

"THE SPANISH LAW ON JUVENILE JUSTICE: ALTERNATIVE MEASURES"

JOSE DIAZ CAPPÀ. PROSECUTOR. SUPERIOR PROSECUTOR'S OFFICE. BALEARIC ISLANDS. SPAIN.

DELEGATE JUVENILE JUSTICE DEPARTMENT. DELEGATE FOR HIGH TECH CRIMES. DELEGATE FOR DISCRIMINATION CRIMES.

www.josediazcappa.es

josediazcappa@yahoo.es

jose.diaz@fiscalia.mju.es

Author's brief biographical reference.

José Díaz Cappa. Public Prosecutor since 1990; currently acting as Public Prosecutor at the Public Prosecutor's Office of the Autonomous Region of the Balearic Islands, where he is the Delegate for Computer Crime, Delegate of the Juvenile Division, Delegate for Discrimination Crime, and the person Responsible for the Coordination of the Prosecution Service's Information System. Associate Lecturer in Criminal Law at the University of the Balearic Islands (UIB) and, since several years ago, a collaborator of the Spanish Open University (UNED); teacher and trainer for the various National Security Forces and Corps (State Police, Spanish Civil Guards and Local Police). He is also a promoter, organizer, speaker and member of the 1st, 2nd and 3rd International Conference about "Minors of School Age: Conflicts and Opportunities", organized together with the Balearic Government, and being considered relevant for the Public Prosecution career by Public Prosecutor's Office. He was a consultant of the Human Rights Commission of the Parliament of the Autonomous Region of the Balearic Islands, advising on the risks minors face out of the new technologies. Speaker TAIEX (European Commission) "The Spanish Law on Juvenile Justice (Republic of Macedonia, 2009) and European Project "Judicial Response to Crime Committed by EU Unaccompanied Juvenile Offenders" (Febrero 2013/Octubre 2014). Since 1990, he has also given and addressed numerous papers and conferences, as well as written a great number of articles and publications, included within his CV, being all of it reachable for consultation at his web page www.josediazcappa.es

THE SPANISH LAW ON JUVENILE JUSTICE: ALTERNATIVE MEASURES

JOSE DIAZ CAPPÀ

***PROSECUTOR. SUPERIOR PROSECUTOR'S OFFICE OF THE AUTONOMOUS
COMMUNITY OF THE BALEARIC ISLANDS. SPAIN.***

DELEGATE OF THE JUVENILE JUSTICE DEPARTMENT

DELEGATE FOR HIGH TECH CRIMES

DELEGATE FOR DISCRIMINATION CRIMES

I. INTRODUCTION.-

The Law LO 5/2000 (12th January 2001) and the RD 1774/2004 (30th July) contain the Spanish Government systems for responding to children in conflict with the law, which reform had been done by the law LO 8/2006 on 4th December, in order to toughen the measures, that is criminal consequences for minors (called punishment/sentence when we deal with adults) and also aims at drawing a possibility for serving the most serious sentences (deprivation of liberty) in adult prisons and not in educational establishments (reformatory centres).

The Spanish law on juvenile justice was born with a serious aim: to consider that children in conflict with the law need to be dealt with in largely the different way as adults due to their age, their special idiosyncrasy and their hypothetical lack of maturity or other similar factors. A different solution with more alternative options of rehabilitation and reintegration into the community is needed regarding the criminal consequences of children offences. There are three keys to understanding the spirit of the law:

- * the best interests of the child;
- * the aim of Spanish legislation on children offenders: educational and repressive at the same time;
- * the importance of the preventive measures over the punishment itself.

To my astonishment, in Spain, as well in others European countries, reforms have a tendency to prolong the privation of liberty in educational rehabilitation centres or prisons or also to ensure the fulfilment of the punishment (sentence), forgetting in some way all the alternative measures. That goes counter to the basic principle of Spanish Law in criminal responsibility for children offenders which states: "people to whom the current Law is applied will enjoy all the rights recognized in the Constitution and in the Spanish Legal System (particularly in the LO 1/1996 of Legal Protection of the Minor) as well as in the Convention on the Rights of the Child (20th November 1989) and in all those regulations on the protection of children in Agreements ratified by Spain".

Groups of minors, some of them between twelve and thirteen years old (below the minimum age of criminal responsibility in Spain) raped recently two twelve years old girls, which has struck a hard an opened debate into the Spanish society.

There seems to be no consensus about which alternative measures will be suitable and effective in order to solve the problem of minor offenders because the society applies for increase repressive measures and proposing to take tougher measures against younger offenders.

I would try to explain the positive point of view of this alternative measures and how the Spanish Law put them into practice.

It is worth mentioning that Spanish Law and Autonomous Communities regulations complement each other and make it possible the implementation of these alternative measures.

II. BASIC MATTERS CONCERNING THE SPANISH LAW ON JUVENILE JUSTICE.-

The Spanish's rules on Juvenile Justice comply with the United Nations Standard Minimum Rules for Non-custodial Measures, **(The Tokyo Rules) A/RES/45/110, 68th plenary meeting, 14 December 1990**, above and all over this work mentioned. First We've to know some basic concepts of the Spanish Law for a better understanding:

Basic Concepts:

- A) Criminal Age of Responsibility:** The present Law is applied to call the persons above fourteen years of age and below eighteen years of age to account for the commission of acts classified as offences or faults by the Penal Code. The term '*minor*' is used with a general nature to refer to any person whose age is below eighteen years.
- B) Involved Institutions and professionals:** all involved institutions and professionals shall be specialised in the subject.

www.josediazcappa.es

josediazcappa@yahoo.es

jose.diaz@fiscalia.mju.es

-
- a. **The Prosecution Service: (*Ministerio Fiscal*)** It is the institution in charge of the investigation concerning the criminal proceedings. This body shall personally supervise the investigation of the facts and shall order the criminal police to carry out all the necessary legal proceedings for the verification of the facts, as well as the participation of the minor in such proceedings, boosting the procedure. Proceedings may be closed where reasons are found, or appropriate charge may be preferred. Likewise, such body boosts and supervises the implementation of the measures sentenced by the Juvenile Judge. It shall be taken into account that in Spain, the Prosecution Service is also the most important Institution in regards to protection of minors, being incumbent to monitor the intervention of the administrative entities which are competent with regard to protection of minors, as well as the exercise of all the judicial civil or criminal proceedings of any kind which are necessary to safeguard the rights of the minors (adoptions, foster cares, guardianships, deprivation of parental authority, right of personal portrayal and the honour of the minors, determination of competence, etc.) Both duties shall be combined, since juvenile offenders continue being, above all, minors, and the protective aspect of these measures shall never be left aside. In criminal proceedings against minors, the Public Prosecutor acts as the Local Criminal Court in a criminal proceeding against adults.

There is a special Public Prosecution Service devoted to the acts of terrorism committed by minors: The Juvenile Section of the National Criminal Court.

- b. **Juvenile Courts: (*Juzgado de Menores*)** These are specialized judicial bodies competent to prosecute minors who have committed a criminal offence, issuing appropriate judgement and ordering its implementation. It is not possible to implement any measure but by virtue of a final judgement issued by the Judge. These Courts are also competent to agree the protective measures requested and to rule on the civil liability derived from the offence or fault. The Judge must base his judgement on the reasons by which a particular measure is applied, as well as its duration term, to the effects of the

assessment of the minor's interests. Such Courts undertake the monitoring of the implementation of the measures imposed. In order to be able to undertake such monitoring, the Judge is granted the following competences:

- 1.- He shall take all the decisions deemed necessary to proceed to the effective implementation of the measures imposed.
- 2.- He shall decide on the proposals concerning the revision of the measures.
- 3.- He shall pass the programmes concerning the implementation of the measures.
- 4.- He shall be aware of the evolution of the minors concerned during the performance of the measures by means of monitoring reports.
- 5.- He shall decide on the notice of appeal given against the resolutions issued for the implementation of the measures.
- 6.- He shall agree, as appropriate, regarding the petitions or complaints which might be issued by the minors during the implementation of the measures.
- 7.- He shall visit the minors at the detention centres and have interviews with them.
- 8.- He shall have the competences pertinent to the disciplinary system.

There is also a special Court devoted to the acts of terrorism committed by minors: The Juvenile Central Court.

- c. **The Administration of the Autonomous Communities Governments:** The implementation of the measures (whether protective or final) issued by the Juvenile Judges in their final judgements is the competence of the **Autonomous Communities and the Autonomous Cities of Ceuta and Melilla**. These public entities shall undertake, in accordance with their respective regulation rules, **the establishment, running, organization and management of the appropriate services, institutions and programmes in order to ensure the correct implementation of the measures included in the law**. They shall send to the Juvenile Prosecution Service or the Juvenile Court all the reports concerning

the implementation of the measures, whether monitoring, completion or inobservance reports. Almost all the autonomous laws regulating such matters stipulate that such bodies shall provide with the necessary material and personal resources for the implementation of the judicial measures imposed, without prejudice to be entitled to request the collaboration of other administrations. They shall also authorise any search, certification, inspection and evaluation of the services and centres with which they reach agreements or contracts for the application of certain judicial measures; shall plan, develop and assess action programmes in this matter; and shall raise the public opinion's awareness by means of popularization campaigns in defence of the attention and of the rights and duties of the minors who have committed any criminal offence; all of this for the purposes of their social reintegration, subject to the current legislation in regards to protecting personal data, and to the remaining current regulations concerning minors. Likewise, they shall promote policies to prevent social risk situation which may be the base of future criminal behaviours in minors.

The Administration of the Autonomous Community Government shall count on the **resources of the common networks linked to the health care and educational systems and the social services, favouring the coordinated action of all the public bodies and institutions** which are competent in this subject.

- d. **Technical Teams:¹ (TT) (*Equipos Técnicos: ET*)** These are made up by physiologists, instructors and social workers whose purpose is to provide technical assistance concerning the matters related to their professional disciplines to the Juvenile Judges and the Prosecution Service; they shall also prepare reports and may pose, at any time,

¹ A/RES/45/110

7.1 *"If the possibility of social inquiry reports exists, the judicial authority may avail itself of a report prepared by a competent, authorized official or agency. The report should contain social information on the offender that is relevant to the person's pattern of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified".*

any proposal related to the juvenile offenders depending on their circumstances and the changes they may undergo. In addition, they undertake the duties concerning mediation between the minors and the victims, as we will tackle further on. Sometimes they can use the support of representatives from a wide range of services, in order to respond to the needs of young offenders in a comprehensive way. The TT identifies the needs of each young offender and the specific problems that make the young person offend as well as measuring the risk they pose to others. This enables the TT to identify suitable programmes to address the needs of the young person with the intention of preventing further offending.

- e. Other Institutions:** The law envisages the possibility of participation of other persons and institutions that might have been related to the minor concerned at any time, to the intents of assessing and advising the competent institutions on the most appropriate response to the juvenile offender. Likewise, they may participate as institutions finally entitled to undertake the implementation's programme of the measure imposed to the minor, where the administration so agrees it with them, as we will cover later on. In addition to that, it must not be left forgotten that, from the criminal point of view, in most of the cases of intervention on minors it is necessary a research and a subsequent monitoring of their social and family status; therefore, the presence of administrative authorities in charge of the protection of the minor (Public Entities which are competent in regards to Protection of Minors), intervene in a simultaneous or parallel way to the criminal proceedings, and their intervention is absolutely decisive.

C) Alternatives to the measures. Out-of-Court Resolutions:²

² A/RES/45/110:

5.1 *"Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims. For the purpose of deciding upon the appropriateness of discharge or*

Before diving into the detailed analysis of the alternative measures themselves, it is necessary to assess if there may be considered as such those proceedings terminations other than conviction with imposition of measure. In all these cases we are not facing alternative measures, but alternatives to the measure, to the continuation of the criminal proceedings. Hereof I will state the different possibilities which, with a general nature, are commonly called "**out-of-court resolutions**":

a. Withdrawal from proceedings: (*Desistimiento*) Under certain circumstances the Law envisages the possibility to fully close the criminal proceedings whenever, facing minor offences or crimes committed without violence or intimidation, it is possible to correct the behaviour of the juvenile offender within an educational or family environment. In these cases, the public administrative entity devoted to the protection of the minors shall be in charge to look for the different alternatives available within the normalized environment of the minor, aiming to prevent subsequent similar behaviours. The task is carried out together with the school and/or family of the minor involved, establishing minimum behaviour patterns, establishing certain basic rules and monitoring their fulfilment in order to check the results. These results shall be reported to the Prosecutor so that he may take the appropriate decision.

b. Mediation: (*Mediación*)

i. Conciliation: (*Conciliación*) There are other times where the legislator deems a criminal behaviour sufficiently reproached once the minor involved acknowledges the damage caused and apologizes to the victim, and such victim accepts such apologies. Conciliation is also possible following a conviction, and, in this last case, the effect is the non-fulfilment of the measure that should have been initially imposed. The same

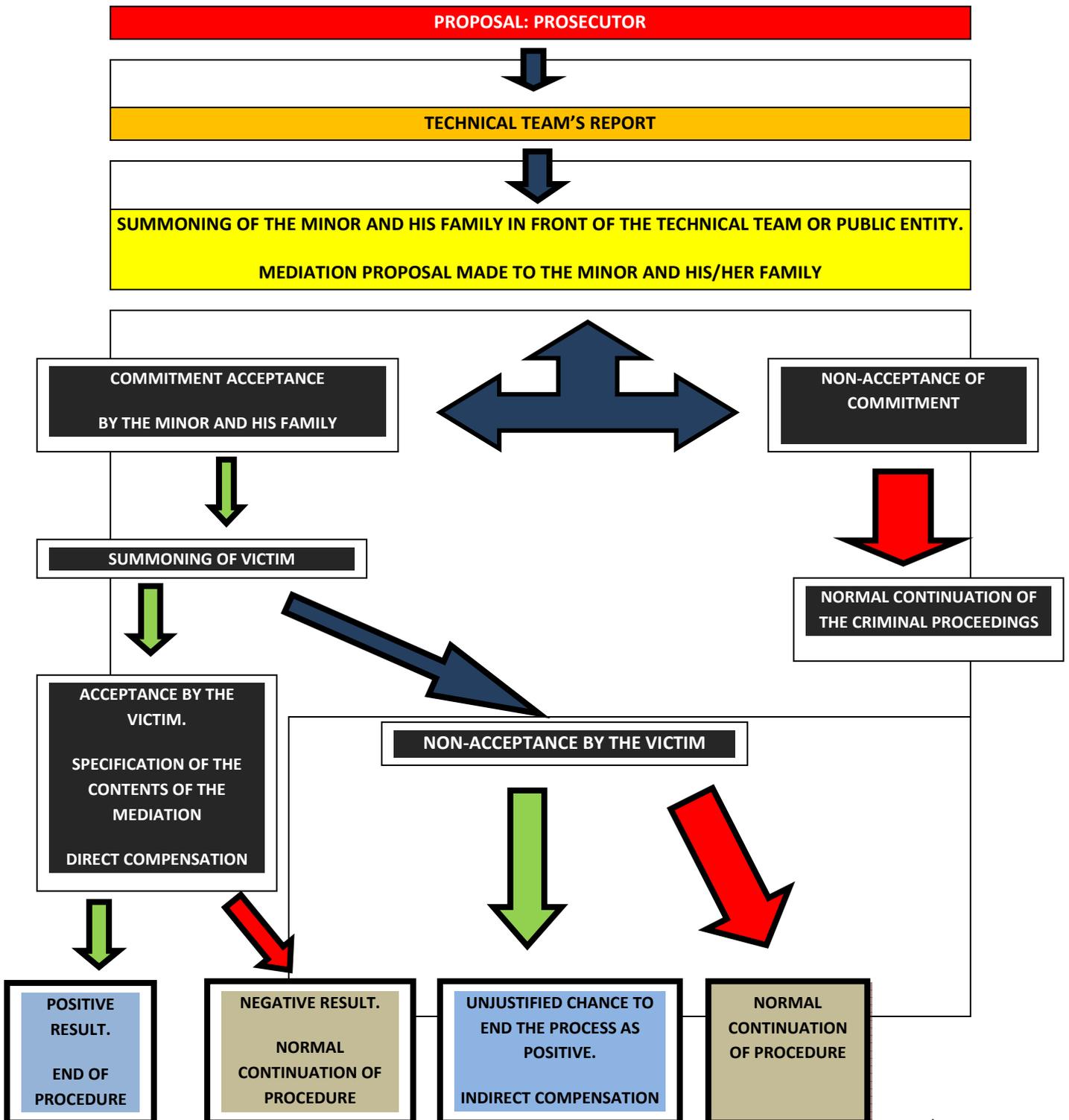
determination of proceedings, a set of established criteria shall be developed within each legal system. For minor cases the prosecutor may impose suitable non-custodial measures, as appropriate".

requirements mentioned in the previous case shall apply. Conciliation may be conducted before the Technical Team or before the public administrative entity; it shall be reported to the Prosecutor so that he determines what is appropriate with accordance to the result of the conciliation proceedings. Where the conciliation is concluded successfully, criminal proceeding exhausts with no need of subsequent procedures. Conciliation must be accepted voluntarily by the juvenile offender.

- ii. **Compensation: (*Reparación*)** It is a commitment made by the minor to the victim or injured person to carry out certain actions in the interests of the second or the community; this shall be followed by its effective fulfilment. The minor undertakes to do something to remove or dismiss the effects of the crime upon the victim; and he actually does it, being such action enough as not being necessary to continue with the criminal proceedings. The responsible bodies are the same as in the conciliation. Subsequently, observance of the agreement must be checked. Should it be the case, the procedure ends with no need to continue the criminal proceedings. It goes without saying that the compensation commitment must be accepted voluntarily by the minor.
- iii. **Commitment to complete educational activity:** In the event the minor undertakes to complete an educational activity suggested by the Technical Team, and he does so, the procedure shall also be finished as a result of such alternative. In these cases, the educational measure to be complied with is specified and both observance and results are analyzed subsequently; in the event such results are positive, criminal proceeding ends up with no need to continue to the sentence. This possibility must be accepted voluntarily by the young offender.

Below you can see the basic process-outline of the mediation procedure:

BASIC PROCESS-OUTLINE OF THE MEDIATION PROCEDURE



- c. **Closure of the File:** There are, in addition, other two file closure scenarios: one which is brought about by the simple fact of *"having been sufficiently expressed the reproach to it by means of the procedures already conducted"*, being already understood that it has been upsetting enough for the minor the simple fact of having been subject to a criminal proceeding; and, the other, consisting on *"considering not appropriate for the good of the minor any intervention, due to the time already elapsed from the commission of the facts"*, taking into consideration that the time already elapsed is enough for the minor to have compensated his situation in front the society. It is a lapse which is not, however, deemed enough as to consider that the crime or offence has prescribed, though it is deemed enough as to have had upsetting and recovering effects upon the juvenile offender.
- d. **Economic sanctions and monetary penalties:** These kind of alternative measures are not foreseen in the Spanish Law on Juvenile Justice.

D) Alternatives to the fulfilment of the measure³: Whenever the application of the before mentioned resources is not possible, the effective alternative for the rehabilitation of the minor consists, at the sight of his evolution, on **leaving fulfilment of the measure with no effect, reducing its duration, or replacing the measure initially imposed** with another measure that adapts better to the current situation of the minor, *"providing that such modification is of advantage to the minor and he/she*

³ A/RES/45/110

11.1 "The duration of a non-custodial measure shall not exceed the period established by the competent authority in accordance with the law.

11.2 Provision may be made for early termination of the measure if the offender has responded favourably to it".

is sufficiently made aware of the reproach deserved out of his/her behaviour". Likewise, the **suspension of the implementation of certain measures** is also possible in the event the minor undertakes to not commit a criminal offence again during a certain period of time, and assumes the commitment to show an attitude and disposition addressed to his/her rehabilitation into the society. In addition, It's foreseen **exit permit while serving custodial measures**.

- E) Minors below fourteen years of age:** In Spain, minors below such age lack criminal liability; according to the Law, it is stipulated that in these cases minors shall not be demanded liability, but they shall be applied what is provided by the regulations related to the protection of minors. The Prosecutor must send to the protection public entity a copy of the proceedings in order to assess the situation of the minor involved; this last entity shall promote the appropriate protection measures which adapt to the circumstances of the this minor. Alternatives, in these cases, are an alternative to the criminal proceedings themselves, which are replaced with the purely protective proceedings. Nevertheless, these possible protection proceedings against these minors lack the possibility of coercive imposition and depend on the willingness and involvement of the minor and his/her family in this alternative recovery procedure.

III. TYPES OF ALTERNATIVE MEASURES TO THE SPANISH JUVENILE LAW.-

As a general rule, all the measures shall be compatible with the school or work duties of the minor.

We shall take into account that certain crimes considered being specially serious (homicides, murders, rapes or terrorism) do not admit the chance to choose the measure to be imposed, but they necessarily entail secure detention measures. Likewise, there are certain offences which may not be punished with detention (offences of imprudence, for instance), and others, such as faults, which have expressly defined the only measures that may be imposed and their duration.

Within the general context of **ALTERNATIVE MEASURES** we could draw the following classification below:

A) "Measures in an Open Environment": (*Medidas en Medio Abierto/MMA*)

Fulfilment of the measures entails an action of the minor within his/her own social and natural environment with no need of any institutional restraint. Measures in an open environment tend to emphasize the socialization of the minors by means of the individual socio-educational intervention within their closest environment, working with their personal responsibility in keeping with that of the Society. For that, the coordination among all resources related to health, educational and social services available is expected, thus optimizing the task and reaching success thanks to networking. These measures would be:

- **Attendance at Day-Care Centres: (*Centro de Día*)** Persons subject to this measure shall live in their habitual residence and must go to a centre, fully integrated into the society, to carry out support, educational, learning, work or leisure activities.
- **Weekend arrest (home or detention centre): (*Permanencias de Fin de Semana*)** Persons subject to this measure shall remain at their home or at a detention centre up to a maximum of thirty-six hours comprised between Friday evening/night and Sunday night, except for the time they must devote to the socio-educational duties assigned by the judge, where appropriate, which shall be carried out outside such place.
- **Probation: supervised release program (*Libertad Vigilada*)** The person subject to the present measure shall be monitored, as well as his/her attendance at the school, vocational training centre or workplace, as appropriate, trying to assist him/her to get over the factors that determined the offence committed. Likewise, this measure forces, where appropriate, the juvenile offender to observe the socio-educational guidelines set by the public entity or the professional in charge of such monitoring, in accordance with the intervention programme drawn up to these effects and approved by the Juvenile Judge. The person subject to this measure is also forced to hold as many meetings before the mentioned professional as

established by the programme, as well as to observe, where applicable, all the behaviour rules imposed by the Judge. These rules may be one or more of the following listed below:

- Attend regularly the school.
 - Submit to the training, cultural, educational, professional, labour or sex and traffic education programmes or similar.
 - Prohibition to go to certain places, commerce or to attend certain shows
 - Prohibition to leave his/her home.
 - Live in a certain place.
 - Appear personally before the Juvenile Court or professional appointed.
 - Any other obligation deemed appropriate by the Judge or Prosecutor, provided that such obligation does not threaten his/her dignity as a person.
- **Residential arrangements: Cohabitation with another person, family or educational group (support group). (*Convivencia*)** The person subject to this measure shall, during the period established by the Judge, live with another person, a family other than his/her family, or an educational group, accordingly selected to advise the minor during his/her socialization process
 - **Provisions in the interest of the community (Community services). (*Prestación de Servicios en Beneficio de la Comunidad/PSBC*)** The person subject to this measure, which may not be imposed without his/her consent, has to carry out the non-remunerated activities indicated, which may comprise social service activities or activities in the interests of persons living in deprivation.
 - **Socio-educational (duties) tasks: (*Tareas socio-educativas TSE*)** The person subject to this measure has to carry out specific duties of educational contents aimed at facilitating the development of

his/her own social competence. This person shall not be subject to detention or probation.

B) Measures in an open environment of a therapeutic nature: In these cases, the application of the measures is a consequence of the existence of a previous anomaly or mental disability of the minor which normally requires a treatment from the psychological or psychiatric point of view. In many cases, (for example in cases of mental alienation or similar, which may be a cause of exemption from criminal liability) these disabilities in minors make the Prosecutor to develop another kind of legal proceedings of a civil nature, such as to request a statement of disability, or the adoption of any other protection measure. Measures of therapeutic nature may be the following:

- **Out-Patient Treatment/OPT (*Tratamiento Ambulatorio/TA*).**
Persons subject to this measure shall attend the designated centre with the regular recurrence required by the doctors assisting them. These minors shall also follow the guidelines set for the appropriate treatment of the mental handicap or disturbance, or impairment of perception they suffer from. Whenever the concerned minor rejects a treatment to loose his/her habits, the Judge shall have to apply another measure appropriate to his/her circumstances. We must remember that in the event the restraint of the minor was necessary for the implementation of the therapeutic measure, the applicable measure should be **Therapeutic Detention, which nature could be secure, semi-open or open**, as appropriate to the needs of the minor concerned. These detention centres will provide minors with educational assistance or specific treatments addressed to persons suffering from mental disturbances or impairment of perception that determine a serious alteration in their consciousness of the reality. This measure could be applied on its own or as a complement to another measure.
- **Treatments to deal with alcoholic drinks, drugs or psychotropic substances dependency:** In cases of addition to alcoholic drink, toxic drug or psychotropic substance consumption minors may be treated at a centre adequate to such circumstances. Nevertheless, in Spain,

such submission is of a voluntary nature and, in the event the minor does not accept it, other legal measure adequate to his/her circumstances must be applied.

C) Measures in an open environment 'while under detention':

We must not forget either that, except for the secure detention measure that entails the stay of the minors at a detention centre carrying out all their activities therein, the other possible detention ways, that is to say open and semi-open detention, allow the execution of some of or all the activities (working or attending school, for example) outside the centre within the standardised services of their environment, like if such measure was actually an isolated alternative measure.

Likewise, the Spanish Legislation envisages that all detention measures shall come to an end with a probation period. Such measure aims to secure an easy social rehabilitation once they leave the detention centre. Finally, we must bear in mind that the minor may be imposed detention measures and alternative measures jointly, in which case these shall be complied with simultaneously where possible.

D) Other alternative measures:

- **Prohibition to approach, or communicate with, the victim or those relatives or other persons so determined by the Judge. (*Prohibición de aproximación y/o comunicación*)** This measure shall prevent the minor from approaching them, wherever they are, as well as their residence, school, working places and any other place they usually frequent, as well as from communicating with them by means of any communication medium or computer or telematic service, or written, verbal or visual contact. The monitoring of effective compliance is usually carried out by local police.

-
- **Reprimand/admonition (*Amonestación*):** It consists, as its name says, on the reprimand of the minor conducted by the Juvenile Judge directed to make him/her understand the seriousness of the offences committed and the consequence such facts have had or could have had, urging him/her to not commit such faults again in the future. Such alternative measure is executed by the Judge himself immediately without the intervention of any other professional.
 - **Ban from driving mopeds and motor vehicles, or deprivation of the right to obtain the driving license, or the hunting licence or other administrative licence to use any other type of weapons (*privación licencias y permisos*):** This measure is imposed whenever the offence was committed using a moped or a motor vehicle, or a weapon. Such measures shall be usually executed by the administrative body competent to issue such authorisations.
 - **Absolute disqualification.** The absolute disqualification measure results in the definite deprivation of the right to hold a public honour, employment or office which the offender may have held, even if conferred by popular election; to obtain them or any other public honour, position or office and to be elected to such office during the term of the measure. These measures shall be usually executed by the administrative bodies competent to do so.

E) Protective measures in an open environment:

It shall be noticed that, in addition to detention, juvenile criminal liability measures, prohibition to approach, or communicate with, the victim or his/her relatives or any other person determined by the judge, or to live together with another person, family or educational group, may also be imposed provisionally as protective measures. These must be executed as if final measures were concerned.

IV. THE IMPLEMENTATION OF THE ALTERNATIVE MEASURES WITHIN THE SPANISH JUVENILE LAW.-

A) JOINT VENTURE AGREEMENTS BETWEEN THE CENTRAL GOVERNMENT (MINISTRY OF LABOUR AND SOCIAL AFFAIRS) AND THE ADMINISTRATIONS OF THE AUTONOMOUS COMMUNITIES GOVERNMENTS: Aiming to assist in the effective compliance of the measures and to collaborate in the provision of the bodies competent for their implementation with the required personal and material means, **JOINT VENTURE AGREEMENTS have been signed between the Ministry of Labour and Social Affairs, as a representative of the Spanish State** (to which the «welfare and protection of families and children» falls) **and the different Autonomous Communities Governments**, in charge of the effective implementation of the measures alternative to detention within their own fields. In this sense, we may emphasize those agreements reached on the 15th February, 2006, as newest, by virtue of which the Ministry of Labour and Social Affairs of the different Autonomous Communities Governments signed joint venture agreements **to carry out and develop programmes devoted to the implementation of the measures for juvenile offenders. These programmes include not only the implementation of the alternative measures to detention passed by Juvenile Judges, but also the Qualification of the Professionals of the Autonomous Communities for an accurate application.** These agreements are basically of an economic nature. Therefore, budget items are agreed devoted to the implementation of the different measures adequate to the needs of each Autonomous Community.

B) COMPETENT BODIES: The implementation of the measures passed by Juvenile Judges in their final judgements is the competence of the Autonomous Communities and the Cities of Ceuta and Melilla. These public entities shall carry out, in accordance with their respective organizational regulations, the development, running, organization and management of adequate services, institutions and programmes to grant the correct

execution of the measures envisaged by the present Law. The fact of coinciding the duties concerning the execution of the criminal measures, on the one hand, and the protection of the child, on the other hand, facilitates the correct implementation of the criminal measures imposed to juvenile offenders, since firstly it facilitates the knowledge of the comprehensive situation of the minor and, secondly, it allows to best adjust the development of such execution and its possible variations to the interests of the minor.

- C) **SPECIALIZED PROFESSIONALS⁴: “OPEN ENVIRONMENT CHILDCARE WORKERS”.** (*Educadores de Medio Abierto/ EMA*) The measures in an open environment are carried out by the so called “**open environment childcare workers**”, who undertake their duties by means of direct monitoring of the activity or activities the minor must conduct, assisting him/her in its/their correct performance and assessing the final result. For that, an “**individualized execution plan**”⁵ is drawn prior to the commencement of the measures fulfilment. This plan includes the objectives to be reached and the way to do so. Usually, these open environment childcare workers work in **teams**, which are supervised by a **coordinator**, who shall analyze the progress level of the intervention together with the minor.

⁴ A/RES/45/110:

15.2 Persons appointed to apply non-custodial measures should be personally suitable and, whenever possible, have appropriate professional training and practical experience. Such qualifications shall be clearly specified.

⁵ A/RES/45/110:

12.2 “The conditions to be observed shall be practical, precise and as few as possible, and shall be aimed at reducing the likelihood of an offender relapsing into criminal behaviour and at increasing the offender’s chances of social integration, taking into account the needs of the victim.

12.3 At the beginning of the application of a non-custodial measure, the offender shall receive an explanation, orally and in writing, of the conditions governing the application of the measure, including the offender’s obligations and rights”.

- D) PLACE OF IMPLEMENTATION:** The general rule presumes that the alternative measures have to be carried out within the normalized environment of the minor, whenever possible. Nevertheless, they may be carried out in other places should it benefit the minor.
- E) WAY OF IMPLEMENTATION: "COLLABORATION OR JOINT VENTURE AGREEMENTS":** The Autonomous Communities and the Cities of Ceuta and Melilla may establish those **collaboration or joint venture agreements with other entities, whether public, such as State or Local Administration or the Administration of any other Autonomous Community, or non-profit private institutions necessary** for the implementation of the measures of their competence, under their direct supervision, without entailing, under any circumstance, the transfer of the protection and the responsibility derived from such implementation. The Autonomous Administration itself shall equip or give credit facilities to (where public resources are concerned), or accredit as collaborator (where private resources are concerned) the entities or persons that shall be allowed to carry out these mentioned duties, stating which kind of tasks may be delegated to them. The following tasks may not usually be delegated: the responsibility of the implementation, the supervision and monitoring duties and the relations with the Prosecution Service and judicial bodies.
- F) REPORTS ON THE IMPLEMENTATION.** The Administration is under the supervision of the Juvenile Court and Prosecutor; therefore, they have to be accounted by means of appropriate reports and with the regularity established; likewise, whenever required or deemed necessary by the entity itself, reports on the implementation of the measures and the incidences related shall be issued, as well as on the personal evolution of the minors subject to them.

G) RESPONSIBILITY OF THE PARTICIPANTS. As it was mentions before, the implementation of the measures passed by the Juvenile Judges and their final judgements is the competence of the Autonomous Communities and the Cities of Ceuta and Melilla. **Such public entities shall carry out, in accordance with their respective organizational regulations, the establishment, running, organization and management of the services, institutions and programmes adequate to ensure the proper implementation of the measures envisaged by the present Law, being able to establish all the necessary collaboration or joint venture agreements with other entities, whether public, such as State or Local Administration or the Administration of any other Autonomous Community, or non-profit private institutions, for the implementation of the measures of their competence, under their direct supervision, without entailing, under any circumstance, the transfer of the protection and the responsibility derived from such implementation.** Therefore, the main responsibility of the proper implementation of the measure, as well as the provision of the necessary personal and material means, lies on the Autonomous Administration. Such Administration is the one that has to study the resources available within its territorial scope and select the appropriately or, in the event of non-availability, provide their development. Likewise, it shall assume the responsibilities which may be derived, in their implementation, from the actions of those persons or entities with which it has reached appropriate agreements for the implementation of the measures in the use of its duties, whether due to an inadequate selection (*culpa in eligendo or vicarious liability*) or due to the lack in monitoring the actions (*culpa in vigilando or vicarious liability*), obviously without detriment to the liability pertinent to such subcontracted entities or persons.

In addition to the personal liability, the pecuniary liability derived from possible pecuniary damages which may be occasioned during the implementation of the measures, shall also be covered by the Autonomous Administration. It is important their cover by means of insurances against civil liability systems.

A basic matter is the protection of personal data of minors and their relatives, being the obligation of all the parties intervening in the implementation of the measure to reserve any information obtained related to the minors in the exercise of their duties, and to not disclose it to any third party alien to the implementation. Such duty persists following implementation under penalty of the appropriate liabilities.

H) SPECIALITIES OF EACH MEASURE: *(A breach of the conditions to be observed by the offender may result in a modification or revocation of the non-custodial measure).*

- a. **Socio-Educational Tasks:** They try to satisfy the specific needs of the minor that limit his/her full development. They may mean the minor’s attendance at and participation in a programme already available within the community, or a programme created «*ad hoc*» by the professionals in charge of the implementation of the measure. Some examples of socio-education tasks could be: attend an occupational workshop, a compensatory education class or a vocational training course; take part in structured youth work activities, attend classes to learn about social competence, etc.

The outline of the implementation’s process of this measure could be as follows: (next page)

"THE SPANISH LAW ON JUVENILE JUSTICE: ALTERNATIVE MEASURES"

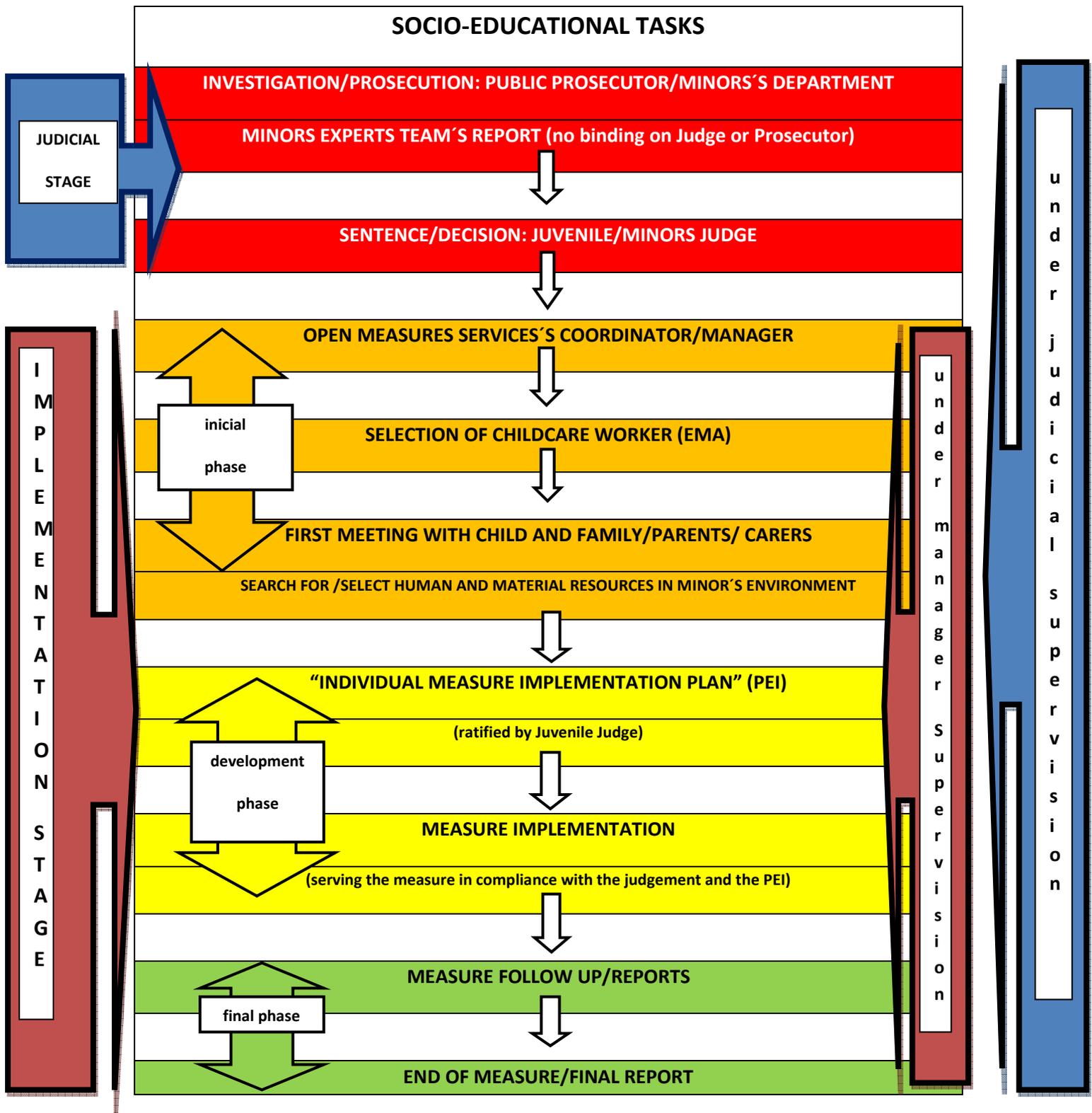
JOSE DIAZ CAPPA. PROSECUTOR. SUPERIOR PROSECUTOR'S OFFICE. BALEARIC ISLANDS. SPAIN.

DELEGATE JUVENILE JUSTICE DEPARTMENT. DELEGATE FOR HIGH TECH CRIMES. DELEGATE FOR DISCRIMINATION CRIMES.

www.josediazcappa.es

josediazcappa@yahoo.es

jose.diaz@fiscalia.mju.es



b. Day-Care Centre: This measure has the purpose to provide a minor with a structured environment during the part of the day when socio-educational activities that may compensate for the absence of the family environment are carried out. They are commonly used to take back conduct disorders (CD). The objective varies according to the age of the minor: whether he/she is included in the age group of compulsory education (until 16 years of age in Spain) or not. In the first case, the activities to be carried out at the day-care centre shall be coordinated with those pertinent to the school. In the second case, the objective shall mainly be the search for the labour market insertion of the minor. Most Autonomous Communities have created their own Day-Care Centres. Should these centres were not available they would be sought within the public and private resources of the environment in order to meet the needs of the minor. These day-care centres offer activities such as extra support lessons, traffic, sex or gender-based violence education, or acquisition of social skills.

The outline of the implementation's process of this measure could be as follows: (next page)

"THE SPANISH LAW ON JUVENILE JUSTICE: ALTERNATIVE MEASURES"

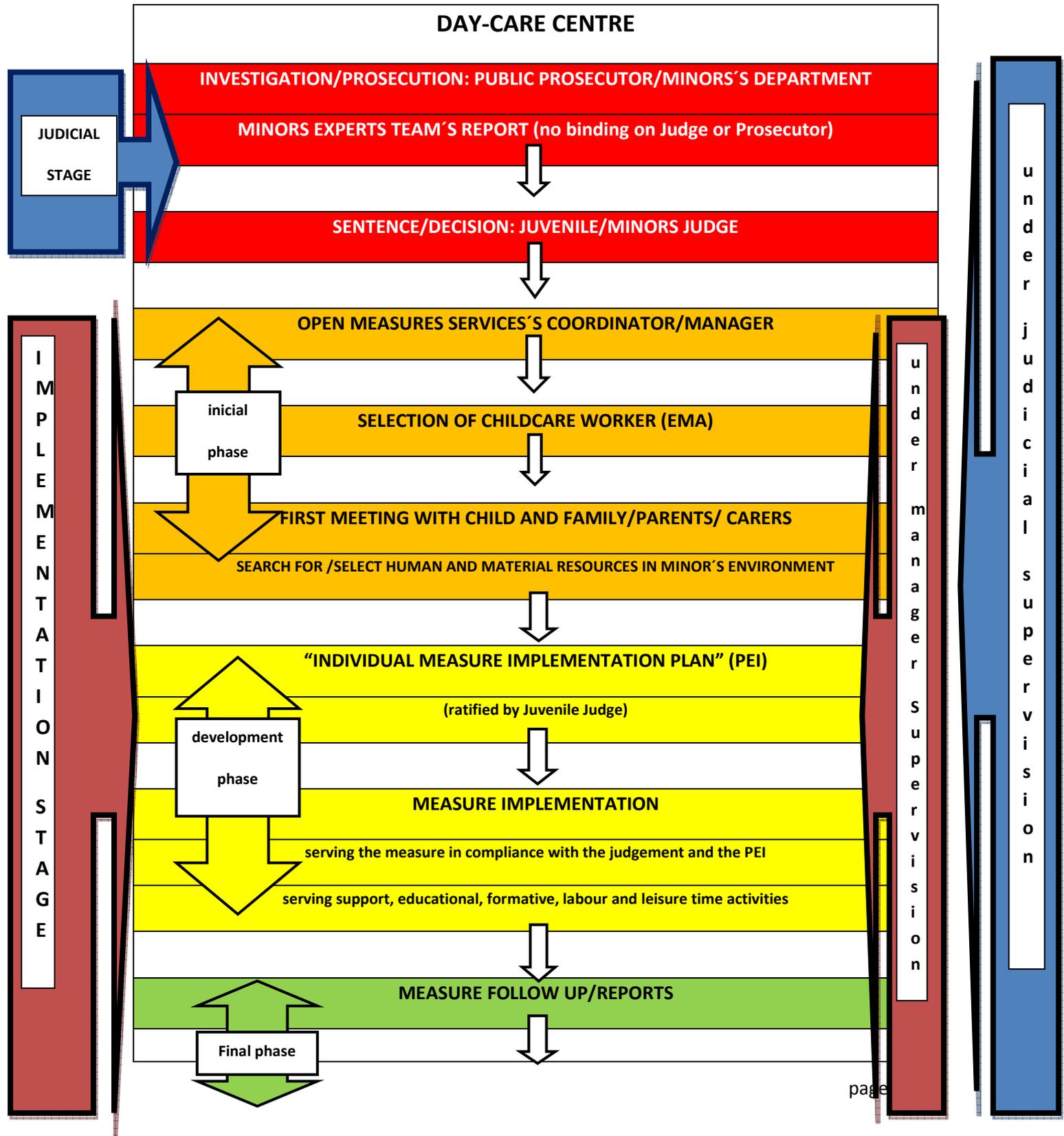
JOSE DIAZ CAPPA. PROSECUTOR. SUPERIOR PROSECUTOR'S OFFICE. BALEARIC ISLANDS. SPAIN.

DELEGATE JUVENILE JUSTICE DEPARTMENT. DELEGATE FOR HIGH TECH CRIMES. DELEGATE FOR DISCRIMINATION CRIMES.

www.josediazcappa.es

josediazcappa@yahoo.es

jose.diaz@fiscalia.mju.es



END OF MEASURE/FINAL REPORT

c. Community Services: It shall be preferably sought to connect the nature of the activity of this measure with the legal rights affected by the facts committed by the minor. This measure is mainly intended to turn the reproach to the behaviour of the minor into a useful and effective redress to the society. The activities to be carried out shall meet the following conditions below:

a) Be of social interest or be carried out in the interests of the persons in a situation of scarcity.

b) Be connected preferably with the nature of the damage caused.

c) Not to infringe upon the dignity of the minor.

d) Not to be dependent on the attainment of economic interests.

3. The provisions of the minor shall be non-remunerated and the rights pertinent to the Social Security shall be granted.

The outline of the implementation's process of this measure could be as follows: (next page)

"THE SPANISH LAW ON JUVENILE JUSTICE: ALTERNATIVE MEASURES"

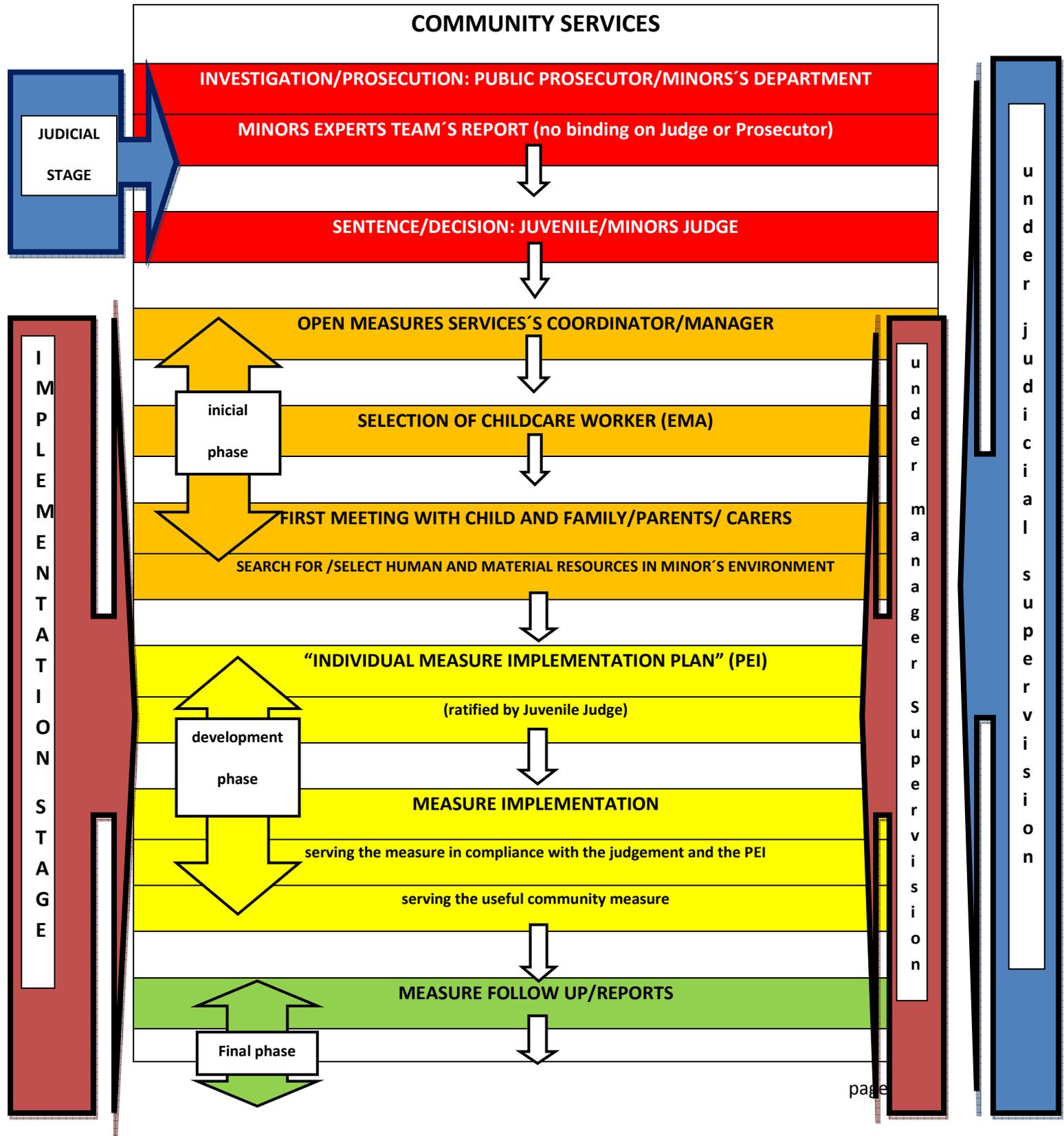
JOSE DIAZ CAPPA. PROSECUTOR. SUPERIOR PROSECUTOR'S OFFICE. BALEARIC ISLANDS. SPAIN.

DELEGATE JUVENILE JUSTICE DEPARTMENT. DELEGATE FOR HIGH TECH CRIMES. DELEGATE FOR DISCRIMINATION CRIMES.

www.josediazcappa.es

josediazcappa@yahoo.es

jose.diaz@fiscalia.mju.es



END OF MEASURE/FINAL REPORT

d. Probation (supervised release program, under judicial supervision):

Here the juvenile offender is subject, during the term established by the judgement, to the surveillance and supervision of the specialised personnel. This is intended to make the minor acquire the necessary skills, abilities and attitudes required for a correct personal and social development. During the time of probation, the minor shall also carry out the duties and observe the prohibitions which, according to the present Law, the Judge may impose. This is, without any doubt, the most used measure and the one counting on more contents possibilities. It is the duty of the open environment childcare worker to become fully aware of the family, labour, social and educational needs of the minor. The application of this measure is very versatile, since it allows to gather together in just one single measure all the different risk factors of the minor and his/her family (family history, economic situation, friends of the minor, consumption, intellectual and cultural shortages, educational failure, etc).

The outline of the implementation's process of this measure could be as follows: (ext page)

"THE SPANISH LAW ON JUVENILE JUSTICE: ALTERNATIVE MEASURES"

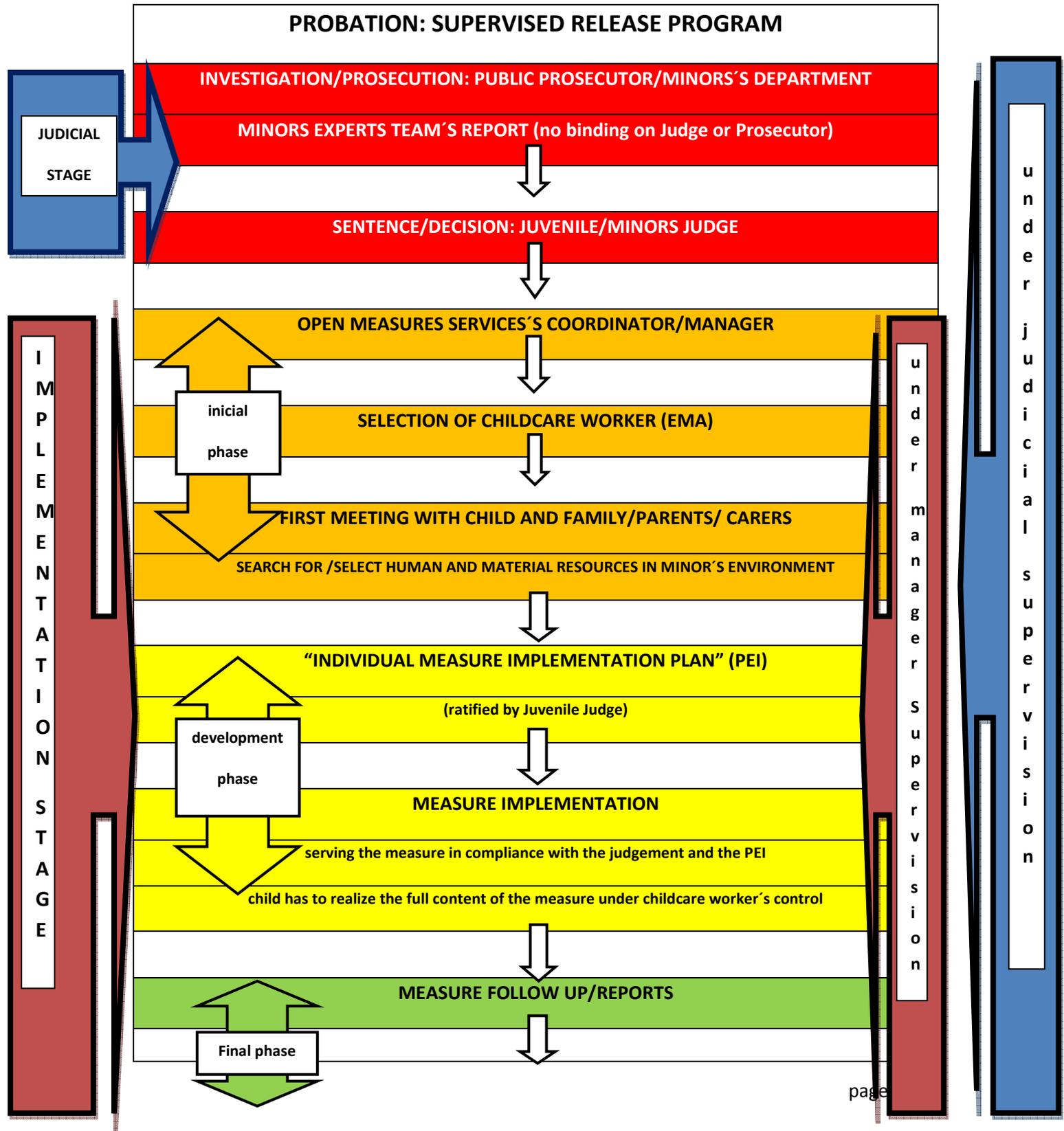
JOSE DIAZ CAPPA. PROSECUTOR. SUPERIOR PROSECUTOR'S OFFICE. BALEARIC ISLANDS. SPAIN.

DELEGATE JUVENILE JUSTICE DEPARTMENT. DELEGATE FOR HIGH TECH CRIMES. DELEGATE FOR DISCRIMINATION CRIMES.

www.josediazcappa.es

josediazcappa@yahoo.es

jose.diaz@fiscalia.mju.es



END OF MEASURE/FINAL REPORT

f. House or detention centre Weekend Arrest. This is a measure considered to be useful for those minors who tend to commit acts of hooliganism or vandalism during the weekends (normally public damages or disturbances). The implementation of this measure depends on its nature: it may be home detention (in which case effective monitoring is carried out by police officers) or detention at a centre (in which case the centre itself is responsible for ensuring the temporary confinement of the minor). The production of an individualized implementation project depends on the duration of the measure: these projects are normally produced where the duration of the detention is above four weekends. In these cases confinement may be accompanied by the performance of any socio-educational task, usually intended to make the minor learn how to structure his/her free and leisure time.

The outline of the implementation's process of this measure could be as follows: (next page)

"THE SPANISH LAW ON JUVENILE JUSTICE: ALTERNATIVE MEASURES"

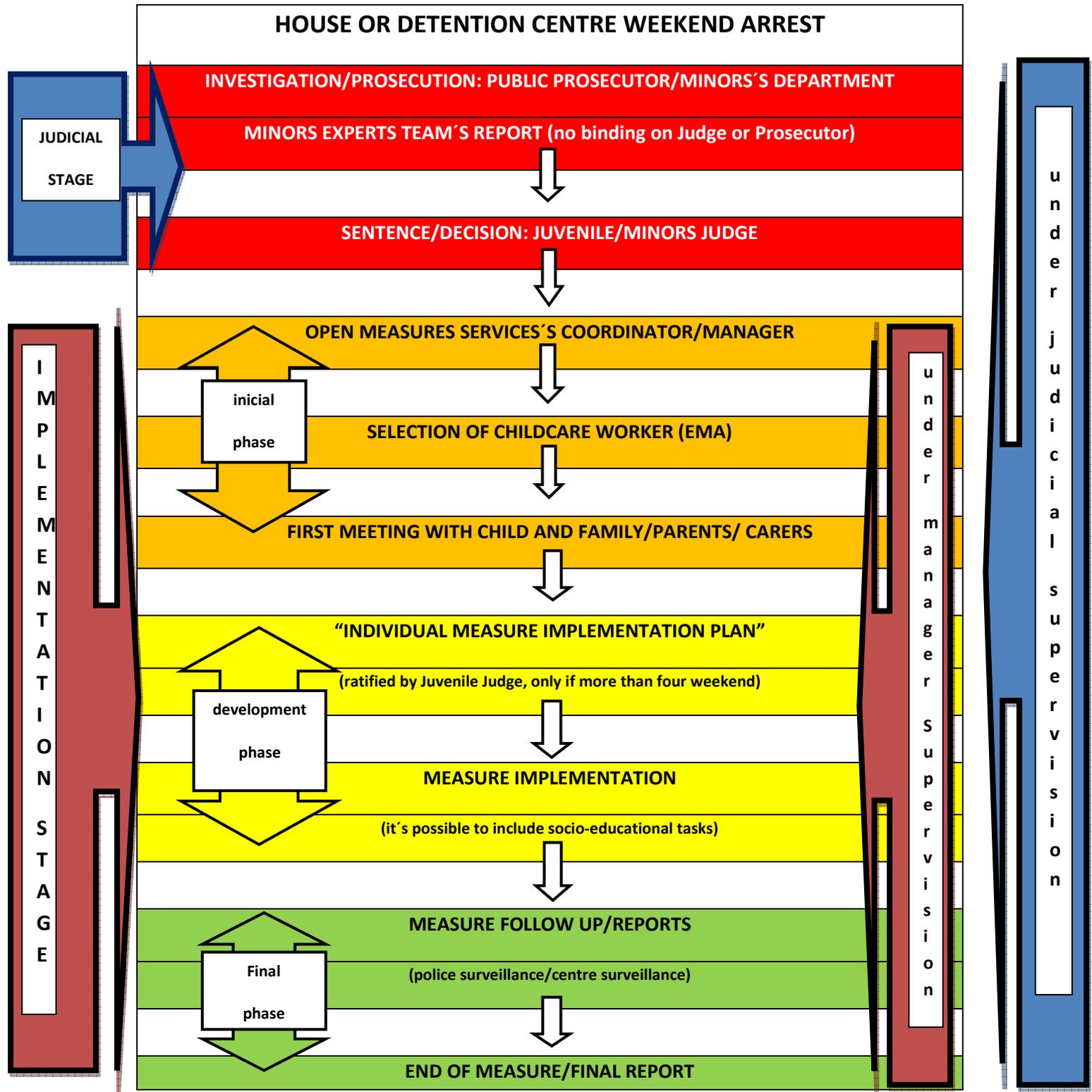
JOSE DIAZ CAPPA. PROSECUTOR. SUPERIOR PROSECUTOR'S OFFICE. BALEARIC ISLANDS. SPAIN.

DELEGATE JUVENILE JUSTICE DEPARTMENT. DELEGATE FOR HIGH TECH CRIMES. DELEGATE FOR DISCRIMINATION CRIMES.

www.josediazcappa.es

josediazcappa@yahoo.es

jose.diaz@fiscalia.mju.es



e. Out-Patient Treatment (OPT). This measure is really suitable for cases of unbalanced state of mind or any other physic disturbance which may be attended with no need of confinement (delirium, bipolar disorders, borderline, aggressiveness, anorexia, etc.). This measure is also suitable for significant behaviour disorders. The implementation of such measure is basically achieved by means of using the public or private health services within the closest environment of the minor. Therefore, it is essential that the open environment childcare worker becomes aware in advance of which resources are available in order to be able to offer them to the minor and his/her family as a valid alternative. In these cases the individualized implementation plan shall also count on the criteria of the therapeutic intervention doctors; these criteria are necessary to achieve the final objective (programme of social and health guidelines to be followed by the minor). The coordination between the open environment officer and the doctor is something essential. Likewise, whenever **communicable diseased or any other risks for the health of the minors or for those living with them** are concerned, the respective control and monitoring may be entrusted to the relevant authorities or Health Services.

**The outline of the implementation's process of this measure could be as follows:
(next page)**

"THE SPANISH LAW ON JUVENILE JUSTICE: ALTERNATIVE MEASURES"

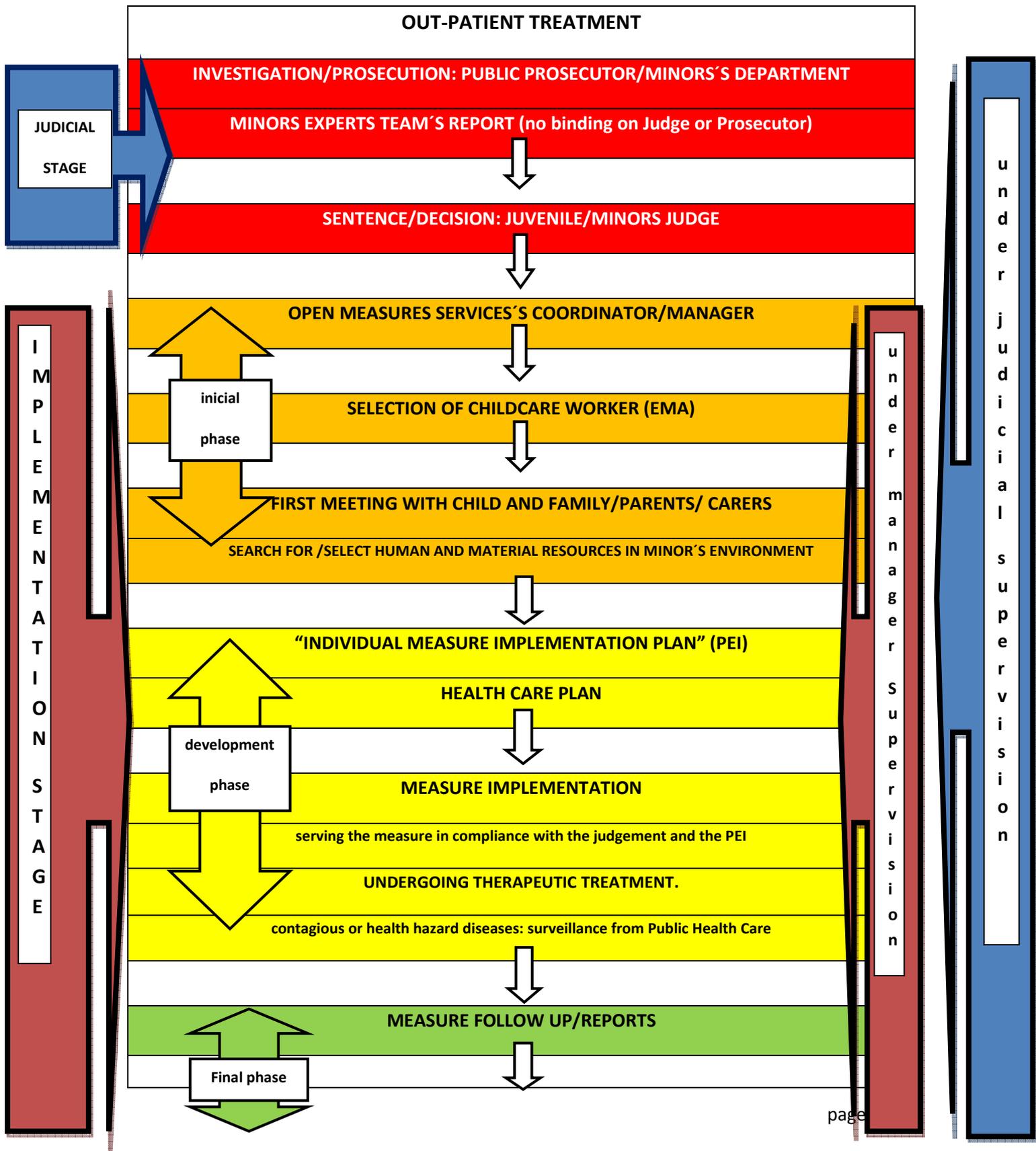
JOSE DIAZ CAPPA. PROSECUTOR. SUPERIOR PROSECUTOR'S OFFICE. BALEARIC ISLANDS. SPAIN.

DELEGATE JUVENILE JUSTICE DEPARTMENT. DELEGATE FOR HIGH TECH CRIMES. DELEGATE FOR DISCRIMINATION CRIMES.

www.josediazcappa.es

josediazcappa@yahoo.es

jose.diaz@fiscalia.mju.es



END OF MEASURE/FINAL REPORT

f. Residential Arrangements: Cohabitation with a person, family or educational (support) group is a measure that tries to provide the minor with a positive socialization environment, through his/her cohabitation with a person, a family other than his/her family or an educational group for a period of time determined by the Judge. This person, family or group offers itself to act as a family as for the development of socio-affective and prosocial guidelines of the minor is concerned. It is mainly used to provide the minor with an adequate cohabitation environment when it is precisely his/her own family environment the negative cause of his/her problems.

For the correct implementation of this measure it is necessary a previous selection and maintenance process of the persons, families or educational groups within which the most adequate to the minor profile may be subsequently selected. The pre-selection and maintenance tasks shall be carried out by the administration in charge of the implementation of the judicial order.

The labour of the selected persons is of a voluntary nature and paid.

The open environment worker, following the development of the individualized implementation plan, shall be appropriately coordinated with the persons, family or educational group concerned for the accurate development of the measure.

The most important final consequence of the present measure, and that differentiates it from the remaining measures, is the last assessment which shall be made on the opportunity to reinstate the concerned minor into his/her family.

During the implementation of the measure, the minor shall preserve the right to have contact with his/her family, provided that no express judicial prohibition exists.

**The outline of the implementation's process of this measure could be as follows:
(next page)**

"THE SPANISH LAW ON JUVENILE JUSTICE: ALTERNATIVE MEASURES"

JOSE DIAZ CAPPA. PROSECUTOR. SUPERIOR PROSECUTOR'S OFFICE. BALEARIC ISLANDS. SPAIN.

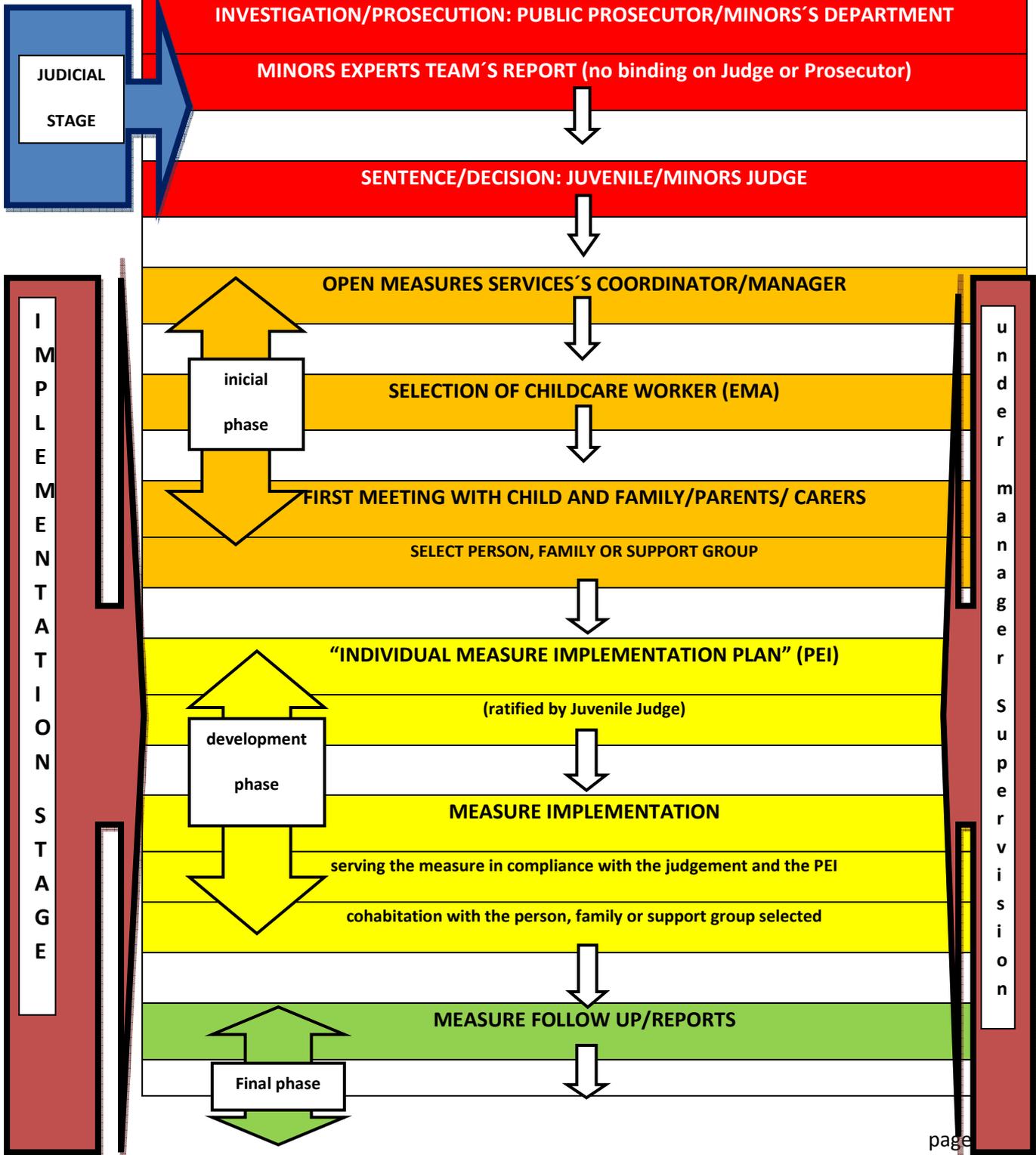
DELEGATE JUVENILE JUSTICE DEPARTMENT. DELEGATE FOR HIGH TECH CRIMES. DELEGATE FOR DISCRIMINATION CRIMES.

www.josediazcappa.es

josediazcappa@yahoo.es

jose.diaz@fiscalia.mju.es

RESIDENTIAL ARRANGEMENTS: LIVING WITH A PERSON, FAMILY OR SUPPORT GROUP



END OF MEASURE/FINAL REPORT

I) VICTIMS AND OTHER OFFENDED PEOPLE PARTICIPATION.-.

Victims and/or offended are able to exercise every kind of criminal and civil actions as the Prosecutor Service, and they normally must be hearing when a proposal (mediation, compensation, conciliation, suspension of measures, etc) is done as regards the situation of the young offender. Their participation is very important in the implementation's process, and their position in taking into consideration, but it is no binding on Judge or Prosecutor.

J) OFFENDER'S FAMILY PARTICIPATION:

Offender's family participation is foreseen as a basic principle of the Spanish Law on Juvenile Justice. It must be promoted the collaboration and support of parents, guardian or another representatives while measures are been served.

K) PUBLIC PARTICIPATION AND PUBLIC UNDERSTANDING AND CO-OPERATION:

Spanish Juvenile Law follows as regards public participation and co-operation the same rules listed in Tokyo ones:

“17.1 Public participation should be encouraged as it is a major resource and one of the most important factors in improving ties between offenders undergoing non-custodial measures and the family and community. It should complement the efforts of the criminal justice administration.

17.2 Public participation should be regarded as an opportunity for members of the community to contribute to the protection of their society.

18.1 Government agencies, the private sector and the general public should be encouraged to support voluntary organizations that promote non-custodial measures.

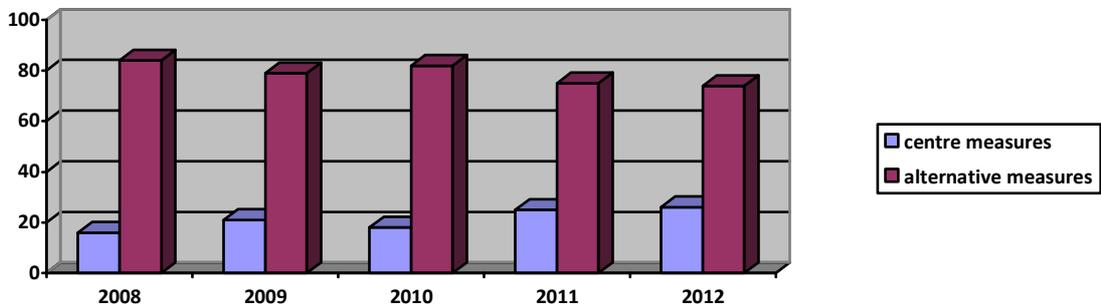
18.2 Conferences, seminars, symposia and other activities should be regularly organized to stimulate awareness of the need for public participation in the application of non-custodial measures.

18.3 All forms of the mass media should be utilized to help to create a constructive public attitude, leading to activities conducive to a broader application of non-custodial treatment and the social integration of offenders.

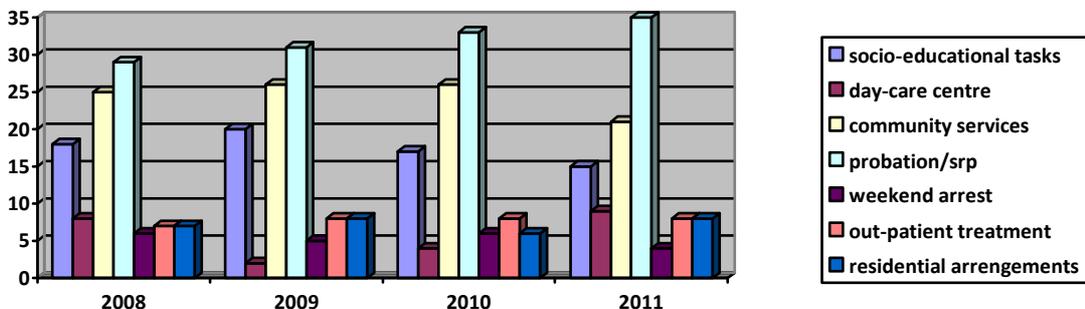
18.4 Every effort should be made to inform the public of the importance of its role in the implementation of non-custodial measures".

L) STATISTICS. (Spain).

centre measures versus alternative measures*



open-environment measures.*



*Self-sources.