as follows:

“Article 239 bis.

The Public Institution entrusted with protection and support of individuals with judicially amended capacity in the respective territory shall be appointed as guardian when the guardianship has not been assigned to any person whatsoever pursuant to Article 234.

Likewise, pursuant to the law, it shall take on guardianship of persons with judicially amended capacity when they are in a situation of distress, having to render accounts to the judicial authority that amended their capacity.

A situation of distress to these ends is considered as concurring *de facto* when the person with judicially amended capacity is deprived of the necessary assistance due to breach, or impossibility or inadequate exercise of the rights of the person appointed to exercise the guardianship, pursuant to the laws, or due to lacking a guardian.”

Twenty-eight. Article 303 is hereby amended and shall henceforth be drafted as follows:

“Article 303.

1. Without prejudice to the provisions set forth in Article 228, when the judicial authority has knowledge of the existence of a *de facto* carer, it may require that party to report on the situation of the person and assets of the minor, or the person who may require an institution to provide protection and support, and what action they have taken with regard to these, also being able to establish the measures for control and surveillance it considers appropriate.

Injunctively, while the situation of *de facto* guardianship remains and until the adequate protection measure is established, if appropriate, judicial guardianship powers may be granted to carers. Likewise, if a minor, temporary care may be established, with the carers being appointed as fosterers.

2. It shall be appropriate to declare the situation of distress of minors and of persons with judicially modified capacity in a situation of *de facto* guardianship if, in addition to that circumstance, the objective cases of lack of assistance considered in Articles 172 and 239 bis concur.

In the other cases, the *de facto* carer may file for deprivation or suspension of parental authority, removal of guardianship or appointment of a guardian.”

Twenty-nine. Article 1263 is hereby amended and shall henceforth be drafted as follows:

“Article 1263.

Consent may not be given by:

1. Non-emancipated minors, except in contracts that the laws allow them to perform themselves, or aided by their representatives, and those related to assets and services in current life in keeping with their age, according to social practice.

2. Those who have judicially amended capacity, pursuant to the provisions contained in the court resolution.”

Thirty. Article 1264 is hereby amended and shall henceforth be drafted as follows:

“Article 1264.

The provisions foreseen in the preceding Article are understood to be without prejudice to the legal prohibitions or the special requisites of capacity that the laws may establish.”

**Article three.** *Amendment of Act 54/2007, dated 28<sup>th</sup> December, on Intercountry Adoption.*

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

*Article 1. Subject and scope of this Act:*

1. This Act regulates the role of the national government, the Public Entities and the accredited bodies in intercountry adoption, the capacity and requirements to be fulfilled by prospective adoptive parents, and provisions of private international law on adoption and other international measures for the protection of children in events where there is a foreign party.

2. For the purposes of Title I of this Act, “intercountry adoption” means adoption in which a child regarded as adoptable by a competent foreign authority and habitually resident abroad is, or is to be, moved to Spain by adopters habitually resident in Spain, either after adoption in the country of origin or with a view to making an adoption in Spain.

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

2. The Act is intended to protect the rights of children who are to be adopted, while also considering those of the prospective adoptive parents and others involved in the intercountry adoption process.

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

*Article 3. Guiding principles:*

The provisions of this Act, along with other provisions in Spanish legislation on adoption and other international child protection measures, shall respect the guiding principles of the Convention on the Rights of the Child of 20 November 1989, the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption, the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, the Council of Europe Convention on the Adoption of Children done at Strasbourg on 27 November 2008, and Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

In so far as possible, the State shall include the standards and safeguards provided in these instruments in the bilateral agreements or conventions on adoption and international child protection that it signs with States not contracting to or obligated by such instruments.

Four. Article 4 is hereby amended and shall henceforth be drafted as follows:

*Article 4. Foreign policy :*

1. The national government, together with the Public Entities, shall determine the initiation of processes for adoptions with each country of origin of the children, and for suspending or halting them.

2. Applications to adopt children that are nationals of, or habitually resident in, another country shall not be processed in the following circumstances:

a) Where the country in which the child to be adopted is habitually resident is in armed conflict or undergoing a natural disaster.

b) If there is no specific authority in the country to oversee and guarantee the adoption and to send the Spanish authorities a matching proposal with information on the child's adoptability and all the other information referred in article 5.1(e).

c) Where the country does not have adequate guarantees for adoption and its practices and formalities do not respect the child's interests or do not comply with the international ethical and legal principles referred to in article 3.

3. The national government, together with the Public Entities, shall determine at any one time which countries are affected by the circumstances described in the previous point for the purposes of deciding whether the processing of adoptions with them should be initiated or suspended.

4. Applications for the adoption of foreign children moved to Spain under humanitarian programmes for temporary placement in connection with holidays, studies or medical treatment may be processed only if those placements have ended and the children have been declared adoptable in the countries of origin.

5. The national government, together with the Public Entities, shall determine the number of intercountry adoption applications to be submitted each year to each country of origin of the children, taking account of the average number of adoptions granted over the last two years and the number of applications pending the matching of a child.

For this purpose, the number of applications processed with each country may not be more than three times the average number of adoptions granted in that period, except where changes in legislation, practice or policy on intercountry adoption in those countries so justify.

In the event that such processing is initiated with a new country, this number shall be set according to the information available on the prospects for adoptions with that country.

The distribution of this maximum number between Spanish autonomous regions and accredited bodies shall be established by agreement with the Public Entities.

No quota shall be established for the processing of adoptions of children with special needs, except where justified by special circumstances.

The provisions of this section shall be carried out according to the criteria and with the procedure to be established by regulation.

6. Prior to determining the initiation, suspension or halting of processes for adoptions with each country of origin of the children, the national government shall gather information on the accredited bodies, if any. It may also gather information on any third countries that have initiated, suspended or halted the processing of adoptions with any one country of origin, and also with the Permanent Bureau of the Hague Conference on Private International Law.

Five. The heading of Chapter II of Title I is hereby amended and shall henceforth be drafted as follows

**“CHAPTER II  
Public Institutions and authorised bodies”**

Six. Article 5 is hereby amended and shall henceforth be drafted as follows:

*Article 5. Role of the Public Entities:*

1. In the sphere of intercountry adoption, the public entities are responsible for:
  - a) Organising and providing information on legislation, requirements and formalities required in Spain and in the children's countries of origin, ensuring that this information is as full, accurate and up to date as possible, and freely accessible to the families concerned and to the accredited bodies.
  - b) Giving families the necessary instruction in the course of the whole process so that they may understand and deal with the implications of intercountry adoption, preparing them to suitably exercise their parental responsibilities once the adoption is granted. They may delegate this function to accredited bodies or to other duly licensed institutions or entities.
  - c) Receiving applications for adoption in all cases, and processing them, either directly or through accredited bodies.
  - d) Issuing, in all cases, certificates of suitability, once the psychosocial report on the prospective adoptive parents has been drawn up, either directly or through duly licensed institutions or entities, and, where required by the country of origin of the child to be adopted, the monitoring commitment.
  - e) Receiving the child's matching proposal by the competent authorities of the country of origin with information on the identity, adoptability, social and family environment, medical history and any special needs of the child; along with information on the granting of the consents by the persons, institutions and authorities required according to the laws of the country of origin.
  - f) Confirming whether the characteristics of the child matched by the competent body in the country of origin suits those indicated in the psychosocial report accompanying the certificate of suitability.
  - g) In the course of the intercountry adoption process, offering technical support to children and to prospective adoptive parents, with particular attention to those who are to adopt or have adopted children with special needs or characteristics. During the adopters' stay abroad, assistance may be provided by Spain's Foreign Service.
  - h) Drawing up any monitoring reports required by the child's country of origin, which may be assigned to accredited bodies or other licensed entities.
  - i) Providing qualified post-adoption support and intermediary personnel for researching biological origins, so as to attend appropriately to both adoptees and adopters, which functions may be assigned to accredited bodies or other licensed entities.
  - j) Mandatorily reporting to the national government on the accreditation of bodies, as well as overseeing, inspecting and preparing monitoring guidelines for bodies based within the territorial scope for intermediary activities to be carried out in the territory.
2. When acting in the sphere of intercountry adoption, the Public Entities shall promote measures to achieve the highest degree of coordination and cooperation among them. In particular they shall seek to standardise procedures, periods and costs.
3. The public entities shall provide the national government with statistical information on the processing of intercountry adoption applications.

Seven. Article 6 is hereby amended and shall henceforth be drafted as follows:

*Article 6. Intermediation in intercountry adoption:*

1. Intermediation in intercountry adoption means any activity intended to facilitate contacts or relationships between prospective adoptive parents and the authorities, organisations, and institutions of the country of origin or residence of an adoptable child, and providing sufficient assistance for the adoption to be carried out.

2. The intermediary role in intercountry adoption may be carried out by the Public Entities directly with the central authorities in children's countries of origin that have ratified the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, provided that in the administrative processing in the country of origin are not involved any natural or legal persons or bodies that are not duly accredited.

The intermediary role in intercountry adoption may be carried out by duly accredited bodies.

No other person or entity may take part in intermediary functions for intercountry adoptions.

However, the national government may, together with the Public Entities, determine with regard to a particular country that intercountry adoption applications shall be processed only through bodies accredited or licensed by the authorities of both States.

3. The functions to be carried out by accredited bodies for intermediation shall be as follows:

a) Informing those interested about intercountry adoption.

b) Advising, instructing and supporting prospective adoptive parents as regards what adoption means and involves, regarding significant cultural aspects and the formalities to be carried out in Spain and in the children's countries of origin.

c) Taking part in the processing of adoption applications with the competent authorities, whether Spanish or foreign.

d) Contributing to the processing and implementation of the corresponding post-adoption measures in order to comply with the post-adoption obligations provided for adopters in the legislation of the adopted child's country of origin, which functions shall be assigned as determined by the Spanish Public Entity where the adopting family resides.

4. Accredited bodies shall act on the terms and with the conditions provided in this Act and in regional legislation.

5. Accredited bodies may make collaboration agreements with each other so as to deal with situations that arise or to carry out their purposes more effectively.

6. In intercountry adoption there may never be any financial gain except as strictly required to cover necessary intermediaries' expenses, as approved by the national government and the Public Entities.

Eight. Article 7 is hereby amended and shall henceforth be drafted as follows:

*Article 7. Accreditation, monitoring and control of accredited bodies:*

1. Accreditation for intercountry adoption shall be available only to non-profit entities registered in the corresponding register and whose object according to their statutes is child protection, which have the necessary material resources and multidisciplinary teams on Spanish territory to carry out the functions assigned, and which are directed and staffed by persons qualified by their ethical standards, by training or experience to work in the field of intercountry adoption.

2. The national government shall be responsible, on the terms and with the procedure to be established by regulation, and with the advice of the Public Entity of the territory in which they are based, for the accreditation of such bodies and for their control and monitoring

as regards the intermediary activities which they are to carry out in the children's country of origin.

The national government shall keep a special national public register of accredited bodies, whose *modus operandi* is to be provided by regulation.

3. The control, inspection and monitoring of these bodies as regards the activities which they carry out in the territory of each autonomous region shall be the responsibility of the competent Public Entity in each region, in accordance with applicable regional legislation.

The competent Public Entities shall seek to standardise in so far as possible the basic requirements for carrying out this control, inspection and monitoring activity.

4. Accredited bodies shall designate the person who is to act as their representative and that of the families *vis-à-vis* the authority of the child's country of origin. Professional staff employed by accredited bodies in children's countries of origin shall be regarded as part of the body, which shall thus be liable for the acts of those professionals when carrying out their intermediary functions. These professionals should be assessed by the national government, advised by the Public Entities.

5. In the event that the foreign country for which the authorisation is intended establishes a limited number of accredited bodies, the national government shall, together with the Public Entities and the authorities of that country, decide which bodies should be accredited to act in it.

If any country of origin of adoptable children sets a limit on the number of applications to be processed by each accredited body and it proves that any bodies with an assigned quota have no applications to process in that country, these may, once authorised by the national government, together with the Public Entities and with the consent of the prospective adoptive parents, process applications that were being processed by other accredited bodies.

6. The national government may, together with the Spanish autonomous regions, establish a maximum number of accredited bodies for intermediation in any one country, according to the intercountry adoption needs in a specific country, the adoptions granted or other aspects regarding the foreseeable opportunities for intercountry adoption in the country.

7. The national government may, at its own initiative or at the proposal of the Public Entities in their territorial spheres, suspend or withdraw the accreditation granted to bodies that cease to meet the conditions on the grounds of which it was granted or whose methods are contrary to the law, once the viewpoint of any such body has been heard. This suspension or withdrawal of accreditation may apply generally for all authorised countries or for certain countries only. In such events it may, if appropriate, be decided that the discredited body's adoption applications in progress should be processed to completion.

8. For the monitoring and control of accredited bodies, the necessary coordination shall be put in place between the national government and the Public Entities.

9. Accredited bodies shall provide the national government with statistical information on the processing of intercountry adoption applications.

10. The national government shall exercise the powers provided for in points 2, 4, 5, 6, 7 and 8 of this article, on the terms and with the procedure to be established by regulation

Nine. Article 8 is hereby amended and shall henceforth be drafted as follows:

*Article 8. List of prospective adoptive parents and accredited bodies:*

1. Prospective adoptive parents may hire the intermediary services of any body that is accredited by the national government.

2. The body and the prospective adoptive parents shall sign a contract exclusively relating to the intermediary functions that the former is to undertake in respect of the processing of the offer to adopt.

The basic model contract should be previously approved by the national government and the Public Entities, in a form to be established by regulation.

3. Solely for the purposes of carrying out the responsibilities established in articles 5.1.j) and 7.2, the national government and the Public Entities shall keep a record of complaints and incidents in intercountry adoption processes, in a form to be established by regulation.

4. Accredited bodies must keep a unique record of adoption procedures showing all the prospective adoptive parents that have signed a contract for the processing of an adoption, regardless of the autonomous region where they reside.

Ten. Article 9 is hereby amended and shall henceforth be drafted as follows:

*Article 9. Communications between the Spanish competent authorities and the competent authorities of other States:*

Communications between the Spanish central competent authorities and the competent authorities of other States shall be coordinated as provided in the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption, even if the latter are not parties thereto.

Eleven. Article 10 is hereby amended and shall henceforth be drafted as follows:

*Article 10. Suitability of adopters:*

1. Suitability means the suitable capacity, aptitude and motivation to exercise parental responsibility in view of the needs of the children to be adopted, and for dealing with the particular circumstances, consequences and responsibilities of adoption.

2. For this purpose, the declaration of suitability shall require a psychosocial assessment of the personal, family and social circumstances of the prospective adoptive parents, their ability to establish stable and secure bonds, their upbringing skills and their aptitude for caring for a child according to their particular circumstances, and any other relevant items linked to the particular features of intercountry adoption. Moreover this psychosocial assessment shall involve interviewing any existing children of the prospective adoptive parents, as provided in Article 9 of Organic Law 1/1996 of 15 January on the Legal Protection of Children, partially amending the Civil Code and the Civil Procedure Act.

The Public Entities shall provide the necessary coordination for the purpose of standardising suitability assessment criteria.

3. The declaration of suitability and psychosocial reports in connection therewith shall be valid for up to three years as of their date of issue by the Public Entities, provided that there are no substantial changes in the prospective adoptive parents' personal and family situation underlying that declaration, subject to the conditions and limitations provided, if applicable, in the regional legislation applicable in each event.

4. The Public Entities are responsible for the declaration of suitability for prospective adoptive parents as from the psychosocial assessment referred in point 2, which shall be subject to the conditions, requirements and limitations established in the corresponding legislation.

5. Prospective adoptive parents may be assessed and, if appropriate, declared suitable simultaneously for national and intercountry adoption, and the processing of their applications shall be compatible in both spheres.

Twelve. Article 11 is hereby amended and shall henceforth be drafted as follows:

*Article 11. Adopters' pre-adoption and post-adoption obligations:*

1. Prospective adoptive parents must attend briefing and preparatory sessions organised by the Public Entities or the accredited body prior to requesting a suitability declaration, on a mandatory basis.

2. The adopters must, within the specified period, give the information, documentation and interviews that the Public Entity, accredited body or authorised entity require for drawing up post-adoption follow-up reports as required by the Public Entity or the competent authority in the country of origin. Any failure by the adopters to cooperate in this phase may give rise to the administrative sanctions provided for in regional legislation and may be regarded as grounds for unsuitability in a subsequent adoption process.

3. Adopters must comply within the specified period with any post-adoption formalities established by the legislation of the adopted child's country of origin, and shall be assisted and advised for the purpose as necessary by the Public Entities and the accredited bodies.

Thirteen. Article 12 is hereby amended and shall henceforth be drafted as follows:

*Article 12. Right to know biological origins:*

Once adoptees are of legal age, or via their legal representatives when adoptees are minors, they shall be entitled to access any details of their origins that are held by the Public Entities, without prejudice to any restrictions pursuant to the legislation of the adoptee's country of origin. This right shall be exercised with the advice, assistance and mediation of the specialist services of the Public Entity, the accredited bodies or any other entities authorised for the purpose.

The competent Public Entities shall guarantee the preservation of any information that they have on the child's origins, in particular as regards the identity of his/her progenitors as well as the medical history of the child and his/her family.

Any accredited bodies that have acted as intermediaries in the adoption must inform the Public Entities of what details they possess on the child's origins.

Fourteen. Article 13 is hereby amended and shall henceforth be drafted as follows:

*Article 13. Protection of personal data:*

1. Any processing and transfer of data pursuant to the provisions of this Act shall be subject to the provisions of Organic Law 15/1999 of 13 December on the Protection of Personal Data.

2. Data obtained by the Public Entities or the accredited bodies may be processed only for purposes linked to the performance, in each case, of the functions described for each one in articles 5 and 6.3 of this Act.

3. International transfers of data to foreign adoption authorities shall be made only in the events expressly provided for in the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption and other international legislation.

Fifteen. Section 2 of Article 14 is hereby amended and shall henceforth be drafted as follows:

2. Spanish nationality and habitual residence in Spain shall in all events be taken into account when an application to adopt is filed to the Public Entity.

Sixteen. The heading of Article 15 is amended, its Section 3 is suppressed and Section 4 is renumbered, becoming 3, drafted as follows:

*Article 15. International judicial jurisdiction for declaring invalidity or converting a non-full adoption into a full adoption in international scenarios:*

3. For the purposes of this Act's provisions, simple or non-full adoption shall mean adoption granted by a foreign competent authority whose effects are not substantially the same as those provided for adoption in Spanish legislation.

Seventeen. Article 17 is hereby amended and shall henceforth be drafted as follows:

*Article 17. Jurisdiction of consuls in granting intercountry adoptions:*

1. As long as there is no legal prohibition or objection by the local government, in accordance with applicable international treaties and other international standards, consuls may grant adoptions if the adopter is Spanish, if the child to be adopted is habitually resident in the corresponding consular district and if there is no need for a prior proposal by the Public Entity as provided in events 1, 2 and 4 in article 176.2 of the Civil Code. The adopter's nationality and the habitual residence of the child to be adopted shall be determined when the adoption process is initiated.

2. The processing of and decision on this adoption application shall be subject to legislation in the sphere of non-contentious jurisdiction.

Eighteen. The division by Sections of Chapter II of Title II is suppressed.

Nineteen. Article 18 is hereby amended and shall henceforth be drafted as follows:

*Article 18. Law applicable to the granting of an adoption:*

The granting of an adoption by the competent Spanish authority shall be governed by the provisions of material Spanish law in the following events:

a) Where the child to be adopted is habitually resident in Spain when the adoption is granted.

b) Where the child to be adopted has been or is to be moved to Spain for the purpose of becoming habitually resident in Spain

Twenty. Section 4 is added to Article 19, being drafted as follows:

4. In the case of children whose national law prohibits or does not provide for adoption, the granting of adoption shall be refused unless the child is in a situation of distress and is a ward of the Public Entity.

Twenty-one. Article 21 is suppressed.

Twenty-two. Article 22 is hereby amended and shall henceforth be drafted as follows:

*Article 22. Law applicable to the conversion or invalidity of an adoption:*

The law applicable to the conversion of a non-full adoption into a full one and to any invalidity of an adoption shall be that applied when it was granted.

Twenty-three. Article 24 is hereby amended and shall henceforth be drafted as follows:

*Article 24. International cooperation between authorities:*

Where the foreign authority that is to grant an adoption, when the adopter is Spanish and resident in Spain, requests information on him/her from the Spanish authorities, the consul may procure it from the authorities of his/her last place of residence in Spain or provide any information held by the consulate, or obtain information by other means.

Twenty-four. Section 1 of Article 26 is hereby amended and shall henceforth be drafted as follows:

Article 26. Requirements for the validity in Spain of adoptions granted by foreign authorities in the absence of international standards

1. In the absence of applicable international treaties and conventions and other international standards with effect for Spain, an adoption granted by foreign authorities shall be recognised in Spain as an adoption if the following requirements are met:

1st. It was granted by a competent foreign authority. The foreign authority shall be regarded as competent if the case has reasonable links with the foreign country whose authorities granted it. They shall in all events be presumed to be competent with reciprocal application of the rules of jurisdiction provided in article 14 of this Act.

2nd. The adoption does not violate public policy.

For this purpose, Spanish public policy shall be deemed to be violated by adoptions not granted with regard for the child's best interest, especially where the necessary consents and hearings have not been provided, or where it is ascertained that the adoptions were not granted with informed and free consent or that they were procured in return for a payment or consideration.

Twenty-five. Article 27 is hereby amended and shall henceforth be drafted as follows:

*Article 27. Checking the validity of an adoption granted by a foreign authority:*

The Spanish public authority from which validation of an adoption granted by a foreign authority is sought, and, in particular, the Registrar at the Civil Registry where the registration is requested for the adoption granted abroad to be recognised in Spain, shall check, incidentally, the validity of that adoption in Spain in accordance with the provisions of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption, by submitting the certificate of conformity in keeping with the provisions of its article 23, and of the non-application of the grounds for non-recognition provided in article 24 of that Convention.

In case of children from countries that are not signatories to the Convention, the Civil Registrar shall make this incidental check by verifying whether the adoption meets the conditions for recognition provided in articles 5.1.e), 5.1.f) and 26.

Twenty-six. Article 28 is hereby amended and shall henceforth be drafted as follows:

*Article 28. Requirements for validity in Spain of foreign decisions to convert or invalidate an adoption:*

Decisions by a foreign public authority converting or invalidating an adoption shall have legal effects in Spain in accordance with the requirements provided in article 26.

Twenty-seven. Article 29 is hereby amended and shall henceforth be drafted as follows:

*Article 29. Registration of the adoption in the Civil Registry:*

Where the intercountry adoption has been granted abroad and the adopters are habitually resident in Spain, they must request the registration of the child's birth and of the adoption in accordance with the provisions of the Civil Registry Act in order for the adoption to be recognised in Spain.

Twenty-eight. Article 30 is hereby amended and shall henceforth be drafted as follows:

*Article 30. Simple or non-full adoption legally granted by a foreign authority:*

1. A simple or non-full adoption legally granted by a foreign authority shall have effects in Spain, as a simple or non-full adoption, if it conforms with the legislation referred in article 9.4 of the Civil Code.

2. The legislation referred in article 9.4 of the Civil Code shall determine the existence, validity and effects of such adoptions, and the attribution of parental custody.

3. A simple or non-full adoption shall not be liable to registration in the Spanish Civil Registry as an adoption and shall not entail the acquisition of Spanish nationality pursuant to article 19 of the Civil Code.

4. A simple or non-full adoption legally granted by a foreign authority may be converted into an adoption as regulated by Spanish law where the relevant requirements are met through non-contentious judicial proceedings. The law applicable to the conversion shall depend on what law was applicable to its granting.

In order for judicial proceedings to be brought, there shall be no need for a prior proposal by the competent Public Entity.

In all events, for the conversion of a simple or non-full adoption into a full adoption, the competent judge must check that the following conditions are met:

a) That the persons, institutions or authorities whose consent is required for the adoption have been appropriately advised and informed of the consequences of their consent, on the effects of the adoption and, in particular, on the termination of the legal bonds between the child and his/her family of origin.

b) That those persons have expressed their consent freely, as legally provided, and that their consent was given in writing.

c) That those consents were not procured for payment or a consideration of any kind, and that the consents have not been revoked.

d) That the mother's consent, where required, was granted after the child's birth.

e) That, taking into account the child's age and maturity, he/she has been appropriately advised and informed of the effects of the adoption and, where required, of his/her consent.

f) That, taking into account the child's age and maturity, he/she has been heard.

g) That, where the child's consent to the adoption needs to be given, it is checked that such consent was given freely, with the legally established form and formalities, and not for any price of consideration.

Twenty-nine. Article 31 is hereby amended and shall henceforth be drafted as follows:

Article 31. *International public policy:*

In no event may a foreign decision relating to simple or non-full adoption be recognised if it has effects manifestly contrary to Spanish public policy. For this purpose, account shall be taken of the child's best interests.

Thirty. Article 32 is hereby amended and shall henceforth be drafted as follows:

Article 32. *Jurisdiction for granting other child protection measures:*

Jurisdiction for the granting of other child protection measures shall be governed by the criteria provided in international treaties and conventions and other international standards applicable to Spain, and in particular by Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, and the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

Thirty-one. Article 33 is hereby amended and shall henceforth be drafted as follows:

Article 33. *Law applicable to other child protection measures:*

The law applicable to other child protection measures shall be determined in accordance with international treaties and conventions and other international standards applicable for Spain, and in particular the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children

Thirty-two. Article 34 is hereby amended and shall henceforth be drafted as follows:

Article 34. *Legal effects in Spain of foreign decisions regarding child protection measures not resulting in bonds of parentage, rendered by foreign authorities :*

1. Child protection measures granted by a foreign authority and which, according to the law under which they were granted, do not result in any bond of parentage, shall be treated as equivalent to family placement or, if applicable, to guardianship, as regulated by Spanish law, if the following requirements are met:

1st. That the substantial effects of the foreign institution are equivalent to those of family placement or, if applicable, those of guardianship, as provided for by Spanish law.

2nd. That the protection measures have been decreed by a competent foreign authority, whether judicial or administrative. The foreign authority that granted the protection measure shall be deemed to be internationally competent if the case in hand has reasonable links with the foreign country whose authorities granted it.

Notwithstanding the above provision, in the event that the foreign protection institution lacks reasonable links of origin, family background or other similar kinds with the

country whose authority granted that measure, the foreign authority shall be deemed to lack international jurisdiction.

3rd. That the effects of the foreign protection measure do not infringe Spanish public policy, taking into account the child's best interests.

4th. That the document recording the measure granted by the foreign authority meets formal authenticity requirements consisting of legalisation or an apostille and a translation to Spanish as official language. Documents exempt from the requirement of legalisation or translation under other applicable legislation shall be excepted.

2. The Spanish public authority to which the question of the validity of a protection measures granted by a foreign authority is submitted, and, in particular, the Registrar at the Civil Registry where registration is requested of the protection measure granted abroad for recognition in Spain, shall check, incidentally, the validity of that adoption in Spain in accordance with this article.

**Article four.** *Amendment of Act 1/2000, dated 7<sup>th</sup> January, on Civil Procedure.*

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

One. A new number 3 is hereby included in Section 2 of Article 76 and the last Paragraph of that Section is hereby amended and shall henceforth be worded as follows:

“3) In the case of procedures that substantiate opposition to administrative resolutions in matters of protection of the same minor, formalised pursuant to Article 780, as long as none of them has begun the hearing.

In all cases, at places where there is more than one Court assigned competences in mercantile matters, in the cases of numbers 1) and 2), or in civil matters, in the case of number 3), suits filed after another shall be distributed to the Court that was assigned to hear the first one.”

Two. Circumstance 1) of Section 1 of Article 525 is hereby amended and shall henceforth be drafted as follows:

“1) Judgments handed down in proceedings on paternity, maternity, filiation, nullity of marriage, separation and divorce, opposition to administrative resolutions in matters of protection of minors, capacity and marital status and honorary rights, except for pronouncements that regulate asset obligations and relations linked to what comprises the main object of the proceedings.”

Three. Article 779 is hereby amended and shall henceforth be drafted as follows:

“Article 779. *Preferential status of the proceedings. Jurisdiction.*

Proceedings substantiating opposition to administrative resolutions in matters of protection of minors shall have a preferential status.

Jurisdiction to hear these shall lie with the Court of First Instance of the domicile of the Public Institution and, failing that, or in cases of Articles 179 and 180 of the Civil Code, the Court of the domicile of the party adopting.”

Four. Sections 1 and 2 are hereby amended and Section 5 is hereby added to Article 780, all drafted as follows:

“1. No prior administrative claim shall be necessary to file opposition to administrative matters in matters of protection of minors before the civil courts. Opposition to these may be lodged within the term of two months from their notification.

Minors affected by the resolution, parents, guardians, fosterers, carers, the State Prosecutor and persons the law specifically recognises such entitlement shall be entitled to lodge opposition to administrative resolutions in matters of protection of minors, as long as they have a legitimate, direct interest in such a resolution. Although not plaintiffs, they may come forward at any moment during the proceedings, without the actions being rolled back.

Minors shall be entitled to be a party and to be heard in the proceedings pursuant to the terms established in the Organic Act on Legal Protection of Minors. They shall exercise their claims in relation to the administrative resolutions that affect them through their legal representatives, as long as the latter do not have interests that clash with their own, or through the person appointed to defend and represent them.

2. The process of opposition to an administrative resolution in matters of protection of minors shall commence by submitting an initial writ in which the claimant shall briefly state the claim and the resolution opposed.

The writ shall specifically state the date of notification of the administrative resolution and shall state whether there are proceedings related to that minor.”

“5. If the State Prosecutor, the parties or the competent Judge have knowledge of the existence of more than one procedure to oppose administrative resolutions regarding protection of the same minor, they shall issue a plea to the former and the latter shall provide, even of its own motion, accumulation before the Court that is hearing the oldest proceedings.

Once the accumulation is resolved, proceedings shall take place as provided in Article 84, with the particularity that the hearing already called shall not be suspended if it is possible to formalise the remainder of the proceedings accumulated within the term set in the summons. If not, the Court Clerk shall order suspension of the hearing already set, until the others are in the same state, proceeding to issue a new summons for all with preferential status and, in all cases, within ten days thereafter.

Remedies of reconsideration and appeal may be filed against the order refusing accumulation, without suspension effects. No appeal whatsoever shall be filed against the order resolving accumulation.”

Five. Article 781 is hereby amended and shall henceforth be drafted as follows:

“Article 781. *Procedure to determine the need for agreement to the adoption.*

1. Parents seeking recognition of the need for their agreement to the adoption may appear before the Court hearing the relevant adoption proceedings and declare so. The Court Clerk shall suspend the proceedings and grant a term of fifteen days to file the suit, which the same Court shall be competent to hear.

2. If the suit is not filed within the term set, the Court Clerk shall hand down a decree concluding the proceeding and raising the suspension of the adoption proceedings, which shall continue their processing pursuant to the terms set forth in the voluntary jurisdiction legislation. The decree may be appealed directly for review before the Court. Once that resolution is final, no subsequent claim shall be admitted from the same subjects regarding the need for agreement for the adoption concerned.

3. Once the suit is lodged within the term, the Court Clerk shall hand down a decree declaring the adoption proceedings to be contentious and shall order processing the suit filed in the same proceedings, as a separate procedure, pursuant to the terms foreseen in Article 753.

Once the resolution handed down in the separate procedure regarding the need for the parents of the adoptee to agree is final, the Court Clerk shall order the summons before the Judge of the persons indicated in Article 177 of the Civil Code who must provide consent or agreement to the adoption as well as be heard, and if they have not yet done so, and shall then resolve regarding the adoption.

The summons shall be issued pursuant to the rules established in the Voluntary Jurisdiction Act for such cases.

The order that puts an end to the proceedings shall be liable to a remedy of appeal, which shall have suspension effects.

An attested copy of the final resolution that orders the adoption shall be sent to the Civil Registry for the inscription to be performed.”

**Additional Provision one.** *Use of the expression “Public Institution”.*

The expression “Public Institution” shall be used in the legal texts to refer to Public Institution for protection of minors with territorial competence.

**Additional Provision two.** *References to pre-adoptive fostering and to simple fostering and to the Intercountry Adoption Collaborating Entities.*

All references made in the laws and other provisions to pre-adoptive fostering shall be understood to refer to delegation of guardianship for the pre-adoptive cohabitation foreseen in Article 176 bis of the Civil Code. Those referring to simple fostering shall be understood to cover temporary foster family care foreseen in Article 173 bis of the Civil Code; and when they refer to the Intercountry Adoption Collaborating Entities, these shall be understood to refer to the bodies accredited for intercountry adoption.

**Additional Provision three.** *Common criteria for coverage, quality and accessibility.*

The Government shall promote establishment of common criteria and minimum standards of coverage, quality and accessibility in application of this Act with the Autonomous Communities nationwide and, in all cases, with regard to:

1. Composition, number and qualification of the professional teams of the public entities for protection of minors with territorial competence who are to intervene in such situations as: risk and distress of minors, voluntary delivery into care, programmes for independent life of youths under a protection measure, foster and adoption procedures.

2. Essential elements of foster family care proceedings: assessment of educational skills of the families; financial compensation for specialised as well as ordinary fostering, with special attention to the needs concurring from care of minors with disability; measures to encourage and support foster family care; informative campaigns; encouragement of association membership and foster families.

3. Essential elements in adoption proceedings to prepare for: pre-adoption; declaration of eligibility; concept of minors “with special needs”; endorsement of accredited bodies; information campaigns, with special attention to those focusing on adoption of minors with special needs.

4. Quality and accessibility standards, facilities and provision of each type of service at residential care centres. Measures to adopt so their organisation and operation tends to following family organisation patterns. Inclusion of models of excellence in management.

5. Standards of coverage, quality and accessibility, installations and provision of family meeting points.

6. Full care for former protected youths: training in skills and abilities to favour their maturity and promote personal and social autonomy on reaching the age of 18 years; guarantee of sufficient income to subsist; accommodation; training for employment, to facilitate or prioritise their participation in job offers as a means of discrimination.

**Additional Provision four.** *Judicial regime of specific centres for protection of minors with behavioural issues of private entities that collaborate with the competent public institutions.*

Centres for specific protection of minors with behavioural issues of private entities that collaborate with the competent public institutions where it is foreseen to use security measures and restriction of fundamental liberties or rights shall have the terms set forth in Title II, Chapter IV of the Organic Act on Legal Protection of Minors applied to them.

These private centres shall need administrative licence to operate to be issued by the competent Public Institution in matters of protection of minors, and be subject to its regime of inspection and, in the event, administrative penalties.

**Additional Provision five.** *Inter-territorial assignment mechanism.*

The Public Administrations shall carry out the necessary actions to establish an effective mechanism to allow assignment of minors with a specific profile to adequate families when their Autonomous Community has no offers of foster families or, in the event, for adoption.

**Additional Provision six.** *Equivalence of legal regimes in matters of fostering.*

For the purposes of the laws and rules that existed prior to this Act and the relevant legislations of the Autonomous Communities with their own Civil Code or with civil laws that regulate such, the status of temporary foster family care is hereby declared equivalent to that of simple foster family care, and the situation of guardianship for the purposes of adoption with that of pre-adoptive fostering.

**Additional Provision seven.** *Specific plans to protect minors.*

The Public Administrations, within the scope of their respective powers, shall approve specific protection plans for minors under six years of age containing specific measures to encourage foster family care for them.

**Transitional Provision one.** *Rules applicable to judicial procedures already commenced.*

Judicial proceedings and cases commenced prior to this Act coming into force and that are in process shall continue their procedure pursuant to the procedural legislation in force at the time of commencing the proceedings or judicial case.

**Transitional Provision two.** *Cessation of fostering ordered by the court.*

Fostering ordered by the court prior to this Act coming into force may be ceased by resolution by the Public Institution without the need for a court order.

**Transitional Provision three.** *Regulations applicable to intercountry adoption cases already commenced; and currency of endorsement of the accredited bodies.*

1. Intercountry adoption of minors cases initiated prior to this Act coming into force and that are in process shall continue to be processed pursuant to the legislation in force at the time the proceedings commenced.

2. Bodies accredited to act as intermediaries in the intercountry adoption that hold such endorsement on the date of this Act being enacted shall maintain it in force until it expires, or until a new accreditation or licensing is in place, in the event, pursuant to the terms foreseen in this Act.

**Transitional Provision four.** *Certification of criminal records.*

Until the Central Register of Sex Offenders starts functioning, the certification referred to in Article 13 of Organic Act 1/1996, dated 15<sup>th</sup> January, on Legal Protection of Minors and of partial amendment of the Civil Code and of the Civil Procedure Act, shall be issued by the Central Register of Criminal Records.

**Transitional Provision five.** *Extension of the benefits regarding enrolment and examination fees within the scope of education for large family certificates in force as of 1<sup>st</sup> January 2015.*

The amendment of Article 6 of Act 40/2003, dated 18<sup>th</sup> November, on protection of large families, foreseen in Final Provision five, shall be applicable, for the exclusive purposes of access to benefits within the scope of education related to enrolment and examination fees foreseen in Article 12.2.a) of said Act for large family certificates that were in force on 1<sup>st</sup> January 2015.

**Sole Repealing Provision.** *Repeal of legal provisions.*

The Sole Additional Provision of Act 54/2007, dated 28<sup>th</sup> December, on Intercountry Adoption is hereby repealed.

All provisions that oppose or are incompatible with the terms of this Act are also hereby repealed.

**Final Provision one.** *Amendment of Act 29/1998, dated 13<sup>th</sup> July, regulating the Contentious-Administrative Jurisdiction.*

Section 6 of Article 8 of Act 29/1998, dated 13<sup>th</sup> July, regulating the Contentious-Administrative Jurisdiction is hereby amended and shall henceforth be drafted as follows:

“6. The Contentious-Administrative Courts shall also hear applications for warrants to enter homes and remaining places where access requires consent by the owner, as long as this is appropriate for mandatory enforcement of acts by the public administration, except in the case of enforcement of measures to protect minors ordered by the competent Public Institution in the matter.

It shall also be the remit of the Contentious-Administrative Courts to authorise or provide judicial ratification of measures that the healthcare authorities consider urgent and necessary for public health and that imply deprivation or restriction of liberty or another fundamental right.

Moreover, the Contentious-Administrative Courts shall decide on applications for warrants to enter and inspect homes, premises, land and means of transport that have been ordered by the National Commission for Competition when such access and inspection requires consent from the holder and the latter refuses to grant it or when there is a risk of such opposition.”

**Final Provision two.** *Amendment of Act 41/2002, dated 14<sup>th</sup> November, on basic regulation of patient autonomy and on rights and obligations in matters of clinical information and documentation.*

Sections 3, 4 and 5 are hereby amended and Sections 6 and 7 are hereby added to Article 9 of Act 41/2002, dated 14<sup>th</sup> November, on basic regulation of patient autonomy and on rights and obligations in matters of clinical information and documentation, which shall henceforth be drafted as follows:

“3. Consent shall be granted by representation in the following cases:

a) If the patient is not able to make decisions, in the opinion of the medical practitioner responsible for care, or if he is in a physical or mental state that does not allow him to be aware of his situation. If the patient lacks a legal representative, the consent shall be provided by the persons related to him for family or *de facto* reasons.

b) If the patient has judicially amended capacity and this is recorded in the judgment.

c) If a minor who is a patient is not intellectually or emotionally able to understand the scope of the intervention. In this case, consent shall be provided by the legal representative after having heard the minor’s opinion, as set forth in Article 9 of Organic Act 1/1996, dated 15th January, on Legal Protection of Minors.

4. In the case of emancipated minors or those over the age of 16 years who are not in cases b) and c) of the preceding Section, no consent by representation may be provided.

Notwithstanding the terms set forth in the preceding Paragraph, if it is an action involving severe risk to life or health of the minor, according to the medical practitioner’s criterion, the consent shall be provided by the legal representative after having heard the minor’s opinion and taken it into account.

5. Performing clinical tests and performing human aided reproduction techniques are governed by the terms established in general terms regarding legal age and the applicable special provisions.

6. In cases in which consent must be granted by the legal representative or persons related for family reasons or *de facto* in any of the cases described in Sections 3 to 5, the decision shall always be adopted in the best interest for the life or health of the patient. Decisions that are contrary to such interests shall be reported to the judicial authority, directly or through the State Prosecutor, in order for it to adopt the relevant resolution, except if, for reasons of urgency, it is not possible to secure judicial leave, in which case the health professionals shall adopt the necessary measures to safeguard the patient’s life or health, due by reasons involving fulfilment of a duty and due to a state of need.

7. Providing consent by representation shall be adequate for the circumstances and in proportion to the needs to be attended to, always in favour of the patient and with respect for his personal dignity. The patient shall participate to the extent possible in decision making throughout the healthcare process. If the patient is a person with disabilities, he shall be offered the relevant supporting measures, including information in adequate formats, following the rules set by the principle of design for all, so they are accessible and comprehensible by persons with disability, to allow him to provide his consent personally.”

**Final Provision three.** *Amendment of the consolidated text of the Workers' Statute Act, approved by Royal Legislative Decree 1/1995, dated 24th March.*

Letter f) of Section 3 of Article 37 of the consolidated text of the Workers' Statute Act, approved by Royal Legislative Decree 1/1995, dated 24<sup>th</sup> March, is hereby amended and shall henceforth be drafted as follows:

“f) For the indispensable time to perform prenatal examinations and techniques to prepare for childbirth and, in cases of adoption or fostering, or guardianship for the purposes of adoption, to attend the requisite information and preparation sessions and to draw up the requisite psychological and social reports prior to the declaration of eligibility, as long as, in all cases, these take place during the working day.”

**Final Provision four.** *Amendment of Act 7/2007, dated 12<sup>th</sup> April, on the Basic Statute of Public Employees.*

Letter e) of Article 48 of Act 7/2007, dated 12<sup>th</sup> April, on the Basic Statute of Public Employees is hereby amended and shall henceforth be drafted as follows:

“e) For the indispensable time to perform prenatal examinations and techniques to prepare for childbirth and, in cases of adoption or fostering, or guardianship for the purposes of adoption, to attend the requisite information and preparation sessions and to draw up the requisite psychological and social reports prior to the declaration of eligibility, that take place during the working day.”

**Final Provision five.** *Amendment of Act 40/2003, dated 18<sup>th</sup> November, on Protection of Large families.*

One. Section 4 of Article 2 of Act 40/2003, dated 18<sup>th</sup> November, on Protection of Large families is hereby amended and shall henceforth be drafted as follows:

“4. Persons subject to permanent protection or foster family or legally constituted pre-adoptive care shall have the same status as their own children. Minors who come of legal age in any of these situations and remain in the family unit shall conserve their status as children pursuant to the terms established in Article 3 of this Act.”

Two. Article 6 of Act 40/2003, dated 18<sup>th</sup> November, on Protection of Large families is hereby amended and shall henceforth be drafted as follows:

“Article 6. *Renewal, amendment and loss of the Certificate.*

The Large Family Certificate shall be renewed or left without effect if the number of members of the family unit or the conditions that gave rise to issue of the Certificate change, when this gives rise to a change in category or loss of large family status.

The Certificate shall remain in force, although the number of children who fulfil the conditions for inclusion in the Certificate is lower than that established in Article 2, whilst at least one of them complies with the conditions foreseen in Article 3. Notwithstanding this, in these cases, the currency of the Certificate shall be understood to refer exclusively to the members of the family unit who continue to fulfil the conditions to form part of it, and shall not be applicable to the children who no longer fulfil them.”

Three. An Additional Provision is added in Act 40/2003, dated 18<sup>th</sup> November, on Protection of Large families, with the following text:

“Additional Provision ten. *Impact on the family of the rules.*

The memoranda on analysis of regulatory impact that shall accompany bills and draft regulations shall include the impact on the family of the new provisions.”

Four. Within the shortest possible term, the Government shall submit to Parliament a Bill to reform Act 40/2003, dated 18<sup>th</sup> November, on Protection of Large families, in order to guarantee equal opportunities and access to public assets and services, contributing to redistribution of revenue and wealth of families.

**Final Provision six.** *Amendment of Organic Act 2/2006, dated 3<sup>rd</sup> May, on Education.*

Organic Act 2/2006, dated 3<sup>rd</sup> May, on Education, is hereby amended and shall henceforth be worded as follows:

One. Section 2 of Article 84 is hereby amended and shall henceforth be drafted as follows:

“2. When there are not enough places, the admission process shall be governed by the priority criteria of the existence of siblings enrolled at the school, fathers, mothers or legal guardians who work there, nearness to the home or place of work of any of the fathers, mothers or legal guardians, per capita income of the family unit and large family legal status, foster family care status of the pupil, and disability status of the pupil or any fathers, mothers or siblings, without any of these being excluding and without prejudice to the terms established in Section 7 of this Article.

Notwithstanding this, schools that are recognised a curricular specialisation by the educational administrations, or that participate in an action intended to encourage quality in teaching centres among those described in Article 122 bis, may reserve up to twenty per cent of the points assigned to the criteria of academic performance by the pupil in admission applications to post-compulsory education. Such percentage may be reduced or modulated if necessary to avoid breaching the criteria of equity and cohesion of the system.”

Two. Section 2 of Article 87 is hereby amended and shall henceforth be drafted as follows:

“2. In order to facilitate schooling and guarantee the right to education of students with a specific need for educational support, the educational administrations shall reserve part of the places in public and subsidised private schools until the end of the pre-inscription and enrolment period.

They may also authorise an increase of up to ten per cent in the maximum number of pupils per classroom in public and subsidised private schools in the same school district, either to attend to the immediate schooling needs of pupils who join late, or needs arising from transfer of the family unit during the extraordinary schooling period, due to forcible mobility of any of the fathers, mothers or legal guardians, or due to commencement of a foster family care measure affecting the pupil.”

**Final Provision seven.** *Amendment of Organic Act 8/2013, dated 9<sup>th</sup> December, for Improvement of Educational Quality.*

One. Section sixty of the Sole Article of Organic Act 8/2013, dated 9<sup>th</sup> December, for Improvement of Educational Quality is hereby amended so the first Paragraph of Section 2 of Article 84 of Organic Act 2/2006, dated 3<sup>rd</sup> May, on Education, shall have the following content:

“If not enough places exist, the admission process shall be governed by priority criteria of existence of siblings enrolled in the school, fathers, mothers or legal guardians who work there, nearness to the home or workplace of any of their fathers, mothers or legal guardians, per capita income of the family unit and large family legal status, foster family care status of the pupil, and disability status of the pupil or any fathers, mothers or siblings, without any of these being excluding and without prejudice to the terms established in Section 7 of this Article.”

Two. Section sixty of the Sole Article of Organic Act 8/2013, dated 9<sup>th</sup> December, for Improvement of Educational Quality, is hereby amended so that Section 2 of Article 87 of Organic Act 2/2006, dated 3<sup>rd</sup> May, on Education, and shall have the following content:

“They may also authorise an increase of up to ten per cent in the maximum number of pupils per classroom in public and subsidised private schools in the same school district, either to attend to the immediate schooling needs of pupils who join late, or needs arising from transfer of the family unit during the extraordinary schooling period, due to forcible mobility of any of the fathers, mothers or legal guardians, or due to commencement of a foster family care measure affecting the pupil.”

**Final Provision eight.** *Amendment of Act 43/2006, dated 29<sup>th</sup> October, to improve growth and employment.*

A new Section 4 ter is hereby introduced in Article 2 of Act 43/2006, dated 29<sup>th</sup> October, to improve growth and employment, under the following terms:

“4 ter. Employers who grant permanent contracts to victims of trafficking with persons, identified pursuant to the terms set forth in Article 59 bis of Organic Act 4/2000, of 11<sup>th</sup> January, on the rights and liberties of aliens in Spain and their social integration, and who, in the event, have obtained residence and work permits due to exceptional circumstances, without the necessary condition of being unemployed, shall be entitled, from the date of entering into the contract, to a monthly rebate on the employer’s Social Security contribution or, in the event, its daily equivalent, per worker hired, of 125 euros/month (1.500 euros/year) for 2 years.

In the event of temporary contracts being entered into with such persons, they shall be entitled to monthly rebate on the Social Security employer’s contribution or, in the event, its daily equivalent per worker hired of 50 euros/month (600 euros/year), during the full term of the contract.”

**Final Provision nine.** *Amendment of Act 39/2006, dated 14<sup>th</sup> December, on promotion of personal autonomy and attention to persons with dependent status.*

A new Section 8 is hereby added to Article 14 de Act 39/2006, dated 14<sup>th</sup> December, on promotion of personal autonomy and attention to persons with dependent status, drafted as follows:

“8. The pensions established by virtue of this Act may not be seized, except in the case foreseen in Article 608 of the Civil Procedure Act.”

**Final Provision ten.** *Amendment of the consolidated text of the General Social Security Act, approved by Royal Legislative Decree 1/1994, dated 20<sup>th</sup> June.*

The consolidated text of the General Social Security Act, approved by Royal Legislative Decree 1/1994, dated 20th June, is hereby amended as follows:

One. A new Article 179 ter is hereby added drafted as follows:

“Article 179 ter. *Impediment to be the beneficiary of death and survival pensions.*

1. Without prejudice to the terms established in Additional Provision one of Organic Act 1/2004, dated 28<sup>th</sup> December, on Comprehensive Protection Measures against Gender Violence, those sentenced in a final judgment for having committed the criminal offence of homicide in any of its forms may not be the beneficiaries of death and survival pensions to which they might have been entitled, when the victim was the subject causing the subsidy.

2. At any time and on its own motion, the Management Entity may review the resolution by which entitlement to death and survival pensions has been granted to a person sentenced by a final judgment in the case stated, who shall be bound to reimburse the sums, in the event, that may have been received for such.

The power of review of its own motion referred to in the preceding Paragraph shall not be subject to a term, although the obligation to reimburse the amount of the pensions received shall expire within the term foreseen in Article 45.3. In all cases, expiry of that obligation shall be interrupted when a judicial resolution is handed down that involves rational signs that the subject investigated is responsible for a criminal offence of culpable homicide, as well as due to the criminal proceedings and sundry appeals being filed.

The resolution to commence review proceedings of recognition of the subsidy to which this Article refers shall be ordered if injunctive suspension of its receipt until the final resolution putting an end to such proceedings has not taken place before.”

Two. A new Article 179 quater is hereby added drafted as follows:

“Article 179 quater. *Injunctive suspension of payment of death and survival pensions in certain cases.*

1. The Management Entity shall injunctively suspend payment of death and survival pensions that may have been recognised, in the event, if a judicial resolution is handed down entailing prima facie evidence that the subject investigated is responsible for a criminal offence of culpable homicide in any of its forms, if the victim was the subject causing the pension, with effect from the first day of the month following that when said circumstances is notified.

If the Management Entity obtains knowledge, before or during the formalities of the procedure to recognise the death or survival pension, that a judicial resolution has been issued against the applicant in which prima facie evidence of a criminal offence having been committed, it shall proceed to grant it of all the remaining requisites for it concur, but with injunctive suspension of payment thereof from the date on which the financial effects should have arisen.

In the cases stated in the preceding two paragraphs, injunctive suspension shall be maintained until a final judgment is handed down, or another final resolution that ends the criminal proceedings is issued or the non-culpability of the beneficiary is determined.

If the beneficiary of the pension is finally sentenced by final judgment for having committed the crime, the recognition review shall be upheld and, in the event, reimbursement of the sums received claimed, pursuant to the terms foreseen in Article 179 ter. If a judgment of not guilty is handed down, or a final judicial resolution declares the beneficiary is not guilty, payment of the pension suspended shall be reinstated with the effects that would have been appropriate had the suspension not been resolved, after deduction, in the event, of the sums paid under the obligation to provide maintenance pursuant to the terms set forth in Section 3.

2. Notwithstanding this, if a judgment of not guilty is handed down at first instance and this is appealed, the injunctive suspension shall be raised until resolution of the appeal by final judgment. In this case, if the final judgment handed down in that appeal is also of absolution, the beneficiary shall be paid the sums not received since the injunctive suspension was ordered, until it was raised, deducting sums that, in the event, have been paid to third parties under the obligation to provide maintenance allowance pursuant to the terms set forth in Section 3. On the contrary, if the final judgment handed down in the appeal convicts the accused, review of recognition of the pension shall be upheld, as well as claiming reimbursement of the sums received by the convicted person, pursuant to the terms stated in Section 1 of this Article, including those during the period when the suspension was raised.

3. During suspension of the payment of a widowhood pension ordered pursuant to the terms foreseen in this Article, the obligations of maintenance in favour of holders of an orphan's pension, or to relatives arising from by the victim of the crime may be paid against it, up to the limit of the amount that would have been due to the beneficiary of that pension for such an item, as long as those holders have been beneficiaries of the increases referred to in Article 179 quinquies, if the final judgment condemning that party is eventually handed down. The sum to be received in maintenance allowance by each one of the orphaned pensioners, or by relatives, may not exceed the amount that would have been due pursuant to that increase from time to time.”

Three. A new Article 179 quinquies is hereby added drafted as follows:

“Article 179 quinquies. *Increased orphanage pensions and those in favour of relatives, in certain cases.*

1. If, pursuant to the terms established in Article 179 ter, the party found guilty by final judgment of a culpable homicide in any of its forms may not be a beneficiary of the widowhood pension, or has forfeited it, that party's children who are entitled to an orphan's pension arising from the victim of the crime, shall be entitled to the increase foreseen by the regulations for cases of absolute orphanhood.

In those same cases, holders of the pension for relatives may benefit from the increase foreseen by the regulations, as long as there are no other persons entitled to the death and survival pension arising from the victim.

2. The financial effects of said increase shall be backdated to the date of effect of the initial recognition of the orphan's pension or that in favour of relatives, when the widowhood pension had not previously been recognised for the person found guilty by a final judgment. Otherwise, said financial effects shall commence as of the date when payment of the widowhood pension has ceased, as a consequence of review of its recognition by the Management Entity pursuant to the terms foreseen in Article 179 ter or, in the event, as of the date of injunctive suspension considered in Article 179 quater.

In all cases, payment of the increase in the orphan's pension, or that in favour of relatives, for the periods when the person sentenced has received the widowhood pension may only be implemented once that party has settled their reimbursement, without the Management Entity being subject to joint or joint and several liability for payment of the increase stated to the orphaned pensioner or to the relatives, if the reimbursement does not take place, nor bound to advance it.

Regarding the amounts that would be due for increase in the orphanhood pension or in favour of relatives, in the event, the amounts that may have been received by the beneficiary against the widowhood pension suspended as maintenance allowance shall be deducted, pursuant to the terms set forth in Article 179 quater.”

Four. A new Article 179 sixies is hereby added drafted as follows:

“Article 179 sixies. *Payment of orphanhood pensions, in certain cases.*

In the case of the children of those sentenced by final judgment for committing a criminal offence of culpable homicide in any of its forms, pursuant to the terms stated in Article 179 ter, being minors or persons with judicially modified capacity, who are beneficiaries of the orphanhood pension concurring from the victim, said pension shall not be payable to the person sentenced.

In any event, the Management Entity shall inform the State Prosecutor of the existence of the orphanhood pension, as well as of any judicial resolution entailing prima facie evidence that the parent in responsible of a criminal offence of culpable homicide so that, pursuant to the terms set forth in Article 158 of the Civil Code, he may proceed, in the event, to instigate adoption of the appropriate measures in relation to the natural person or institution protecting the minor or person with judicially amended capacity to whom the orphanhood pension shall be paid. If such measures are adopted due to said procedural situation, when appropriate, the Management Entity shall also notify the State Prosecutor of the resolution that puts an end to the proceedings and whether or not the judicial resolution handed down is final or not.”

Five. Section 1 of Additional Provision eight shall henceforth be drafted as follows:

“1. The terms set forth in Articles 137, Sections 2 and 3; 138; 140, Sections 1, 2 and 3; 143; 161, Sections 1, 2 and 3; 161 bis, Section 1 and Section 2. B); 162, Sections 1.1, 2, 3, 4 and 5; 163; 165; 174; 174 bis; 175; 176, Section 4; 177, Section 1, Paragraph two; 179, 179 ter, 179 quater, 179 quinquies and 179 sixies shall be applicable to all the regimes forming the Social Security system.

Likewise, Additional Provisions 7 bis, forty-three and fifty-nine and Transitional Provisions five, Section 1, 5 bis, 6 bis and sixteen shall be applicable to the regulations on family pensions contained in Chapter IX of Title II. .

Notwithstanding the terms set forth in the preceding Paragraph, application to the special regimes of the provisions Article 138, last Paragraph of its Section 2, as well as of the provisions contained in its Section 5 is hereby excluded.”

**Final Provision eleven.** *Amendment of the consolidated text of the State Passive Classes Act, approved by Royal Legislative Decree 670/1987, dated 30<sup>th</sup> April.*

The consolidated text of the State Passive Classes Act, approved by Royal Legislative Decree 670/1987, dated 30<sup>th</sup> April, is hereby amended as follows:

One. Section three is hereby added to Article 15, drafted as follows:

“Article 15.3. Without prejudice to the terms set forth in number 1, the Administration may review acts of recognition of the right to a pension in favour of relatives concurring from the beneficiary being found guilty, by final judgment, for committing a criminal offence of culpable homicide in any of its forms, when the victim is the subject giving rise to the pension, that may be performed at any time, as well as reclaiming the sums that, in the event, may have been received for that item.”

Two. A new Article, number 37 bis is hereby added, drafted as follows:

“Article 37 bis. *Impediment to be beneficiary of pensions due to relatives.*

Without prejudice to the terms set forth in Additional Provision one of Organic Act 1/2004, dated 28<sup>th</sup> December, on Comprehensive Protection Measures against Gender Violence, pensions for relatives to which a party might be entitled may not benefit those found guilty by a final judgment of committing a criminal offence of culpable homicide in any of its forms, if the victim was the subject giving rise to the pension.

At any time and of its own motion, the Administration may review the act or resolution by which the right to receive the pension in favour of relatives in the case of a person found guilty in a final judgment in the case stated, who shall be bound to reimburse the sums that, in the event, may have been received for that item.

The resolution to commence the review proceedings regarding recognition of the pension this Article refers shall order, if this has not previously taken place, injunctive suspension of its receipt until the resolution that concludes those proceedings.”

Three. A new Article, number 37 ter, is added, drafted as follows:

“Article 37 ter. *Injunctive suspension of payment of pensions to relatives, in certain cases.*

1. The Directorate General of Personnel Costs and Public Pensions shall injunctively suspend payment of pensions granted to relatives when a judicial resolution is handed down against the beneficiary entailing prima facie evidence of criminal behaviour in committing an offence of culpable homicide in any of its forms, if the victim was the subject giving rise to the pension, with effect from the first day of the month following that in which such person is notified of that circumstance.

In the cases stated, the injunctive suspension shall be maintained until a final judgment or another final resolution is handed down that concludes the criminal proceedings, or determines that the beneficiary is not guilty.

If the beneficiary of the pension is definitively found guilty by a final judgment for having committed said crime, review of the recognition shall proceed and, in the event, reimbursement of the sums received demanded, pursuant to the terms set forth in Article 37 bis. In that case, the Directorate General of Personnel Costs and Public Pensions, or the Directorate General of Personnel of the Ministry of Defence, within the scope of their respective powers, shall set the amount of the pensions, if any, as if the person found guilty did not exist.

If the proceedings are concluded by means of a final judgment or resolution without such a conviction, or if the beneficiary is declared not guilty, the payment of the pension suspended shall be reinstated with the effects that would have existed had the suspension not been ordered.

2. Notwithstanding this, if a judgment of not guilty is handed down at first instance and this is appealed, the injunctive suspension shall be raised until resolution of the appeal by final judgment. In that case, if the final judgment handed down at that appeal is also of absolution, the beneficiary shall be paid the sums not received from the injunctive suspension being ordered, until it was raised. On the contrary, if the final judgment is a conviction, review of the pension granted shall be appropriate, as well as reimbursement of the sums received by the person sentenced, pursuant to the terms set forth in Section 1 of this Article, including those during the period when the suspension was raised.

3. During suspension of payment of a pension ordered as provided in this Article, the Directorate General of Personnel Costs and Public Pensions or the Directorate General of Personnel of the Ministry of Defence, within the scope of their respective powers, shall set the amount of the pensions, if any, as if the person against whom the resolution had been handed down, referred to in Section 1, did not exist. Such amount shall be provisional until the final resolution that concludes the criminal proceedings is handed down.

In the event of the case being set aside or of a final judgment of not guilty, the sums subject to injunctive suspension shall be paid. Notwithstanding this, the beneficiary of the pension calculated according to the terms set forth in the preceding Paragraph shall not be bound to reimburse any sum whatsoever.”

Four. A new Article 37 quater is hereby added drafted as follows:

*Article 37 quater. Payment of pensions to relatives in certain cases.*

“In the event of there being minor or judicially incapacitated beneficiaries, whose parental authority or protection are assigned to a person against whom a judicial resolution has been handed down entailing prima facie evidence of criminal behaviour, or a final judgment of conviction of a criminal offence of culpable homicide in any of its forms is handed down, the pension may not be paid to that person.

In any case, the Directorate General of Personnel Costs and Public Pensions shall inform the State Prosecutor of the existence of the pension, as well as of the judicial resolution entailing prima facie evidence that a person who is attributed parental authority or guardianship is responsible for a criminal offence of culpable homicide so he may proceed, in the event, to call for adoption of the appropriate measures in relation to the natural person or institutional guardianship of the minor or person with judicially amended capacity to which the pension shall be paid. Once such measures are adopted due to said procedural situation, when this is appropriate, the Administration shall also notify the State Prosecutor of the resolution that concludes the criminal proceedings and whether or not the judicial resolution in which it is ordered is final.”

Five. Additional Provision eleven shall henceforth be drafted as follows:

*“Additional Provision eleven. Pensions for relatives.*

The regulation contained both in Article 38 and in Transitional Provision twelve, as well as in Article 41 of this text, except for the terms set forth in Paragraph two of Section 1 of the last Article cited shall be applicable, respectively, to widowhood and orphan’s pensions of the State Passive Classes, concurring pursuant to the legislation in force on 31<sup>st</sup> December 1984, as well as those concurring in application of the special war legislation; as long as, in one case and another, and in the case of orphanhood, the age limit giving rise to the condition of beneficiary of the orphanhood pension is equal to or less than twenty-one years.

Likewise, the terms set forth in Articles 37 bis and 37 ter shall be applicable to all pensions for the State Passive Classes, whatever their regulatory legislation, as well as pensions concurring pursuant to the special war legislation.”

**Final Provision twelve.** *Amendment of the Criminal Procedure Act.*

A new Additional Provision is added to the Criminal Procedure Act, approved by Royal Decree of 14<sup>th</sup> September 1882, drafted as follows:

“Additional Provision five. *Notification of actions to the National Social Security Institute, the Social Institute of the Navy, the Directorate General of Personnel Costs and Public Pensions of the Ministry of Finance and Public Administrations and the Directorate General of Personnel of the Ministry of Defence.*

Court clerks shall notify the National Social Security Institute, the Social Institute of the Navy Marina and the Directorate General of Personnel Costs and Public Pensions at the Ministry of Finance and Public Administrations, of any judicial resolution entailing prima facie evidence of criminal behaviour due to committing a criminal offence of culpable homicide in any of its forms, in which the victim is an ascendant, descendent, sibling, spouse or former spouse of the party investigated, or if linked to that party by a relation of affection similar to the marital one. Likewise, said official bodies shall be notified of the final judicial resolutions that conclude the criminal proceedings. Said notifications shall be made for the purposes foreseen in Articles 179 ter, 179 quater, 179 quinquies and 179 sexies of the consolidated text of the General Social Security Act, approved by Royal Legislative Decree 1/1994, dated 20<sup>th</sup> June and in Articles 37 bis and 37 ter of the consolidated text of the State Passive Classes Act, approved by Royal Legislative Decree 670/1987, dated 30<sup>th</sup> April.”

**Final Provision thirteen.** Amendment of Act 36/2011, dated 10<sup>th</sup> October, regulating the Social Jurisdiction.

Article 146.2 of Act 36/2011, dated 10<sup>th</sup> October, regulating the Social Jurisdiction, and shall henceforth be drafted as follows:

“2. The following are excluded from the terms of the preceding Section:

a) Correction of material or *de facto* and arithmetical errors, as well as reviews arising from discovery of omissions or inexactness in the declarations by the beneficiary, as well as claiming reimbursement of sums that, in the event, may have been unduly received for that reason.

b) Reviews of acts in matters of protection due to unemployment, and due to cessation of activity of self-employed workers, as long as this takes place within the maximum term of one year from the administrative resolution or that by the management body that has not been challenged, without prejudice to the terms set forth in Article 147.

c) Review of acts of recognition of the right to death and survival pension arising from the beneficiary being convicted, by final judgment, of having committed a criminal offence of culpable homicide in any of its forms, when the victim is the subject giving rise to the pension, that may be performed at any time, as well as claiming the sums that, in the event, may have been received for that item.”

**Final Provision fourteen.** *Effectiveness in applying the legal amendments.*

The amendments introduced in the General Social Security Act, in the State Passive Classes Act, in the Criminal Procedure Act and in the Act Regulating the Social Jurisdiction, by means of Final Provisions ten to thirteen of this Act, shall be applicable to the facts giving rise to pensions in the Social Security system and the Special Regime for State Passive Classes arising as of the date of its entry into force, as long as the criminal acts have also taken place as of that same date.

**Final Provision fifteen.** *Titles of powers.*

This Act is enacted under the exclusive power to issue civil legislation attributed to the State by Article 149.1.8) of the Spanish Constitution, without prejudice to the conservation, amendment and development by the Autonomous Communities of their regional or special law, if such exists.

Article four, Transitional Provision one and Final Provision one are adopted pursuant to Article 149.1.6) of the Spanish Constitution that attributes to the State exclusive power to order procedural legislation.

Final Provision two has basic status, pursuant to the terms set forth in Article 149.1.1) and 16) of the Spanish Constitution.

Final Provision three is issued pursuant to Article 149.1.7) of the Spanish Constitution, that attributes to the State exclusive power to order the labour legislation.

Final Provision four is issued pursuant to Article 149.1.18) of the Spanish Constitution, constituting the bases of the statutory regime of civil servants, without prejudice to the powers of the Autonomous Communities that already have exclusive powers regarding the statutory regime of personnel serving the Public Administrations and specialities concurring from the administrative and functional organisation inherent to the Autonomous Communities.

Final Provision five is adopted pursuant to Article 149.1.1), 7) and 17) of the Spanish Constitution.

**Final Provision sixteen.** *Implementing regulations in the Cities of Ceuta and Melilla.*

Pursuant to the terms set forth in Section three of Additional Provision four of Act 27/2013, of 27<sup>th</sup> December, on rationalisation and sustainability of the Local Administration, the Cities of Ceuta and Melilla, in the exercise of their regulatory power, may implement the content this Act pursuant to the criteria and circumstances contained herein, in order to adapt it to their particular conditions, to develop their regulatory capacity and within their scope.

**Final Provision seventeen.** *Creation of the Central Register of Sex Offenders.*

At the proposal of the Ministry of Justice and having heard the General Council of the Judiciary and Data Protection Agency, the Government shall issue the appropriate regulatory provisions, within the term of six months from this Act being published, regarding organisation of the Central Register of Sex Offenders at the Central Register of Criminal Records and the Central Register of Judgments of Criminal Liability of Minors, that shall be included in the system of supporting registers at the Judicial Administration, as well as the regime for inscription and cancellation of the entries and access to the information contained there, assuring confidentiality thereof in all cases. It shall be formed with at least the data regarding the identity and genetic profile (DNA) of the persons sentenced for offences against sexual liberty and indemnity, including sexual aggression and abuse, exhibition and sexual provocation, prostitution and sexual exploitation and corruption of minors. The General State

Administration shall collaborate with the competent authorities of the Member States of the European Union to facilitate exchange of information in that field.

**Final Provision eighteen.** *Regulatory amendments and developments.*

The Government shall carry out the regulatory amendments and developments required to apply this Act.

**Final Provision nineteen.** *Inclusion of the European Union regulations.*

This Act contains the provisions to transpose to Spanish law Articles 10 and 15 of the Directive 2011/93/EU, of the European Parliament and the Council, of 13<sup>th</sup> December 2011, on combating sexual abuse and sexual exploitation of children and child pornography and that substitutes Framework Decision 2004/68/JHA by the Council.

**Final Provision twenty.** *No increase in expenditure.*

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

**Final Provision twenty-one.** *Entry into force.*

This 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 Act.

At Madrid, this 28<sup>th</sup> July 2015.

The President of the Government  
MARIANO RAJOY BREY

PHILLIP R.

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