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Between Protection and Punishment: Non-exclusionary Trends in European Juvenile Criminal Justice

Carmen Rodríguez-Hidalgo[1]
University of Málaga

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Abstract: The operation of juvenile criminal justice systems varies considerably across countries. This article offers an analysis of the legal frameworks and available data in six European countries, with a particular focus on key aspects of juvenile justice, namely the minimum age of criminal responsibility and the frequency of the application of custodial sanctions.

The study seeks to assess whether European juvenile justice systems are evolving towards lower levels of penal exclusion by refining two specific indicators from the RIMES instrument: items 113 and 121. The findings reveal substantial cross-national differences and highlight the need to reorient juvenile justice models towards a less exclusionary approach.

Keywords: *Penal Social Exclusion, Juvenile Justice, Minimum age of criminal responsibility, Custodial sanctions, Rimes.*

1. Introduction

One of the most debated questions –and one that still lacks a definitive answer– within the academic field of juvenile justice concerns determining the age at which a minor begins to possess full cognitive capacity and, consequently, demonstrates adequate cognitive development to be held responsible for their actions and subject to punishment. At the same time, within juvenile criminal law, there is a substantial body of research examining the potential negative consequences arising from the excessive implementation of custodial measures for minors.

Accordingly, this study aims to analyse the current situation of juvenile criminal law in six European countries (Spain, Portugal, France, Poland, Romania, and Finland), in order to examine their minimum ages of criminal responsibility and to analyse the use of deprivation of liberty measures applied to minors, with the aim of assessing whether European countries tend to adopt juvenile criminal policies oriented towards low exclusion.

2. Theoretical Framework

2.1. Criminal Responsibility of the Minor

Since the early twentieth century, a strong social trend towards the development of juvenile criminal legislation has been observed. In 1989, in the pursuit of enhanced international

[1] Correspondence: carrodhid1@alum.us.es
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protection of children's rights, the Convention on the Rights of the Child (CRC) emerged as the first international legal instrument specifically designed to promote and protect children's rights, establishing binding obligations for the signatory States (CRC, 1989). This Convention began to recognise the need for States to establish a minimum age at which children are considered sufficiently mature to be held criminally responsible, presuming that below this threshold children lack the necessary capacity to infringe criminal laws (Art. 40.3.a, CRC, 1989). However, it was General Comment No. 24 (2019) on children's rights in the juvenile justice system (hereinafter CRC/C/GC/24) that addressed in greater depth several issues that had raised –and continue to raise– concern, namely, on the one hand, the establishment of an appropriate minimum age of criminal responsibility to ensure the proper treatment of minors, and on the other hand, the use of custodial measures involving children.

It is the States Parties that have ratified the CRC that are required to establish a minimum age of criminal responsibility. According to the *United Nations Treaty Collection*, the official database of treaties of the United Nations (UN), all countries and recognised states worldwide are parties to the CRC: out of a total of 196 States, 140 States have signed it and 195 have ratified or accepted, acceded to, or succeeded to the CRC, with the United States being the only State that, despite having signed the Convention, has not ratified the CRC (UN, n.d.).

The Committee on the Rights of the Child (CRC Committee) has observed that, following the ratification of the Convention, the most common international practice has been to set the lower age limit of criminal responsibility at 14 years; nevertheless, there remain countries and jurisdictions where this age is set well below that threshold, such as the state of Florida (7 years); New York, Texas, England, Wales and Northern Ireland (10 years); or Scotland and France (12 years), a situation that the CRC Committee has described as unacceptable (CRC/C/GC/24, 2019). For this reason, through CRC/C/GC/24 (2019, p. 7), the CRC Committee urges States Parties to raise the age of criminal responsibility to at least 14 years, while at the same time commending those States that have established a higher minimum age (15 or even 16 years) and requesting that, under no circumstances, it be lowered. Furthermore, it should be noted that subsequent reconsiderations aimed at reviewing a potential increase in the lower age threshold have been partly based on findings from neuroscientific research (such as Bueno i Torrens, 2024; Da Nóbrega, 2024; Gur, 2021) and social research (such as Damm, Larsen et al., 2025; McAra and McVie, 2024, among others). Similarly, the idea of establishing a minimum age of criminal responsibility within juvenile justice had already been partially addressed in the Beijing Rules (Rule No. 4, UN, 1985), which indicated that legal systems recognising the application of adult criminal regimes to young persons should do so by taking into account their emotional, mental and intellectual maturity, while avoiding the establishment of an excessively low age.

Juvenile justice constitutes a legal system designed to address adolescent offenders. It is unlikely that children under the age of 12 or 13 are able to understand the consequences of their actions or, even more so, criminal proceedings, as several studies indicate that maturity or the capacity for abstract thinking at this stage is still in the process of development (CRC/C/GC/24, 2019, p. 7). Indeed, as noted by Bueno i Torrens (2024, p. 2), the period of adolescence is closely linked to the controlled elimination of neural connections associated

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with childhood behaviours and the establishment of a large number of new neural connections. This constitutes a synaptic process that is present throughout an individual's life but is particularly intense during adolescence. Moreover, these neural connections contribute to guiding human behaviour, conditioning –though not determining– the establishment of behavioural patterns. However, these changes are not linear. The brain is a flexible organ, constantly undergoing processes of formation and restructuring, capable of prioritising certain neural connections. Likewise, the external environment may, to a certain extent, influence patterns of neural connectivity (Bueno i Torrens, 2024, pp. 3–4). Perhaps the fact that this is not a linear process renders it practically unattainable to establish an age range capable of delimiting the period of adolescence and, consequently, also complicates the precise determination of a minimum age of criminal responsibility for minors. Each human being, throughout the course of life, experiences internal and external factors that shape the adolescent stage. Thus, from a neuroscientific perspective, Da Nóbrega (2024, p. 72) argues that determining a specific period as adolescence constitutes a considerable challenge, as it is closely linked to the development of brain regions that do not follow a uniform developmental trajectory.

Additionally, neuroscientists have concluded that mental abilities –such as reasoning, thinking, or impulse control– develop as the brain matures (Gur, 2021, p. 58). In this regard, it should be emphasised that the primary biological function of adolescence is the attainment of brain maturation (Bueno i Torrens, 2024, p. 4). However, while most authors maintain that this maturation does not conclude until shortly after –or during the mid– twenties (CRC/C/GC/24, 2019; Da Nóbrega, 2024; Gur, 2021; Steinberg, 2007), others suggest that it may not be completed until the onset of the thirties (Bueno i Torrens, 2024, p. 4). Consequently, the only conclusion that can be clearly drawn from the various neuroscientific studies is that there is no scientifically certain way to assert that a twenty-year-old individual possesses a fully mature brain (Gur, 2021, p. 64). For this reason, the CRC Committee commends those States parties that allow the application –whether exceptional or generalised– of the juvenile justice system to individuals over the age of 18 (CRC/C/GC/24, 2019, p. 8).

Developmental immaturity, together with other social and environmental factors, limits adolescents' capacity to act with maturity (Farmer, 2011, p. 89). During adolescence, curiosity and the desire for novelty increase, which may help to explain the age-typical tendency to explore the environment and challenge certain boundaries (Bueno i Torrens, 2024, p. 4); likewise, minors are expected to act impulsively, often without adequately considering potential consequences (Gur, 2021, p. 62). In addition, this stage –along with pubertal development– affects risk-taking behaviour and influences certain types of decision-making, potentially leading to an increase in the adoption of dangerous behaviours (CRC/C/GC/24, 2019; Da Nóbrega, 2024). While this does not in any way justify the conduct adopted by juvenile offenders, it does help to understand how brain development operates, thereby facilitating the adoption of appropriate and inclusive measures aimed at guiding minors and reducing the likelihood of criminal behaviour in adulthood, while simultaneously raising questions regarding adolescent culpability. In this regard, McAra and McVie (2024, p. 398), in their *Edinburgh Study of Youth Transitions and Crime* (ESYTC), suggest that delinquency may

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function as a coping strategy through which young people respond to the negative consequences of both their neurological state and broader living conditions (such as social or environmental factors). Consequently, the establishment of a minimum age of criminal responsibility must take into account these complex interactions affecting minors.

On the other hand, within the field of social research there is also strong scientific evidence regarding the aetiology of youth offending to support the claim that the statutory minimum age should be raised to at least 15–16 years (McAra and McVie, 2024). A recent study conducted by Damm, Larsen et al. (2025) is arguably one of the most illuminating contemporary social science investigations concerning the potential effects that may result from lowering the minimum age of criminal responsibility (from 15 to 14 years). That study was unable to provide empirical evidence demonstrating that a reduction in the minimum age of criminal responsibility constituted a successful deterrent to youth offending; on the contrary, its findings pointed to an increase in delinquency, suggesting higher rates of recidivism. This outcome, the authors noted, pointed towards labelling theory as a possible explanatory framework (Damm, Larsen et al., 2025, p. 510).

In conclusion, adolescence constitutes a singular period in human development. The reviewed evidence could suggest that the age of 14 remains insufficient for the assumption of criminal responsibility. Nevertheless, RIMES –an innovative instrument in comparative criminal policy from the perspective of the social exclusion generated by the operation of penal systems– includes an indicator asserting that, for a criminal policy to be considered penal-exclusionary in the field of juvenile justice, legislation would have to impose criminal responsibility on children as young as 12 years of age. From this standpoint, the present study adopts the premise that a criminal policy will be regarded as "less exclusionary" insofar as it adheres to an appropriate age of criminal responsibility. In this respect, and notwithstanding the fact that the scientific literature suggests a broad and variable age range for criminal responsibility, this study concludes that the minimum age for imposing criminal responsibility on minors should be set at 14 years, in line with the position defended by the CRC Committee, while also positively assessing the approach adopted by some countries that raise the minimum age of criminal responsibility above 14.

2.2. Deprivation of Liberty Measures

Throughout history, deprivation of liberty measures has been grounded in approaches which, although lacking solid empirical support, have nonetheless proved particularly appealing to certain sectors of society. Justifications for the confinement of juvenile and adult offenders range from the pursuit of rehabilitation and punishment to the deterrence of future criminal behaviour (Lambie and Randell, 2013, p. 449). Moreover, the deterrent effect of punishment has also traditionally been invoked as a justification for low age thresholds within justice systems (Damm, Larsen et al., 2025, p. 496). However, just as Damm, Larsen et al. (2025) were unable to find evidence that a reduction in the minimum age of criminal responsibility produces deterrent effects, Gilman, Hill et al. (2015) likewise found no empirical support for the claim that deprivation of liberty provides the aforementioned benefits, since, although juvenile justice aims to re-educate and rehabilitate young offenders, that study points to a direct relationship between juvenile incarceration and future recidivism rates, findings that

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had already been identified by earlier studies –based on data up to 2008– such as that of Aizer and Doyle (2015). Indeed, a substantial body of research concurs in identifying the failure of custodial penal practices when applied to minors, emphasising a wide range of harmful consequences across multiple dimensions.

The UN General Assembly (2019), in its *Global Study on Children deprived of liberty* (hereinafter A/74/136), sets out how deprivation of liberty has harmful effects on the life trajectories of minors, negatively impacting their health, development, and well-being. In addition, the report delves into the complex field of children's mental health, stating that anxiety, depression, developmental delay, and even language regression are effects that may arise or be exacerbated during detention (A/74/136, 2019, p. 8). Consistent with these findings, Powell (2022, p. 170) also correlates early detention with an increase in the number of symptoms of depression and anxiety. Likewise, within the field of mental health, it has been noted that deprivation of liberty measures can, in some cases, increase the prevalence of psychiatric disorders in children by up to tenfold (A/74/136, 2019, p. 8). Nevertheless, it should be emphasised that, within this same field of study, research points to the dual nature of certain conditions, such as post-traumatic stress disorder (PTSD): while the United Nations (A/74/136, 2019, pp. 8, 13) considers that placing children in solitary confinement causes PTSD, other mental health studies determine that young people deprived of liberty already presented PTSD prior to detention, underscoring that this condition is exacerbated by the imposition of this measure (Murie, Marr et al., 2026, p. 40). Similarly, it should be noted that physical health is also affected, as evidence indicates a correlation between deprivation of liberty and increased rates of premature death among minors due to overdose, suicide, injuries, and related causes (A/74/136, 2019, p. 8; Barnert, Perry et al., 2016, p. 102), in addition to the fact that confinement is also associated with a deterioration in adult physical health outcomes among former juvenile detainees (Barnert, Perry et al., 2016, p. 100).

On the other hand, according to Life-Course Theory, experiences during adolescence have the capacity to shape individuals' life trajectories and therefore become foundational life experiences (Sampson and Laub, 1997). In this regard, juvenile incarceration constitutes an abrupt disruption in young people's development, an event that affects pre-existing mental health conditions and fosters the emergence of new disorders. Moreover, it is often associated with feelings of abandonment, loneliness, lack of protection, or inadequate access to basic needs, while simultaneously leading to higher levels of stress, trauma, and social isolation (Ackerman, Magram et al., 2024, p. 8; United Nations Office of the Special Representative of the Secretary-General on Violence against Children [UNSRSG], 2019, p. 34).

Likewise, deprivation of liberty at such an early age entails a series of significant problems, as it disrupts a crucial educational stage which, in many cases, results in poor educational outcomes among those minors who later resume their studies (Abram, Azores-Gococo et al., 2017, pp. 128, 130) or, more commonly, in the permanent abandonment of secondary education (Aizer and Doyle, 2015, p. 799). Moreover, as a consequence of the above, this complex phenomenon leads to higher rates of unemployment and greater difficulty in securing stable or well-paid employment (Ackerman, Magram et al., 2024, p. 9; Abram, Azores-Gococo et al., 2017, pp. 124, 128) and has even been linked to future dependence on

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social assistance (Gilman, Hill et al., 2015, pp. 43–44). Nevertheless, some authors attribute these difficulties in labour-market integration to problems derived from the stigma associated with penal practices (Mears and Travis, 2004). Along these lines, the stigmatisation and social harm experienced by offenders after serving their sentence constitutes a problem that, far from facilitating social reintegration, hinders the development of a future life within society. In the case of adolescents, reintegration following the completion of a custodial measure is particularly complex, due to the fact that this process coincides with the critical life transition from adolescence to adulthood, thereby increasing the risk of negative outcomes such as recidivism (Altschuler and Brash, 2004, pp. 73–75). Accordingly, responding to juvenile behaviour through punitive measures, particularly those involving deprivation of liberty, without taking into account minors' vulnerability does not foster effective treatment by the system. Moreover, it should not be overlooked that social stigma reinforces young offenders' own negative self-esteem (Lambie and Randell, 2013, p. 454). For this reason, whenever possible, it is preferable to adopt educational measures aimed at rehabilitation, given that many children experience difficulties in accessing reintegration support after completing a custodial measure (UNSRSG, 2019). In this sense, penal isolation can be said to impose a profound and long-lasting social stigma on children's lives.

Additionally, part of the literature maintains that detention fosters contact between minors and antisocial peers, while simultaneously reducing prosocial relationships. Taken together, these dynamics contribute to negative outcomes for adolescents, who are thereby exposed to opportunities to learn criminal techniques and attitudes, generating what has been described as a "school of crime" –which in turn leads to higher rates of recidivism– (Ackerman, Magram et al., 2024, p. 9; Gatti, Tremblay et al., 2009, pp. 991, 992, 995; Nguyen, Paternoster et al., 2017, pp. 208, 227, 228).

In conclusion, the various findings highlight how deprivation of liberty measures fail to achieve their intended effects and have negative repercussions across multiple areas of minors' lives. Unfortunately, although knowledge and evidence support a shift towards rehabilitative models rather than punitive practices, they rarely possess sufficient capacity to influence political decision-making (Ackerman, Magram et al., 2024, p. 1).

3. Methodology

Following a synthetic examination of the theoretical framework on the subject, this study sought to assess whether European countries develop socially less exclusionary penal practices and legal frameworks in the field of juvenile justice, in line with the recommendations put forward by expert bodies. To this end, the study has devised two relevant indicators of the juvenile criminal justice system, drawing on the previously mentioned research instrument, RIMES.

More specifically, the RIMES instrument includes a specific pool devoted to the area of juvenile criminal justice, which is composed of 5 indicators: 3 rules and 2 punitive practices. In this regard, a punitive rule is understood as a legal norm, while practices analyse the way in which different social agencies respond to situations of penal control (Díez-Ripollés and García-España, 2020, p. 673). However, given the scope of the present research, the study has been limited to the analysis of a single rule and a single practice inspired by two indicators

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of that instrument, specifically the following (Díez-Ripollés and García-España, 2020, p. 690):

113. Youth justice applies to children who are 12 years old or younger;

121. Custodial sanction is one out of three most common sanctions applied to minors.

It should be emphasised that the RIMES instrument is specifically designed to measure social exclusion generated by the operation of penal systems, whereas the aim of this article adopts an inverse approach, namely the analysis of rules and practices that mitigate processes of social exclusion. It should be recalled that reversing a social exclusion indicator does not necessarily entail the direct measurement of social inclusion (Díez-Ripollés, 2024, pp. 25–26); rather, it facilitates the assessment of lower levels of exclusion, which, conceptually, does not amount to inclusion. For this reason, it was considered most appropriate to reformulate both RIMES indicators in order to analyse the inverse effect of such rules and practices, that is, their capacity to reduce mechanisms of penal social exclusion. Accordingly, the indicators selected and developed in this study are the following two:

113. Youth justice applies exclusively to children aged 14 years or older.

121. Custodial sanctions account for 10% or less of the total sanctions imposed on minors.

It should be taken into account that indicator 113 has also been modified in line with international standards to raise the minimum age for the application of juvenile criminal justice to 14 years, as it is reasonable to consider that, if CRC/C/GC/24 (2019) recommends setting the lower limit of criminal responsibility at 14 years, it is only from the establishment of such minimum age thresholds that it may be concluded that a country is oriented towards reducing dynamics of exclusion. Likewise, indicator 121 is retained as a dichotomous variable, modified to include a maximum threshold of 10% in order to identify juvenile justice systems in which deprivation of liberty constitutes a minority sanction. In the absence of literature establishing a precise percentage capable of reflecting the residual use of exclusionary practices in penal systems, a 10% threshold has been adopted as an operational criterion to capture the limited use of such measures. From this perspective, the main rationale for introducing a percentage threshold in the reformulation of indicator 121 lies in avoiding potential biases arising from the heterogeneity in the number of sanctions available for application across the different European countries analysed.

For both indicators, an affirmative response determines that the country under study implements a criminal policy aimed at generating lower levels of social exclusion in the field of juvenile criminal justice, although this conclusion is strictly confined to the specific area of analysis to which the indicators refer. Ultimately, an exploratory analysis is conducted of the capacity of the selected items to assess the ability to minimise exclusionary barriers in highly specific aspects, and therefore this analysis does not seek to determine whether, in general terms, a given juvenile criminal justice system is socially inclusive or not, since the absence or reduction of exclusion does not automatically imply the existence of an inclusive system, as these constitute related but independent dimensions.

With these limitations, the situation of 6 countries located within the European continent was analysed: Finland, France, Poland, Portugal, Romania, and Spain. Their Criminal Codes, specific legislation on juvenile justice, and official statistics on convicted minors were

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reviewed. All of this was done with the purpose of obtaining precise information on the age of criminal responsibility for children and on the implementation of deprivation of liberty sanctions in the countries comprising the sample. In this regard, it should be noted that the representativeness of the sample is grounded, first, in its ability to provide coverage of different regions of the continent according to geographical diversity, namely Southern Europe, Western Europe, Central Europe, Eastern Europe, and Northern Europe; and second, in its capacity to capture the situation of Europe in terms of demographic heterogeneity –through the inclusion of countries of different territorial scales– as well as socioeconomic variation, as evidenced by the coexistence of countries with differing levels of economic development.

3.1. Minimum Age of Criminal Responsibility in Europe

The general recommendation issued by the CRC Committee, and discussed in the second section of this article, concerning the establishment of a minimum age of criminal responsibility set at 14 years, appears to be observed in most of the countries analysed in this study. At the upper threshold of minimum ages of criminal responsibility within the sample stands Finland, which, in Chapter 3, §4 of its Criminal Code 39-001/1889 (FCC), establishes that the application of criminal law requires having reached the age of 15. By contrast, cases involving children under the age of 15 in Finland are referred to the Child Welfare Act [*Lastensuojelulaki*] (683/1983) –a statute that does not have a criminal nature–. Spain follows, with Organic Law 5/2000 of 12 January on the Criminal Responsibility of Minors (LORPM), whose scope of application covers individuals over 14 and under 18 years of age (Art. 1, LORPM, 2000). The same applies in Romania, where Article 113-(1) of Title V of the Romanian Criminal Code 286/2009 (RCC) provides that minors under the age of 14 are not criminally responsible. In addition, pursuant to Article 113-(2) of the RCC (2009), in order for a minor between 14 and 16 years of age to be held criminally responsible, it must be demonstrated that the act was committed with discernment, which requires an expert assessment of the degree of discernment (psychiatric examination) together with other evidence. Therefore, it is plausible to state that in none of these countries –Finland, Spain, and Romania– do the measures applied to children under the age of 14 have a criminal character and, accordingly, they implement rules that may be regarded as having a low capacity for penal exclusion.

Slightly below the minimum age of criminal responsibility recommended by the CRC Committee stands Poland, a country that applies its 2022 Act on the Support and Social Reintegration of Minors [*Ustawa z dnia 9 czerwca 2022 r. o wspieraniu i resocjalizacji nieletnich*] (hereinafter, LRJ), which replaced the 1982 Act on Proceedings in Juvenile Matters, to individuals over the age of 13 and under 17 (Art. 1 § 1-(2), LRJ, 2022). In Portugal, pursuant to Article 19 of the Portuguese Criminal Code 63/1995 (PCC), minors under the age of 16 cannot be considered criminally responsible; however, children between the ages of 12 and 16 who commit acts that would constitute an offence if committed by adults are subject to the Educational Guardianship Law [*Lei Tutelar Educativa*] (LTE), Law No. 166/99 of 14 September (Title I, Art. 1, LTE, 1999). Accordingly, if a child under the age of 12 commits an act considered a criminal offence, the case is dealt with within the juvenile justice system

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(although not under a punitive approach but rather through an educational and rehabilitative framework) and one of the measures provided for in the LTE is applied. Finally, in France it can be stated that the French juvenile justice system is empowered to impose juvenile justice measures on children under the age of 12 who commit an offence, provided that they possess the capacity for discernment (Article L11-3 of the Juvenile Criminal Justice Code [*Code de la justice pénale des mineurs*], hereinafter CCJM, 2021). Consequently, Poland, Portugal, and France do not meet the criteria established in this study to be considered as setting penal rules with a low level of exclusion. Thus, within a sample of 6 European countries, 50% include in their legal frameworks a minimum age of criminal responsibility of at least 14 years. Accordingly, it may be concluded that only 50% of the countries analysed exhibit legal provisions aimed at minimising dynamics of penal social exclusion.

3.2. Frequency of the Use of Deprivation of Liberty Measures in Europe

To examine how this practice is implemented across the different countries, official statistics from the most recent 3 years available were consulted. Moreover, although the initial objective was to analyse data from the same time period in all countries, certain constraints limited this approach. Some countries have not yet fully reported data for the year 2024, as is the case in Portugal, while others only provide data up to 2023, as in Finland. In such cases, the decision was made to rely on the most up-to-date data available. In this same vein, the present study was required to adopt, in each country, a methodology adapted to national statistical resources, depending on data availability.

Spain

In the case of Spain, it must be borne in mind that the LORPM provides for different measures applicable to minors. Within this catalogue of sanctions, four types of custodial measures can be identified: closed detention, semi-open detention, open detention, and therapeutic detention in a closed, semi-open, or open facility (Art. No. 7, LORPM, 2000). Depending on the type of detention applied, minors may or may not be permitted to engage in certain activities outside the facility; however, it should be emphasised that in all cases minors are required to reside in an institution.

In order to verify whether custodial measures account for 10% or less of the total measures imposed on minors in Spain, the methodology employed consisted of reviewing data on convicted minors provided by the National Statistics Institute (INE). The data are broken down in Table 1.

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Table 1

List of Sanctions Imposed on Juvenile Offenders in Spain

Spain	*2022*	*2023*	*2024*
Without measure	6 (0.03%)	2 (0.01%)	0 (0%)
Driving licence suspension	35 (0.15%)	26 (0.12%)	40 (0.18%)
Day centre attendance	128 (0.56%)	100 (0.47%)	102 (0.46%)
Ambulatory treatment	297 (1.30%)	256 (1.20%)	256 (1.16%)
Living with an individual, family or group	350 (1.53%)	333 (1.56%)	344 (1.56%)
Weekend retention	467 (2.04%)	358 (1.68%)	381 (1.72%)
Warning	696 (3.05%)	660 (3.10%)	693 (3.13%)
No approaching or communicating with the victim	1,819 (7.97%)	1,816 (8.53%)	2,178 (9.85%)
Community service	2,141 (*9.38%*)	2,092 (*9.82%*)	2,155 (*9.74%*)
Socio-educational tasks	3,432 (*15.03%*)	2,892 (*13.58%*)	3,011 (*13.61%*)
Total custodial sanctions	**3,399 (*14.88%*)**	**3,205 (*15.05%*)**	**2,997 (*13.55%*)**
Probation	10,067 (*44.08%*)	9,558 (*44.88%*)	9,959 (*45.03%*)
Total	22,837	21,298	22,116

Source: own elaboration based on INE data (2022, 2023, 2024).

This information suggests that custodial measures have an average usage rate of 14.49% in Spain over the period 2022–2024, exceeding the 10% threshold established as a criterion in this indicator. Therefore, with regard to this aspect alone, Spain cannot be considered a country with low levels of penal exclusion in sentencing within the juvenile justice system.

Romania

For juvenile offenders, the RCC provides for a system of educational measures not involving deprivation of liberty (Art. No. 115(1)1, RCC, 2009) and educational measures involving deprivation of liberty (Art. No. 115(1)2, RCC, 2009). It should be emphasised that non-custodial educational measures in Romania comprise four types (civic training; supervision; weekend curfew; and daily assistance), whereas custodial educational measures comprise two types (placement in an educational centre and placement in a detention centre). This distinction is relevant because the Romanian National Institute of Statistics (*Institutul Național de Statistică*, INSSE) does not publish disaggregated data on the frequency of each educational measure.

Nevertheless, the official statistics provided by Romania yield the following information: during the period 2022–2024, a total of 1,439 measures were recorded, of which 427 corresponded to educational measures involving deprivation of liberty and 1,012 to non-custodial educational measures. Across the three years of analysis, non-custodial measures exceeded custodial ones both on an individual yearly basis and overall, accounting for 70.33% as compared to 29.67%.

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Table 2

List of Sanctions Imposed on Juvenile Offenders in Romania

Romania	*2022*	*2023*	*2024*	Total
Juveniles-Custodial educational measures	**194 (36.26%)**	**130 (26.58%)**	**103 (24.82%)**	**427 (29.67%)**
Juveniles-Non-custodial educational measures	341 (63.74%)	359 (73.42%)	312 (75.18%)	1,012 (70.33%)
Total	535	489	415	1,439

Source: own elaboration based on data from the INSSE (2025).

Although the exact distribution of the individual application of measures remains unknown, the proportions previously calculated on the basis of official data indicate that custodial measures are less frequent than educational measures in general terms (70.33% vs. 29.67%). Nevertheless, its use is not residual. The overall proportion of custodial measures exceeds the 10% threshold established in the definition of this indicator and, consequently, it cannot be confirmed that the Romanian juvenile justice system predominantly relies on penal practices oriented towards a less exclusionary model.

France

In France, Book I of the CCJM, devoted to the system of measures and sanctions applicable to minors, distinguishes between educational measures in Article L111-1 and applicable sanctions in Article L121-4 (CCJM, 2021).

With regard to this aspect, it should be noted that, of all the judicial educational measures provided for under the law, only one may involve a residential programme: the reception module (Article L112-2(4), CCJM, 2021). This measure requires the minor to cease living with the family members with whom they were residing at the time the offence was committed; however, it does not entail deprivation of liberty, but rather a restriction thereof aimed at ensuring more effective supervision. For this reason, it is not considered, strictly speaking, a deprivation of liberty measure (Articles L112-14 et seq., CCJM, 2021). By contrast, among the sanctions applicable to minors pursuant to Article L121-4 (CCJM, 2021) are confiscation of the object used to commit the offence, training and community service orders (provided that the minor is at least sixteen years old at the time of sentencing), as well as a custodial sanction where duly justified (Article L123-2, CCJM, 2021).

On the other hand, a minor may be sentenced to a suspended term of imprisonment subject to probation, with the requirement that one or more obligations be fulfilled (Article L122-2, CCJM, 2021), and the juvenile judge or juvenile court may impose a custodial sanction on a minor while suspending it in full or in part (Articles L123-1 and L123-2, CCJM, 2021). Nevertheless, it is unknown how many of these cases ultimately result in the effective execution of a deprivation of liberty measure. Therefore, for the purposes of assessing the indicator used in this study, only sanctions involving the placement of minors in a detention centre are taken into account, in line with the information provided by the French Ministry of Justice [*Ministère de la Justice*], which publishes statistical data on the judicial activity of juvenile courts, including the number of sanctions imposed on minors.

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The sanctions imposed on convicted minors are highly diverse. The vast majority allow the minor to remain at liberty, subject to the obligation to carry out specific educational activities. Within the overall range of sanctions, immediate or partially immediate imprisonment is not a measure that is imposed with any great frequency. The average rate of application of custodial measures over the period 2022–2024 is 6.11%, suggesting that the French juvenile justice system develops practices oriented towards lower levels of social exclusion. These data are set out in detail in Table 3.

Table 3

List of Sanctions Imposed on Juvenile Offenders in France

France	*2022*	*2023*	*2024*
Exemption from sentence, measure or declaration of educational success	3,313 (6.62%)	4,456 (9.27%)	4,621 (9.86%)
Judicial warning	13,847 (27.65%)	11,870 (24.69%)	10,663 (22.74%)
Judicial educational measures	9,009 (18%)	9,810 (20.41%)	9,984 (21.30%)
Prohibition, confiscation, other penalties	5,209 (10.40%)	4,802 (9.99%)	5,277 (11.26%)
Probationary penalty	1,660 (3.32%)	2,165 (4.50%)	2,296 (4.90%)
TIG (community service) sentence	2,330 (4.65%)	2,421 (5,04%)	2,405 (5.13%)
Firm or suspended fine	1,321 (2.64%)	967 (2,01%)	836 (1.78%)
Imprisonment with full suspended sentence	5,203 (10.39%)	4,612 (9.59%)	3,941 (8.41%)
Suspended sentence with full probation	2,920 (5.83%)	2,596 (5.40%)	2,514 (5.36%)
Firm or partly firm imprisonment	**3,313 (6.62%)**	**2,884 (6%)**	**2,680 (5.72%)**
Unidentified penalty or measure	1,947 (3.89%)	1,492 (3.10%)	1,667 (3.56%)
Total	50,072	48,075	46,884

Source: own elaboration based on data from the Ministry of Justice (2024a, 2024b, 2025).

Portugal

Minors between the ages of 12 and 15 who commit acts that would be considered criminal offences if committed by adults are subject to the LTE, a law which, following a rehabilitative approach, provides for a set of educational measures: admonition (Art. 9), deprivation of the right to drive (Art. 10), reparation to the offended party (Art. 11), community service (Art. 12), imposition of rules of conduct (Art. 13), imposition of obligations for better school performance (Art. 14), attendance at training programmes (Art. 15), the educational counselling measure (Art. 16), and placement in specialised centres (Art. 17). The latter measure entails deprivation of liberty in a specialised centre and may be applied under different regimes, namely a closed regime, a semi-open regime, or an open regime (LTE, 1999).

In order to examine the judicial activity of juvenile courts in Portugal, the Directorate-General for Reintegration and Prison Services [*Direção-Geral de Reinserção e Serviços Prisionais*] (DGRSP) of the Ministry of Justice publishes statistical data, which are presented in the table below. It should be noted that in all years, the data correspond to annual figures, with the exception of 2024, which includes only data for the period from January to October.

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Table 4

List of Sanctions Imposed on Juvenile Offenders in Portugal

Portugal	*2022*	*2023*	*2024*
Reparation	1 (0.10%)	5 (0.42%)	3 (0.21%)
Community service	206 (21.41%)	183 (15.26%)	259 (18.54%)
Financial benefit	2 (0.21%)	3 (0.25%)	3 (0.21%)
Rules of conduct	4 (0.42%)	5 (0.42%)	5 (0.36%)
Obligations	307 (31.91%)	391 (32.61%)	478 (34.22%)
Training programmes	23 (2.39%)	18 (1.50%)	25 (1.79%)
Educational counselling	278 (28.90%)	415 (34.61%)	449 (32.14%)
Placement	**141 (14.65%)**	**179 (14.93%)**	**175 (12.53%)**
Total	962	1,199	1,397

Source: own elaboration based on data from the DGRSP (2023a, 2023b, 2025).

As can be observed in Table 4, the sanctions imposed on minors convicted of an offence are diverse; however, the vast majority of them allow the minor to remain at liberty, subject to the obligation to carry out specific educational activities. In order to determine whether deprivation of liberty measures constitute a commonly used resource in Portugal, the only sanction that can be taken into account is placement in a specialised centre. It can be observed throughout the years analysed that this educational measure is applied at a rate of 14.04%, suggesting a comparatively higher use relative to the threshold established for exclusionary practices.

Poland

According to the LRJ (2022), minors who have committed punishable acts between the ages of 13 and 17 may be subject to educational measures and corrective measures (Art. No. 6, LRJ, 2022), such as admonition, the imposition of specific rules of conduct, supervision by parents, guardians, social organisations, or a probation officer, driving bans or confiscation of property, referral to a probation officer's centre, placement in a youth educational centre, or correctional centre, as well as other measures (Art. No. 7, LRJ, 2022).

Recent statistics provided by the Central Statistical Office of Poland report data on educational –though not all– or corrective measures imposed on minors in recent years, as published in the *Statistical Yearbook of the Republic of Poland* (SYRP). It is important to note that, in Poland, placement in a juvenile educational centre or a juvenile socio-therapeutic centre cannot be regarded as deprivation of liberty measures in the strict sense, as they do not entail deprivation of liberty, although they do involve separating the minor from their usual environment. On the basis of this distinction, Polish statistics show that custodial measures account for a very small proportion.

In 2022, out of 31,873 measures recorded, only 461 involved deprivation of liberty (1.44%). In 2023, out of 32,826 measures, only 397 did so (1.20%), and in 2024, out of 33,987 measures, only 354 (1.04%). These data indicate that custodial measures constitute one of the least frequently applied measures to minors in Poland, with a residual average rate of use during the 2022–2024 period (1.23%).

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Table 5

List of Sanctions Imposed on Juvenile Offenders in Poland

Poland	*2022*	*2023*	*2024*
Supervision by probation officer	22,875 (71.77%)	23,296 (70.97%)	24,005 (70,63%)
Supervision by parents	3,378 (10.60%)	3,337 (10.17%)	3,200 (9.42%)
Placement in correctional centre	**461 (1.45%)**	**397 (1.21%)**	**354 (1.04%)**
Placement in youth educational centre	3,518 (11.04%)	3,761 (11.46%)	3,986 (11.73%)
Placement in youth sociotherapy centre and school-educational centre	51 (0.16%)	243 (0.74%)	395 (1.16%)
Directing to probation officer's centre	1,590 (4.99%)	1,792 (5.46%)	2,047 (6.02%)
Total	31,873	32,826	33,987

Source: own elaboration based on SYRP data (2024, 2025).

Finland

In Finland, the minimum age of criminal responsibility is 15 years. Once this age has been reached, any act committed that is considered a criminal offence is subject to a conviction in accordance with the provisions of the Finnish Criminal Code (Chapter 3, §4, FCC, 1889). Strictly speaking, there is no separate juvenile justice system nor juvenile courts; however, certain specific rules apply when cases involve young offenders (Lappi-Seppälä, 2015). Consequently, the sanctions applicable to both minors and adults include a fixed fine, suspended imprisonment, community service, a monitoring sentence, and unconditional imprisonment (Chapter 6, Section 1, FCC, 1889).

In order to assess whether the use of custodial measures for minors is exceptional in Finland, data available from Statistics Finland (StatFin) on sanctions imposed on young offenders aged between 15 and 17 were examined. It should be noted that the Finnish Criminal Code provides that suspended imprisonment (not exceeding two years) or unconditional imprisonment may be imposed on minors under the age of 18 if there are weighty reasons to do so (Chapter 6, §9, FCC, 1889). All other sanctions, with the exception of those combined with imprisonment, are served in the community. Accordingly, for the purposes of assessing the indicator, consideration has been given to data relating to minors sentenced to suspended imprisonment (including combined sanctions) and to unconditional imprisonment.

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Table 6

List of Sanctions Imposed on Juvenile Offenders in Finland

Finland	*2021*	*2022*	*2023*
Persons sentenced to a fine in court	1,826 (65.66%)	1,753 (62.47%)	2,127 (60.56%)
Persons sentenced to suspended imprisonment	**422 (15.17%)**	**478 (17.03%)**	**632 (18%)**
Mere suspended imprisonment	373 (13.41%)	429 (15.29%)	573 (16.32%)
Suspended imprisonment and supplementary fine	35 (1.26%)	32 (1.14%)	46 (1.31%)
Suspended imprisonment and community service	14 (0.50%)	17 (0.61%)	13 (0.37%)
Persons sentenced to unconditional imprisonment	**30 (1,08%)**	**30 (1.07%)**	**62 (1.77%)**
Persons sentenced to a monitoring sentence	0 (0%)	0 (0%)	0 (0%)
Persons sentenced to community service	3 (0.11%)	6 (0.21%)	0 (0%)
Persons sentenced to juvenile punishment	12 (0.43%)	7 (0.25%)	9 (0.26%)
Waiving of punishment	66 (2.37%)	54 (1.92%)	50 (1.42%)
Total	2,781	2,806	3,512

Source: own elaboration based on StatFin data (2024).

Data provided by StatFin (2024), specifically those relating to suspended imprisonment, confirm that custodial measures exceed the 10% threshold in terms of average frequency of use (18.03%). However, the FCC provides that a person sentenced to suspended imprisonment will not be sent to prison unless a new offence is committed during the probation period, which ranges from one to three years (Chapter 2b, §3 and §5, FCC, 1889). In light of this information, it can be inferred that incarceration resulting from a suspended imprisonment sentence is not the objective pursued by such convictions; rather, it is more likely to function as a mechanism aimed at avoiding the deprivation of liberty of convicted minors. In this regard, and despite the absence of sufficient information indicating how many of these sentences ultimately result in actual imprisonment, beyond the 1.31% of minors sentenced to unconditional imprisonment, it appears reasonable to proceed on the basis that deprivation of liberty is not among the most frequently imposed sanctions on minors in Finland.

4. Results

The present study aimed to assess the low level of penal social exclusion in a sample of European countries on the basis of two indicators: the establishment of a minimum age of criminal responsibility set at 14 years and the preference for non-custodial measures for minors in contact with the criminal justice system. In this respect, it may be concluded that, regarding the minimum age of criminal responsibility, Finland, Spain, and Romania are the only countries in the sample that apply penal rules considered to be "less exclusionary" in the field of juvenile justice. This implies that 50% of the countries included in the study apply juvenile justice to children with a minimum age of 14 years. Nevertheless, this finding diverges from the general comment issued by the CRC Committee –it is most common to establish 14 years of age as the lower limit of criminal responsibility (CRC/C/GC/24, 2019)– insofar as this study confirms that juvenile justice is applied to minors from the age of 14 in

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only 50% of the sample, rather than in the majority of cases. However, this discrepancy may not be significant, as the present research is based on a study sample which, although representative, is limited in size when compared to the number of Western countries covered by the CRC.

Second, with respect to the second indicator developed in this study, it has been observed that, among the European countries analysed, and with a view to reducing exclusion, 50% of the sample does not exceed the maximum threshold of 10% in the use of custodial measures.

Likewise, the results indicate that, with the exception of Portugal, in the European countries analysed, at least one of the two indicators examined is met. Moreover, when the data are analysed jointly, the European trend –based exclusively on the study sample– does not show a clear preference for low-exclusion practices over legal frameworks with a low exclusionary effect; instead, a balanced application of both is observed. In order to visualise this phenomenon, a value has been assigned to each response. Each verified less exclusionary practice or legal rule is assigned a value of 1, while a value of 0 is assigned where the reduced exclusionary nature of the practice or rule could not be established. This distribution can be observed in detail in Table 7. Thus, the sum of the values obtained makes it possible to determine which country within the sample exhibits a less exclusionary criminal policy according to the data analysed, with Finland emerging as the country with the highest levels of low exclusion.

Table 7

Final Results

Country/ State	*Less penal-exclusionary age of criminal responsibility*	*Less penal-exclusionary sanctions*	*Total/ index*
Finland	1	1	2
France	0	1	1
Poland	0	1	1
Romania	1	0	1
Spain	1	0	1
Portugal	0	0	0

Source: own elaboration

Therefore, it may be concluded that, with higher or lower scores, Europe can be regarded as a continent exhibiting a penal tendency towards low exclusion in the field of juvenile justice. Although the results obtained are encouraging, there remains room for improvement. Raising the minimum age of criminal responsibility to 14 years or above in those countries that currently establish lower thresholds would be advisable in order to provide a less exclusionary form of juvenile judicial intervention. Similarly, insofar as possible, all countries –particularly Romania, Spain and Portugal– should favour interventions centred on educational measures, reserving deprivation of liberty for specific cases. Such an approach would contribute to reducing penal exclusion and would represent an intermediate step

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conducive to future proposals aimed at achieving social inclusion and the development of an inclusive juvenile criminal justice system in Europe.

5. Methodological Limitations

This study presents clear limitations that must be taken into account when interpreting the results obtained. First, the indicators analysed in this research are based on items drawn from a social exclusion instrument previously validated by experts (RIMES); however, the modifications introduced in their wording in order to assess situations of low levels of social exclusion compromise their validity, as they have not been subjected to a new validation process. At the same time, RIMES is an instrument that does not focus exclusively on the field of juvenile justice, as is the case in this book chapter. Consequently, the results presented are limited to a single practice and a single legal rule examined exclusively within the domain of juvenile justice in each country analysed.

Second, although the sample used for the study is representative, its size limits the generalisation of the findings. Moreover, despite efforts to work with data corresponding to the same temporal interval, it was not possible to access official statistical data for the year 2024 in Portugal and Finland. Nevertheless, this constitutes a temporary limitation that may be overcome once the respective countries update their statistical records.

Finally, the main limiting factor has been the scarcity of official statistical data on the measures imposed on juvenile offenders; however, these limitations have been addressed with due rigour.

Despite all the aforementioned limitations, it is worth highlighting that this article is conceived as a qualitative exploratory study that has made it possible to approach the phenomenon under analysis, namely the current situation of social exclusion within juvenile penal systems in the European context. Furthermore, this research has revealed significant trends and contrasts, providing relevant and contextualised information on the results obtained and contributing to a better understanding of the phenomenon.

Accordingly, this article establishes an initial framework of reference that may prove especially useful for the design of future studies seeking to further explore this field. At the same time, the identification of limitations allows for the clear identification of potential opportunities for improvement and continuation of research.

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