Reconsidering the Protection of Child Witnesses and Pre-Recorded Testimony: Comparative Perspectives from Spain and England and Wales

Reconsideración de la protección de los menores testigos y la prueba preconstituida: Perspectivas comparativas de España e Inglaterra y Gales

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Abstract: This study conducts a comparative law analysis between Spain and England and Wales, focusing on pre-recorded evidence as a procedural tool designed to prevent the secondary victimization of underage witnesses in criminal proceedings. In the Spanish system, recorded statements are intended to prevent children from having to repeat their testimony, ensure their protection and preserve the evidential value of their statements. Special measures are taken in England and Wales, such as video-recorded examination and pre-recorded cross-examination. These methods pursue similar objectives by reducing the child's exposure to the judicial environment. The study identifies the similarities in their protective purpose and the differences that result from procedural structures. It also detects the lessons that each legal system can apply to optimize the use of these instruments and strengthen the protection of children and adolescents.

Keywords: pre-recorded testimony, underage victims, secondary victimization, comparative law, criminal process.

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Resumen: *Este estudio lleva a cabo un análisis de Derecho comparado entre España e Inglaterra y Gales, centrándose en la prueba preconstituida como herramienta procesal destinada a prevenir la victimización secundaria de las víctimas menores de edad en los procesos penales. En el sistema español, la prueba preconstituida tiene por objeto evitar que los menores tengan que repetir su testimonio, garantizar su protección y preservar el valor probatorio de sus declaraciones. En Inglaterra y Gales se adoptan medidas especiales, como el interrogatorio y el contrainterrogatorio videograbado. Estos métodos persiguen objetivos similares al reducir la exposición del menor al entorno judicial. El estudio identifica las similitudes en su finalidad protectora y las diferencias que se derivan de las estructuras procesales. Asimismo, detecta las lecciones que cada ordenamiento jurídico puede aplicar para optimizar el uso de estos instrumentos y reforzar la protección de los niños y adolescentes.*

Palabras-clave: *prueba preconstituida*, *víctimas menores de edad*, *victimización secundaria*, *Derecho comparado*, *proceso penal*.

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Introduction

The relationship between the criminal justice system and underage victims has consistently been characterized by mutual misunderstanding and persistent complexity. This is either due to distrust of children and adolescents as witnesses (Spencer & Flin, 1990; Myers, Saywitz & Goodman, 1996; Marchant, 2013), and the intimidation that the criminal

process and its participants tend to instil in this demographic (Newberger, 1987; Morgan & Zedner, 1992; McEwan, 1998; Parsons & Bergin, 2010).

It is clear that the demands of an essentially adult-centric criminal system, combined with the possible lack of awareness and training among professionals who work with children, can trigger a new traumatic episode that exacerbates the distress caused by the crime (Magherescu, 2023). This issue is even more significant when dealing with criminal offences commonly perpetrated in private settings, where the child's testimony is often the only evidence available. Consequently, the victim may be instrumentalized in the process (Herrera Moreno, 1996).

This phenomenon, known as secondary victimization (Kühne, 1986) or procedural victimization (Herrera Moreno, 1996), is particularly relevant in the case of underage victims. Empirical evidence suggests that they are more vulnerable to developing serious consequences as a result of their participation in the criminal process (Goodman et al., 1992; Saywitz & Nathanson, 1993; Quas et al., 2005). Several factors contribute to this reality, including limited access to information about the criminal justice system (Ben-Arieh & Windman, 2007), insufficient support (Gekoski, Horvath & Davidson, 2016), high numbers of interviews (Henry, 1997; Quas & Goodman, 2012) and the formal atmosphere of the courtroom (Saywitz & Nathanson, 1993; Goodman et al., 1998).

These psycho-emotional effects have repercussions in terms of evidence. Considering that the child's statement is usually the only evidence available to the court, it is essential for justice that this testimony be as complete and clear as possible to ensure an accurate resolution. Discomfort, anxiety or fear (Ceci & Bruck, 1993) and the use of complex legal terminology (Saywitz, Jaenicke & Camparo, 1990; Zajac, Gross & Hayne, 2003) are counterproductive to this goal by negatively affecting the quality of the evidence.

These challenges have led psychology, victimology, and law to advocate for procedural mechanisms that protect children and adolescents witnesses. In recent decades, interest has grown in minimizing minors' exposure to the public through audiovisual means, such as videotaped statements. Legislative frameworks at both the international and European level have promoted the adoption of this mechanism in the criminal justice systems of various countries. Early precedents can be found in

Framework Decision 2001/220/JHA, which in Article 8 calls on States to guarantee the victims' right to protection during their testimony by any appropriate means consistent with their domestic law. This specific provision gave rise to the landmark case Pupino (C-105/03), through which the Court of Justice of the European Union concluded that its provisions must be interpreted to allow courts to authorize children and adolescents to testify outside the context of an oral trial.

That norm was replaced by Directive 2012/29/EU, which – with the same objective and greater legal force – establishes a protection system structured in three progressive levels. Underage witnesses are eligible for the measurers provided for at all three levels, although the level, as set forth in Article 24, is reserved exclusively for them. This provision includes the appointment of a representative and legal counsel, as well as the recording of their statement during the investigation phase. In this regard, Directive 2026/1472/EU was recently adopted, amending the aforementioned Directive, by adding that the right of the child to be heard and the child's best interests must be guaranteed.

While Spain and England and Wales have incorporated these guidelines, the differences between their legal traditions and systems invite a comparative analysis of the contrasts, similarities, and lessons learned. This research could strengthen the position of underage victims in the process, both in terms of protection and participation.

1. Research Question, Objectives and Methodology

The following study is based on a specific research question: how do Spain and England and Wales regulate the practice and use of video-recorded statements by underage witnesses during the investigation phase, and to what extent do their respective regimes succeed in reconciling the objectives of the criminal justice process with the protection of children and adolescents? To answer this question, the general objective is to conduct a comparative analysis of Spanish and Anglo-Welsh legislation on pre-recorded testimony by underage witnesses in criminal proceedings. Based on the general objective, the following specific objectives have been defined: 1) establish the conceptual and regulatory framework of evidence law, child protection, and pre-recorded testimony in England and

Wales and Spain; 2) conduct a comparative analysis of both systems to identify their main similarities and differences, as well as their strengths and limitations; and 3) formulate proposals for regulatory improvements to optimize the use of this mechanism, striking a balance between the protection of children and adolescents and the proper functioning of the criminal justice system.

A doctrinal and normative analysis has been conducted of various legal provisions concerning to general rules of evidence, the adoption of protective measures for victims in criminal proceedings, and the recording of underage victims' statement during the investigating phase. Seven units of analysis were selected for this study focused on pre-recorded evidence of underage victims: 1) age threshold, 2) scope of offenses, 3) participation of the child in the decision-making, 4) subjection of the mechanism to evaluation, 5) structure of the recording, 6) timing of testimony, and 7) role of the professionals.

This type of analysis is carried out using an inductive method of reasoning, through which the various existing legal provisions – including their evolution and legal context – are reviewed and analyzed. This is complemented by a comparative law perspective, in which the comparison is carried out by identifying similarities and differences between the two legal systems regarding the protection of children and adolescents in the criminal justice system. This method allows for an assessment of the effectiveness of the various models, the identification of best practices and limitations, and the formulation of conclusions that contribute to strengthening, in this specific case, the use of the recording of a minor's statement made during the investigation as evidence.

2. Brief Contextual Comparison between Criminal Justice Systems

The classification of legal systems is often used as a didactic resource to facilitate the understanding and study of complex comparative law processes. However, as McEwan (1998, 1) and Roberts (2022, 53) emphasize, criminal justice systems rarely strictly adhere to one model or another. Today it is more appropriate to recognize that contemporary criminal proceedings are shaped by principles and approaches, meaning

that their classification is a matter of degree. Despite this, a brief comparison between Spain and England and Wales allows us to identify particularities that should be highlighted before diving deeper into the subject matter.

The dichotomy between the accusatorial or adversarial system and the inquisitorial system reflects the main models that have historically shaped and guided criminal proceedings. The accusatory or adversarial system, traditionally widespread in Anglo-Saxon countries (Spencer & Flin, 1990, 76-77), depends on the will of the parties, who control it. In this system, the judge is relegated to being a mere passive and impartial referee (Damaska, 1973, 563) who resolves the legal issues that arise in the process. In the words of Ellison (2001, 51), the classic idea of adversarialism is that truth emerges from an orchestrated clash between opposing points of view, a position to which Munday (2022, 143) adds that the ideal Anglo-Saxon judge is one who remains above the contradictory debate.

Although originally the burden of prosecution and obtaining evidence fell entirely on the victim of the crime, the weight of the investigation gradually began to be entrusted to the police, and the exercise of prosecution ended up being largely assigned to the Crown Prosecution Service (CPS) from the 1990s onwards (Campbell, Ashworth & Redmayne, 2019, 194-199). In this regard, assigning both tasks to entities other than those responsible for adjudicating cases helps to strengthen judicial impartiality and objectivity. Likewise, citizen participation is deeply rooted in the criminal justice of England and Wales, so much so that the institution of the jury is at the heart of the traditional criminal process under the notion of judgment by one's peers (Crawford, 2004, 693-694). While the judge is the competent authority to resolve matters of applicable law, it is the jury that evaluates the probative value of the evidence admitted in order to ultimately reach a verdict on which to base the sentence.

At the other end of the spectrum is the inquisitorial system, which combines the prosecuting and adjudicating functions in a single figure, the judge. The judge's primary objective is the prosecution of crime, potentially to the detriment of judicial impartiality (Armenta Deu, 2012, 22). Crime is conceived as an offence against the State, and therefore,

the State itself initiates the proceedings *ex officio*, without requiring the consent of a private individual. Consequently, the process is neither dual nor adversarial (Damaska, 1973, 564), eliminating the possibility of exercising a defence. In turn, written proceedings predominate over oral in this model, limiting external and internal public disclosure.

Essentially, pure inquisitorial criminal justice systems are now rare. It is more accurate to speak of countries, like Spain, which have procedural systems with inquisitorial features. Careful analysis of the Spanish criminal justice system reveals a blend of both the inquisitorial and adversarial systems. This is applied to the two phases of the Spanish criminal process, resulting in what is known as a formal or mixed adversarial system (Armenta Deu, 2012, 25-26).

In the absence of private initiative, criminal proceedings can be initiated *ex officio* for public offences. Nevertheless, in no case are judicial authorities responsible for initiating criminal action. It is the *Ministerio Fiscal* (Public Prosecutor's Office), the state entity responsible for promoting the administration of justice, who is tasked with this role. However, this does not exclude the right of any Spanish citizen to bring charges, either as a private prosecutor (if they are the victim or the person affected by the crime) or as a popular prosecutor (when they do not have that status). Another inquisitorial feature still present is the judicial oversight of the investigation (Nieva Fenoll, 2024, 29). The principle of party contribution is not strictly enforced in criminal jurisdiction, insofar as the investigating judge and the Public Prosecutor's Office can gather evidence even without the prompting of the parties involved.

The oral trial phase exhibits the most prominent adversarial principles in Spanish criminal procedure. The judge who acts in this phase, the sentencing judge, is different from the one who is involved in the investigation. Thus, although both phases are conducted by the corresponding competent authority, this functional separation allows for judicial oversight of the investigation, while the assessment of evidence and sentencing are governed by impartiality and objectivity. Even though the jury court's role is less significant than in England and Wales, it may be involved in this phase. However, the role of career judges clearly predominates over that of lay magistrates or citizen participation.

3. The Pre-Recorded Testimony of the Underage Person in Spain

3.1. General Concepts of Spanish Evidence Law

To understand the current approach to pre-recorded evidence in Spain, it is important to be familiar with the regulatory framework, as well as the reasons for its exceptional and particular nature. As a starting point, the rules governing criminal proceedings are contained in the *Ley de Enjuiciamiento Criminal* (Criminal Procedure Act) (1882) (hereafter, LECrim), supplemented by case law of the Tribunal Supremo (Supreme Court) and the *Tribunal Constitucional* (Constitutional Court) to shape the applicable law of evidence.

Given that evidence allows opposing parties to support their positions, the proposal of evidence is necessarily a party-driven activity (Miranda Estrampes, 1997, 25; Barona Vilar, 2023, 413) through which they duly exercise their right to defence; otherwise, the parties would be left without recourse (Nieva Fenoll, 2024, 363). Article 728 of the LECrim (1882) establishes the general rule that evidence not proposed by the parties is inadmissible. However, party request does not guarantee automatic admission. Article 659 of the aforementioned law states that the judicial authority must conduct a preliminary review to determine which evidence is likely to be admitted and examined. This judicial assessment, together with the requirement that the evidence be proposed in accordance with legal formalities, is based on three fundamental criteria: legality, pertinence and utility (Picó i Junoy, 2021, 44-52).

Once the court has admitted the relevant evidence and dismissed the rest, article 741 stipulates that the oral hearing is the ordinary procedural phase designated for examining it. In accordance with this principle, Spanish criminal procedure only recognizes as evidence in the strict sense of the term that which is presented before the deciding judge in a public hearing and under the solemnity of the guiding principles of orality, immediacy, public disclosure, and contradiction.

The principle of orality is enshrined in the Spanish Constitution, with article 120.2 establishing that criminal proceedings are predominantly oral. Thus, as Calaza López (2021, 340) and Armenta Deu (2024, 47) point

out, oral proceedings are understood as the procedural rule whereby all judicial decisions must be based exclusively on the material provided by the parties through the spoken word, which means that they are closely linked to immediacy.

Related to orality, the principle of immediacy has two dimensions: the requirement of spatial, temporal, and personal proximity to ensure judicial conviction through direct assessment of the evidence without third-party intermediation, and the requirement that the evidence be presented in the presence of the judicial authority (Abel Lluch, 2012a, 209).

The combination of both principles creates a procedural scenario that naturally promotes full observance of the adversarial or contradiction principle. Contradiction, inseparable from the right to defense recognized in article 24.2 of the Spanish Constitution, are essential to guarantee equality of arms and prevent material defenselessness by allowing parties to make allegations, propose evidence, and refute those made and proposed by the opposing party (Abel Lluch, 2012a, p. 211; Barona Vilar, 2023, 418).

Ultimately, the principle of public disclosure acts as a democratic barometer, allowing citizens to assess the legitimacy of justice (Calaza López, 2021, 345). It essentially encompasses two variants: external transparency, which allows the proceedings of the courts to be witnessed by individuals outside the process, and internal transparency, which only involves the parties in the process. It may only be restricted in the interests of morality, public order, or for reasons of justice or the protection of individual rights and freedoms (Barona Vilar, 2023, 419).

After the evidence has been proposed, admitted, and examined, it is time for its assessment. There are two recurring models for evaluating evidence: the legal evidence system, which is governed by criteria predefined by the legislator, and the free evaluation system, which maintains a spontaneous and discretionary origin based on experience and the human judgement of the judge (Nieva Fenoll, 2010). In the Spanish procedural system, as provided for in the aforementioned article 741 of the LECrim (1882), the free assessment system applies, and the court is still obliged to fully substantiate and justify its decision.

Thus, as Abel Lluch (2012b) rightly points out, Spain, with its legal tradition rooted in civil law, does not have a pre-established standard of proof, as is the case in common law systems. As we have said, once the

evidence has been presented, the judge must assess it freely and logically in order to deliver a judgement. However, the position of the Constitutional Court reflected in STC 31/1981, of 28 July, requires a minimum amount of evidence to rebut the presumption of innocence recognized for the accused, which provides the grounds to assess the evidence.

In line with the above, Miranda Estrampes (1997) defines the contours of this minimal evidentiary activity around four points: 1) every conviction must be accompanied by evidence from which the guilt of the accused can be inferred; 2) only evidence obtained with respect for fundamental rights may be accepted, examined, and evaluated; 3) the evidence must be incriminating, i.e., it must have incriminating content from which the certainty of the crime and the guilt of the accused can be concluded; and 4) the evidence may only form the basis of the judgment when it has been examined in oral proceedings in accordance with the principles of immediacy, contradiction, public disclosure, and orality.

3.2. Procedural Protection Measures for Children and Adolescents

It is appropriate to begin by noting that Spanish procedural law has traditionally recognized the participation of the victim or the affected by the crime, unlike other European countries where they are not permitted to prosecute. Villacampa Estiarte (2015, 158) adds that the recognition of the right to protection of victims in the Spanish criminal justice system is the logical consequence of the adoption of a new paradigm underpinning criminal proceedings, the victim participation model, promoted both by European legislation and by the evolution of domestic law. The reintegration of victims into conflict resolution involves greater exposure within the judicial system, which may entail additional risks to those who have already suffered as a result of the criminal offence. Consequently, it is essential to complement the right to participation with protection mechanisms.

In the mid-1990s, Spanish lawmakers began to enact legislation establishing various measures to protect victims from a sectoral perspective. Priority was given to certain categories of victims, such as violent and sexual crimes, domestic and gender-based crimes, and terrorism, who are covered by specific legislation that exclusively benefits them. This

led to a clear lack of an integrated legal framework that would guarantee the protection of all victims, regardless of the type of crime suffered or their personal characteristics.

This shortcoming was solved with the influence of Directive 2012/29/UE, considered a milestone for victims as it became the benchmark regulatory standard in the field of victims' rights, which are recognized for all victims of crime without distinction (Serrano Masip, 2013; Oromí Vall-Llovera, 2013). This directive led to the enactment in Spain of *Ley 4/2015 del Estatuto de la Víctima del Delito* (Standing of Victims of Crime Act) (2015) (hereafter LEVD), whose purpose is consistent with that defined at European level, although limited to the national legal framework. Regarding the right to protection, covered in Title III of the LEVD (2015), the Spanish protection system is based on the same structure as that set out in European legislation.

Article 23 establishes the applicability of the principle of individualization, which is based on a broad concept of vulnerable victims that includes any victim whether their vulnerability is determined by subjective or objective conditions (Villacampa Estiarte, 2015, 183-184). Based on this principle, an individual assessment is to be carried out to identify the specific needs of each victim, as well as the appropriate protection measures to meet those needs, which are classified into three progressive categories.

The first level is basic in nature and offers universal access to all victims, considering that any of them may be vulnerable within the scope of the process. Therefore, in addition to the rights established in articles 20 and 22 – to avoid direct contact with the accused and the right to protect their privacy and that of their family members –, article 21 stipulates that authorities in charge of criminal investigations must ensure the following: 1) statements are taken without undue delay; 2) statements are taken as few times as possible and only when strictly necessary; 3) victims are accompanied by their legal representative; 4) legal guardian, and a person of their choice during legal proceedings in which they must intervene; and 5) medical exams are reduced to the minimum necessary. If the individual assessment determines that there are specific needs that cannot be met by the first level measures, access to those established in the second level is enabled. Article 25 covers all

measures aimed at more vulnerable victims, which are in turn divided according to the procedural phase at which they can be applied.

During the investigation phase, victims may provide statements in designated areas with specialized professionals and, where possible, with the same person. Furthermore, when the crime suffered by the victim involves domestic or gender- based violence, sexual assault, or human trafficking for sexual exploitation, the possibility of providing statements to a professional of the same gender is available.

During the trial phase, measures may be taken to prevent eye contact with the accused during testimony; to prevent leading questions or questions concerning the victim's private life; to guarantee that the victim can be heard without being present in the courtroom; and to restrict public access in order to preserve the victim's privacy and safety. In addition, the first two measures may also be implemented during the investigation.

Finally, the third and hyper-reinforced level of protection is reserved exclusively for children and adolescents, individuals with disabilities and victims of sexual violence. Consequently, all the measures outlined above apply to underage witnesses, in addition to those provided for in article 26, namely the audiovisual recording of the statement given during the investigation, the reception of the testimony by expert and trained professionals, and the appointment of a legal representative to represent the victims when their legal representatives have a conflict of interest.

3.3. Pre-Recorded Evidence (prueba preconstituida)

The use of statements made during the investigation phase as evidence is not a new practice in Spanish jurisdiction. This procedural figure has been contemplated since before the 19th century and was maintained in articles 448 and 730 of the LECrim (1882) when absence from the national territory and the risk of death or incapacity of the witness prevented the assessment of the testimonial evidence at trial.

That being said, the justification traditionally accepted by legal doctrine has not prevented pre-recorded evidence from being the subject of

recurring criticism, especially due to its conflict with structural principles of criminal evidence.

Regarding immediacy, even when the intervention of the investigating authority is understood to be guaranteed (Asencio Mellado, 1989, 162), there remains concern about the risk of a breach or, at the very least, a weakening of the principle, given that the spatial and temporal proximity between the court and the witness has practically disappeared and the perception of the testimony is reduced to the medium on which it is documented and reflected (Muerza Esparza, 2016, 770; Martín Ríos, 2021, 111-112).

As for contradiction, the concept is often equated with confrontation between the parties, which is not satisfied when the declarant whom the accused should be able to challenge is excluded from the hearing (Ormazabal Sánchez, 2010, 141). In this line, article 6.3.d) of the European Convention on Human Rights and Fundamental Freedoms (1950) – of which Spain and England and Wales are parties – enshrines the right to examine or have examined witnesses testifying against the accused, and although the law allows questions to be put to children through intermediaries, it has been considered that the contradiction is diluted in the public hearing, a phase expressly intended for the presentation and assessment of evidence and adversarial debate.

In this regard, the European Court of Human Rights has addressed this provision in numerous rulings, including, among others, the case P.S. v. Germany, December 20, 2001; the case Bocos Cuesta v. the Netherlands, November 10, 2005; and the case A.H. v. Finland, May 10, 2007. In these resolutions, the Court emphazises that witness testimony, even when given by a child or an adolescent, must be presented in open court and in the presence of the accused. However, this general rule allows for exceptions when necessary to ensure the protection of the underage victim, provided that the restrictions are compatible with the right of defence and are accompanied by sufficient procedural safeguards.

Thus, the risk of causing harm to the psychosocial well-being of children is recognized as a justification for limiting the right to question or have the witness questioned and to admit the documented testimony during the investigation phase as evidence, but never to the extent that it results in convictions based on statements that have not been subject to

contradiction. To comply with this standard, the Court requires that the defendant be informed of when the child or adolescent will be interviewed, that the defendant have the opportunity to witness the interview – either at the time it takes place or at a later time by viewing the recording –, that the defendant be able to ask questions or request clarifications directly or indirectly through a third party, and that the resulting recording be admitted as evidence during the oral trial.

For these reasons, the rational for pre-recorded evidence has always been to constitute an exception to the general rule of evidence production in trial (Asencio Mellado, 1989, 17; Miranda Estrampes, 1997, 324; Guzmán Fluja, 2006, 197). However, the risk of secondary victimization began to emerge as a justification with sufficient substance to transform pre-recorded evidence into a procedural instrument of protection in recent years. This evolution was mainly driven by the Supreme Court, which, based on rulings such as STS 151/2007, of 28 February; 96/2009, of 10 March; and 743/2010, of 17 June, began to recognize the importance of this kind of evidence in safeguarding the free development of personality and the indemnity of children and adolescents during the testimony process.

These jurisprudential rulings gave rise to various legislative initiatives aimed at both providing a regulatory framework for the figure and recognizing underage persons as beneficiaries. Among these, the *Ley Orgánica 8/2021 de Protección Integral a la Infancia y la Adolescencia frente a la Violencia* (Comprehensive Protection of Children and Adolescents from Violence Act) (2021) (hereafter LOPIVI) has been the most significant in transforming the general rule on the testimony of children in the oral phase into an exception (Castillejo Manzanares, 2025, 22).

Pre-recorded evidence is organized according to the applicable scenario, divided into two categories. The first is general in character and is regulated by articles 448 and 449 of the LECrim (1882), which refer to the aforementioned classic justifications. The second was introduced by the 2021 reform in article 449 *ter*, whose regime applies to underage witnesses and persons with disabilities and makes the use of the mechanism mandatory. This compulsory use does not apply generally to all children or to any type of proceeding, but is limited by an objective criterion, which establishes a list of crimes, and a subjective criterion,

which sets the maximum age at 14 years old (Pillado González, 2023, 600). Moreover, given that the rule uses the generic term of underage, without making any further distinction, the provision applies regardless of whether the child is a victim or merely a witness.

In addition to defining both modalities, the LOPIVI (2021) introduces a series of guidelines into the procedural code that are – already anticipated and defined by case law – for common application, aimed at ensuring that the resulting testimonial evidence is fully compliant with the law. In terms of the general framework for pre-recorded evidence, article 449 *bis* of the LECrim (1882) establishes four requirements that must be met in order for the video recording to be used as valid evidence.

The first condition is the existence of a legitimate reason that prevents the statement from being directly heard at trial. In the context at hand, the mere fact that the person called to testify is 14 years of age or younger allows this requirement to be considered fulfilled.

Next, the pre-recorded evidence requires the intervention of the investigating judge and the Public Prosecutor's Office as judicial authorities who must supervise its correct execution. Although the provision does not expressly address this issue, article 449 *ter* contemplates the intervention of intermediaries, such as psychologists or social workers of the judicial psychosocial team, to conduct the interview. In any case, it is not a mandatory requirement, as it basically depends on the judge's discretion in each case, who can assess the advisability or necessity of requiring the involvement of specialized professionals.

Thirdly, the guarantees and rights afforded to the accused must be respected, especially the right to cross-examination. To this end, while the accused's attendance is not required, their legal counsel must be present, and in the event of unjustified absence or when it is necessary to interview the child urgently, a court-appointed barrister may be assigned. The right to cross-examination is exercised through collaboration with third parties, other than the judicial authority or the psychosocial team, who act as communication bridge between the victim and the defence. Through these mediators, both the accused and their legal representative may ask additional questions or request clarifications.

In any case, the physical separation between the defendant and the child is guaranteed in the Spanish criminal justice system through various

initiatives. The most widespread consists of the use of multipurpose rooms interconnected via closed-circuit television. The victim is interviewed in one of these rooms. The defendant and their barrister are in other room and, if the interview is conducted by the psychosocial team, also the investigating judge and the Public Prosecutor's representative. A similar mechanism is the Gesell camera, two adjacent rooms separated by a mirror for those being observed and a window for the observers. With radically different approach, Spain also adopted the *Barnahus* model in 2021, and its implementation and development continue to expand today. With a deeply multidisciplinary approach, this model stands as a child-friendly justice and intervention system that combines criminal and welfare channels in a single hybrid organization to address child and youth sexual victimization (Pereda, Bartolomé & Rivas, 2021; Martínez Perpiñá, 2024; Torres-Rosell et al, 2026), though its application in Spain does not encompass other forms of violence.

Finally, as a last requirement, the statement must be audiovisually documented. The sound and image quality checked immediately and a brief report drawn up to record the identification and signatures of the persons involved. The resulting recording will then be transferred for use in the oral hearing, in accordance with article 730 of the LECrim (1882).

4. The Pre-Recorded Testimony of the Underage Individual in England and Wales

4.1. General Concepts of English Evidence Law

Unlike the Spanish evidence law, which is characterized by the systematic codification of its rules, the law of evidence in England and Wales is notable for its complexity. This entanglement is derived from the prominent role that case law has traditionally played in the creation and specification of rules applicable to criminal evidence (Roberts, 2022, 35). While the enactment of the Police and Criminal Evidence Act (1984) has led to a proliferation of new legislation on evidence, legal tradition and case law still largely regulate the exceptions and counter-exceptions to be taken into account for the admission and assessment of evidence.

As previously noted, the CPS plays a fundamental role within the English and Welsh criminal justice system, assuming the primary function of prosecution. Roberts (2022, 15-16) suggests that this centrality has led to an adversarial deficit. The ideal of equality of arms pursued by adversarial theory enters into a paradox when it fails to overlook the fact that the State actively participates in the process with vastly superior resources to those available to the defendant. Precisely for this reason, the simplest technique for rebalancing an already asymmetrical scale is to assign the risk of non-persuasion and the burden of proving the facts to the party seeking justice (Zuckerman, 1989, 106).

The concept of burden of proof, which consists of the overall burden and the specific burden (Keane & McKeown, 2022, 60-64), should be understood as the obligation assigned to one party to convince the jury of the truth of the alleged facts up, on which the legal rights and obligations of the parties depend (Dennis, 2010, 450). In light of this, one of the fundamental principles of the Anglo-Saxon criminal justice system is that the accused is presumed innocent, which means that, with few exceptions, the prosecution bears the burden of proof, as ruled in *Woolmington v DPP* (1935):

> Throughout the web of English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception.

When the prosecution fails to convince the court of the presence of the constituent elements of the crime, it fails in its duty, and the court is obliged to acquit the defendant. In this context, the law of evidence in England and Wales distinguishes between two standards of proof: balance of probabilities and beyond reasonable doubt, although the latter is more prevalent in criminal jurisdiction.

Unlike the former, which Roberts (2022. 245-246) conceptualizes as the probability that the opponent's argument is marginally more accurate, the "beyond reasonable doubt" formula poses serious problems of intelligibility. Dennis (2010, 453) argues that the greatest difficulty faced when explaining what is meant by reasonable doubt in clear terms is that it is a matter of values, and these values may differ among jury

members. To this end, one of the most widely supported formulations for unravelling the concept is that put forward in *Miller v Minister of Pensions* (1947), according to which the evidence must generate, not so much absolute certainty, but such a high degree of conviction that any doubt is merely remote.

In light of the above, it is worth asking what evidence can lead the jury to form a conviction regarding the guilt or innocence of the accused. To answer this question, two key concepts must be considered: relevance, fundamentally governed by logic, and admissibility, configured as a matter of law (Zuckerman, 1989, 48). Relevance, in the words of Stephen (1949), can be reduced to three statements: the fact to be proved has a direct relationship with the fact that allows the evidence to be accredited; the deduction of the existence of the fact must be facilitated by the common body of knowledge; and relevance must be evaluated on its own or in connection with other related facts. It follows that all relevant evidence is *prima facie* admissible.

Notwithstanding the foregoing, while the judge has the authority to hear and rule on legal issues that arise in the specific case, they also have discretionary power to filter the information presented to the jury and determine the admissibility of certain pieces of evidence by applying exclusionary rules (Campbell, Andrew & Redmayne, 2019, 194-199). That said, these rules do not provide guidelines on how to evaluate evidence. Instead, the system is based on free evaluation, so the law relies on common sense and logic to assess the facts (Dennis, 2010, 125).

Even when orality is not a distinctive principle of pure adversarial theory, it is nonetheless a fundamental pillar. So much so that Roberts (2010, 311) and Hoyano (2015, 9) argue that oral evidence is the paradigmatic channel for providing evidence. It is therefore logical and to be expected that England and Wales have developed filters to determine which accounts can be incorporated into the process, with the hearsay rule being the exclusionary rule *par excellence*. Spencer (2014, 5-6) points out that this rule comprises four prohibitions: a witness testifying in court cannot recount an event witnessed by a third party; a witness cannot rely on what they said on a previous occasion; a disputed fact cannot be proved by written submission; and a written or recorded statement cannot replace an oral statement.

4.2. Procedural Protection Measures for Children and Adolescents

In the late 1980s, various common law jurisdictions, notably England and Wales, began to recognize serious shortcomings in the traditional adversarial model with regard to the participation and protection of underage victims in criminal proceedings. Consequently, the English Parliament initiated a series of reforms aimed at modifying the legal provisions relating to the testimony of children and adolescents, such as the use of closed-circuit television and the prohibition of direct cross-examination by the accused, as outlined in sections 32 and 34 of the Criminal Justice Act (1988).

By the end of that year, the Home Secretary appointed the Pigot Committee to consider broad reforms for the protection of underage victims and witnesses. It established two guiding principles: the involvement of children in criminal proceedings should be concluded as quickly as possible in accordance with the interests of justice; and children and adolescents have the right to testify in a friendly and respectful environment (Spencer & Flin, 1990, 88-90; Hoyano & Keenan, 2007, 618).

The proposals contained in the resulting report were ambitious given the legal and social context in which they were presented, as they advocated for the complete exemption of underage victims from appearing in court. This idea was so controversial that it aroused strong opposition, which initially lead, in the first instance, to a mitigated and limited adoption of its recommendations, known as the Half-Pigot doctrine. Following the incorporation of section 54 of the Criminal Justice Act (1991), a system was introduced whereby a recording made during the investigation phase could replace the direct examination of the child and be admitted as valid evidence, provided that the witness was subsequently available for cross-examination in court (Davis, Hoyano, Keenan, Maitland & Morgan, 1999, 5-6).

Many of the proposals set out in the report, which outlined the parameters for a much broader reform (Hoyano & Keenan, 2007, 618-619), were postponed until 1998, when an interdepartmental government working group once again put forward a series of recommendations that would result in the enactment of the Youth Justice and Criminal Evidence Act (1999) (hereafter YJCEA) (Louise, 2001, 6-7).

The act covers four profiles considered *a priori* vulnerable based on subjective or objective requirements. The subjective criteria, defined in section 16, include all persons who had reached the age of 18 at the time of the preliminary hearing for special measures, and witnesses whose testimony may be affected by mental disorder, significant impairment of intelligence and social functioning, or any kind of disability. The objective criteria, meanwhile, are set out in section 17 and cover individuals who experience fear, distress or anxiety as a result of their participation in the criminal justice system and victims of sexual violence, domestic violence, or human trafficking.

All beneficiaries covered by the norm may, subject to evaluation and approval by the court, access the measures provided for in sections 23 to 28. These include the use of physical means to avoid visual confrontation with the defence; the use of closed-circuit television; the restriction of the public in the courtroom; the removal of judicial attire; the recording of direct examination; and the recording of cross-examination. Only underage witnesses and witnesses with disabilities can access the additional measures envisaged in sections 29 and 30, relating to the intervention of an intermediary and the use of assistive devices to facilitate communication.

A distinctive trait of the protection system established for children and adolescents is that the duties assigned to the judge to evaluate what special measures may be adopted are partially alleviated. In cases where a child must participate in criminal proceedings as a witness, whether for the prosecution or the defence, a series of provisions known as the primary rule of section 21 are automatically applied. This priority rule determines that in all proceedings where a witness under the age of 18 is required to give evidence, the court must order the adoption of two specific measures: the recording of the direct examination and the use of closed-circuit television for the cross-examination. Furthermore, when an order for special measures is issued on the ground of minority of age and that order provides for the recording of the examination and the cross-examination, section 22 allows those prerogatives to remain in force when the person has reached the age of 18 before the trial.

Nonetheless, this does not prevent the child's wishes from being taken into consideration in this simplified decision-making procedure.

According to the provisions of section 100 of the Coroners and Justice Act (2009), the immediate admission of these measures is subject to certain limitations, such as the child stating that they do not wish to benefit from these tools, provided that the quality of their testimony is not compromised, or that the court considers that these measures do not contribute to optimizing the quality of the oral evidence.

4.3. Video-Recorded Interview and Video Recorded Cross-Examination

From the explanation of exclusionary rules, it can be deduced that the last of the hearsay prohibitions appears to conflict with the possibility of using pre-recorded testimony as evidence. This conflict was tangible until section 114 of the Criminal Justice Act (2003) eliminated this exclusionary rule when another statutory provision allowed it (Spencer, 2014, 245-253), enabling section 116 to use it under the applicability regime provided for in the YJCEA (1999). We will therefore proceed to outline the current regulations that have marked a turning point in this exclusionary rule.

The impulse to use video recording as a protective measure, regardless of regulatory developments, was reinforced by various empirical studies conducted in England and Wales that made it possible to assess its viability within the national legal framework. The pioneering study was conducted by the London Metropolitan Police (1987), the results of which, while not advocating replacing the personal appearance of the child in the courtroom, supported the admissibility of the recording. This initiative was later joined by others of similar scope, over the years making it possible to refine key aspects of the child's statement in criminal proceedings through audiovisual means (Social Services Inspectorate, 1994; Davies, Wilson, Mitchell & Milsom, 1995; Davies & Westcott, 1999; Burton, Evans & Sanders, 2006; Plotnikoff & Woolfson, 2009).

Video-recorded evidence-in-chief is regulated in section 27 of the YJCEA (1999) and developed in the Achieving Best Evidence in Criminal Proceedings guidance (2022). According to the precept, any witness under 18 years of age must have their account documented by audiovisual means instead of giving oral testimony in a public hearing. The

interview is conducted by two interviewers; a police officer and a social worker trained in child and youth violence and testimony psychology. Besides the interviewers, the English and Welsh system provides for the involvement of interpreters and intermediaries, who need to be accredited beforehand and are there to help the child or the adolescent and the authority to communicate better. The role of the interview supporter is recognized, a right granted in the Victim's Code (2020) that allows victims to be accompanied during the interview by a person of their choice to provide emotional support, but without any active intervention in the development of the statement.

As for the physical space in which the meeting takes place, a specific room set up for this purpose in police stations is organized, or, in the case of certain London boroughs, on the premises of the Lighthouse Project, similar to the European *Barnahus* Model (Johansson, Stefansen, Kaldal & Bakkateig, 2024, 25). Although not recommended, it is also possible for the interview to take place at the child's residence, in which case any elements that could facilitate the identification of the location should be avoided.

The admissibility of a recording, while automatically recognized by the primary rule, may be subject to dismissal if the judge considers that its admission is contrary to the interest of justice; if the account is not subject to cross-examination; if both the defence and the prosecution do not advocate for the inclusion of the recording in the body of evidence; or if any of the provisions relating to the standards of proof have not been satisfied. In any case, when specific segments could cause serious prejudice, editing of the video is permitted, provided that the prejudice to the defence is not outweighed by the convenience of showing the entire content of the interview.

The production of a video-recorded evidence-in-chief is subject to the condition that it can be cross-examined, which may be fulfilled by ordinary means or through the adoption of a special measure, such as the use of audiovisual means. Section 27 establishes that the admissibility of video-recorded cross examination is dependent on the existence of video-recorded evidence-in-chief. Thus, the advisability of audiovisually documenting the cross-examination may only be assessed when the order for special measures contemplates the practice provided for in section 27.

Video-recorded cross-examination, provided for in section 28 of the YJCEA (1999) and developed in section 6.3 of the Criminal Practice Directions (2023), operates in a radically different way. Moreover, it was the last of the special protection measures to be effectively implemented in the English and Welsh criminal justice system, with its application not beginning until 2014 (Baverstock, 2016, 1; Henderson, 2019, 10; Ward, Pehkonen & Murray, 2023, 6), and since then its implementation has been gradual, reaching completion in 2020 (Seaton, Christmas & Jones, 2025, 1).

To begin with, it has already been pointed out that, unlike evidence-in-chief, this is currently a wholly discretionary mechanism. In this regard, the CPS representative responsible for the case must formally notify the court of a witness's eligibility. Authorization to apply section 28, based on the minor status recognized in section 16, is strictly subject to time limits, as clarified in *R. v A.* (2022), in which the court held that a witness who was under 18 years of age at the time of the offense, but who had turned 18 by the time of the request for special measures, does not meet the legal requirements to undergo recorded cross-examination. If the recording for the cross-examination has been requested due to the risk of intimidation or harm of the child or adolescent, the court will set a date for the ground rules hearing (GRH), provided for in section 18.8(h) of the Criminal Procedure Rules (2025). The purpose of this hearing is to discuss the individual needs of the child, establish the ground rules for the defense's examination (Hoyano, 2025, 1), and set the date on which the cross-examination and re-examination, if necessary, are to be recorded. A deadline is also set for requesting a second cross-examination; for requesting the exclusion of the recording; and for completing any necessary editing of the tape.

This is compounded by the fact that, to safeguard the contradiction, the same provision requires the participation of the judge and legal representatives during cross-examination, while the defendant may only watch and listen to how it unfolds. The child or adolescent, located in a separate room connected to the courtroom by videoconference, is examined by the defence barrister, although, in exceptional cases, the court may agree to the intervention of an intermediary to facilitate the communication process or even to be present in the witness statement room when the child is very young. Despite being subject to the rules

of evidence regarding the examination of witnesses, it is acknowledged that certain forms of cross-examination could compromise the witness's right to privacy, among other issues, which is particularly complex when dealing with vulnerable witnesses. Consequently, the judge is responsible for protecting the interests of the defence while ensuring the safety of the witness. For this reason, they will actively filter out inappropriate or invasive questions asked by legal counsel, as noted in *R. v. PMH* (2018), which held that advocates must adapt their questioning techniques to the witness' needs, avoiding confusing or incomprehensible questions. While this implies a different style, it does not compromise the right to cross-examination, as long as the judge informs the advocates of how and when this limitation will be communicated to the jury.

Ideally, the child's statement should be made on a single occasion. However, when a recording has been made, whether under section 27 or section 28, and further examination is required, this may be allowed if the court first issues a new order for special measures providing for the use of audiovisual media. This may be authorized when one of the parties wishes to raise an issue that was not addressed in the first examination or cross-examination or if the judge considers it necessary in the interests of justice to ask the witness further questions.

Recent evaluations on the impact of section 28 suggest that, while the use of video-recorded cross-examinations does not have a significant impact on conviction rates, it has, in the cases studied, made it possible to bring forward the cross-examination of the victims by up to 193 days (Seaton, Christmas & Jones, 2025, 27-31). These findings, combined with the results of qualitative studies, points to the fact that the measure is, in general terms, well received by its beneficiaries and the judicial operators, primarly because it enhances the quality of the evidence and provides a better experience for witnesses in the criminal justice system (Jackson et al, 2024, 71-76).

However, various challenges remain – which have also been identified by judicial officials – highlighting the need to improve the processes for conveying information to witnesses, strengthen the training of professionals responsible for conducting the interviews, and ensure that victims receive adequate updates about the progress of the proceedings once the recording has been made (Ward, Pehkonen & Murray, 2023,

15-51). These operational limitations have also been reflected in case law. For example, the case *R. v. PMH* (2018) is highly illustrative, as it highlights technological and personnel difficulties. Specifically, the ruling addresses how the recorded cross-examination procedure was hindered by a lack of continuity among the attorneys from the recorded evidence-in-chief through the trial, as well as by a technical defect that causes the camera to partially obscure the lower part of the complainant's face.

After both stages of the underage witness' statement have been carried out in accordance with sections 27 and 28, both the judge and the jury will view the content of both recordings during the trial, which will be reproduced via a television link.

5. Comparative Law Analysis. What Can We Learn from Each Other?

Undeniably, the protection of vulnerable victims, particularly children and adolescents, has been a central concern of public policy on criminal justice in recent decades. Evidence of this can be found in the procedural initiatives developed in Spain and England and Wales, legal systems that also largely coincide in the protection prerogatives around underage victims involved in the criminal justice system. Likewise, both systems share the conviction that the use of technological and audiovisual means allows the particular needs of these victims to be reconciled with the aims of the criminal process.

As stated at the beginning of this study, the rigid scheme of legal systems has begun to blur, and it is this approach that is taken when embarking on the present comparative law analysis. While the differences between the procedural systems of Spain and England and Wales are evident, this does not prevent either jurisdiction from adopting certain characteristic elements of pre-recorded witness testimony from the other. Hence, once the protection models in force in both countries have been analysed, the following question remains: what lessons can be learned from the contrast between the two systems and how can they be reinforced in terms of pre-recorded evidence?

One of the most notable differences is the minimum age. In Spain, article 449 *ter* of the LECrim (1882) establishes that only minors

under 14 can make use this measure unconditionally, whereas in England and Wales section 21 of the YJCEA (1999) universalizes the access for anyone under 18. The choice made by England and Wales is based on a better fit with both studies on child and youth violence, which explicitly recognize the vulnerability of children and adolescents to the risk of public hearings, and the age of majority determined in the vast majority of European countries.

In contrast, Spain, despite setting 18 as the age of majority and recognizing in successive legislative acts that minority of age is a decisive factor when assessing the vulnerability of a witness or a victim, has set the limit at 14. This means that a sector of the group is, to some extent, unprotected against secondary victimization, either because they will have to testify again in court, or because they may be subjected to a new psychosocial examination to assess the advisability of recording their statement (Pillado González, 2023, 560-561; Durán Silva, 2023, 262-263).

Within Spanish legal doctrine, critical positions have questioned the appropriateness of automatically applying the measure to all witnesses under the age of 18. It has been argued that making preconceived assumptions about the age and vulnerability of the declarant may ignore the particularities and individual needs of each child and adolescent, replacing them with decisions made by third parties (Martín Ríos, 2023, 698). In response to this claim, it should be noted that this can only happen if the rule is inflexible and does not allow for adaptation. On the contrary, if the Anglo-Saxon example is followed, the automatic application of the measure need not undermine the individuality of the child in decision-making, since active listening to their wishes, opinions, and needs is also considered. Furthermore, this approach would allow the pre-recorded evidence to be brought more closely into line with the principle of individualization adopted for by the LEVD (2015), even though it would require a strengthening of the processes of communication, information, and assistance between judicial operators and the underage witnesses and their families to ensure that the final decision is fully informed and that the minors understands the various implications of each option.

Along with the broadening of the subjective criterion, differences can be seen in the definition of the objective criterion. While the measures

set out in sections 27 and 28 of the YJCEA (1999) apply to all underage witnesses regardless of the crime that gave rise to the proceeding, in Spain, article 449 *ter* of the LECrim (1882) provides a list which, despite its breadth, restricts access to pre-recorded evidence to children called to testify in relation to violent and sexual crimes, including minor offenses. In this context, the possible elimination of this requirement raises uncertainty in the Spanish legal system, as divergent positions have been identified. On the one hand, there are those who advocate for the universalization of the mechanism for all minors without being subject to objective elements (Sempere Faus, 2024, 157-159). On the other hand, there is also clear reluctance to separate the mechanism from elements such as the gravity or nature of the crime (Moya Guillem & Durán Silva, 2022, 438), as the existence of this institution in Spain is still linked to necessity and exceptionality.

Another aspect that stands out positively is the drive shown by England and Wales in evaluating the effectiveness and adaptation of underage witnesses' pre-recorded evidence in national criminal process, based on ongoing empirical studies aimed at identifying successes and failures, both victimological and procedural, on which to base future reforms. For its part, the Spanish system lacks research on the subject matter of this study, being limited to analyses with purely jurisprudential, legislative, and theoretical approaches.

While the results obtained within the Anglo-Saxon criminal justice system may positively influence the strengthening of witness testimony recording in Spain, it is essential to remember that the awareness of judicial operators, the specific needs of the society served by the criminal process, and the availability of material, human, and time resources, significantly impact the deployment of the beneficial effects of videotaped witness testimony. Considering this, we believe it imperative that Spain begins to develop analytical and evaluative projects, given that the reality of pre-recorded evidence from minors in Spanish courts is currently unknown, a lack of knowledge that hinders its optimization.

However, this comparative analysis also highlights several strengths of the Spanish system when contrasted with the English model. The most significant difference from the Spanish perspective is the strict distinction between examination-in-chief and cross-examination, also

reflected in the separation of the measures provided for in sections 27 and 28 of the YJCEA (1999), which gives rise to three main weaknesses.

Firstly, the requirement that a recording be made during the investigation phase in order to proceed with the recording of the cross-examination may be frustrated in cases where the police have not detected the declarant's vulnerability due to their young age (Hoyano & Riley, 2021, 47). This eventuality can be addressed if the judge subsequently orders the recording of the interrogation in a plea and trial preparation hearing. However, this solution contradicts the need for minors to be interviewed as soon as possible and on as few occasions as possible.

Secondly, the time difference between the video recorded evidence-in-chief and the video recorded cross-examination has the potential to negatively affect both the integrity of the account and the credibility and well-being of the child (Burton, Evans & Sanders, 2007, 12-13; Ward, Pehkonen & Murray, 2023, 24-38). While videotaping children's testimonies allows for restricting their exposure to the trial and reducing their period of participation in the justice system, following this approach means that not all possible efforts are being made to mitigate this circumstance. In response to this situation, and following the example of the state of Queensland in Australia, Spencer (1990, 122-123) had already recommended that cross-examination be videotaped immediately after examination-in-chief through an intermediary. However, this suggestion has not been implemented in England and Wales.

Finally, while the initial interview is conducted with the assistance of a specialized police officer and social worker, even when it is deemed appropriate for the cross-examination to be documented, the methodology used is radically different and the child or adolescent will be questioned by the defence. This has led to the use of closed questions and complex legal terminology, or even to the description of the lawyer's performance in very negative terms (Henderson, Andrews & Lamb, 2018, 21-22; Plotnikoff & Woolfson, 2004, 49-53). Along these lines, Hoyano (2015) presents comparative solutions to exclude lawyers from cross-examination, including having it conducted by a police officer, an intermediary, or the judge, provided that the defense can monitor the interview and suggest question or request clarifications.

Given these drawbacks, the Spanish model for pre-recorded evidence could usefully strengthen the similar mechanism provided for in England and Wales. To this end, sections 27 and 28 of the YJCEA (1999) should be unified. This would allow for a single interview and video recording during the investigation, in which the defence attorney and, where appropriate, the person under investigation actively participate. It would also allow the underage witness to undergo a single judicial examination in accordance with the adversarial process and the rights of defence recognized to the accused. This option would also allow trained professionals to be the ones who come into contact with the child during the interview, similarly to section 27 of the YJCEA (1999). The fact that this approach has been possible in the context of common law adopted by the Australian courts means it could also be aligned with the fundamental principles of the adversarial model in England and Wales.

Conclusions

This study initially sought to determine what lessons, in terms of video-recorded testimony, could be drawn by each jurisdiction from a comparative law analysis. Having addressed this question, the analysis enables us to progress and conclude with the key insights gained from comparing the protection of minors and the role of pre-recorded evidence within the traditional criminal justice systems of different legal traditions.

Firstly, the creation of protection mechanisms in criminal justice extends beyond simply recognizing the risk of secondary victimization, or self-assessment of the judicial system as a potential source of further harm. It moves beyond a purely protective or corrective rationale to become a genuine public policy, redefining the place of children and adolescents in conflict resolution. In this sense, the addition of specific protection measures signals a shift in thinking. Children are no longer seen as passive, instrumental or merely evidence in the prosecution of crime, but are recognized as individuals with rights. Their dignity, integrity, development, and participation require extra support and care from public authorities. This approach requires the criminal justice system to adapt its procedures, actions, language and timelines to the needs and particularities of the underage population.

To achieve this, pre-recorded testimony has become a prominent proposal, albeit a controversial one. Its increasing relevance is clear from a comparative examination of the Spanish and English jurisdictions, where this mechanism has been developed and extended in recent years. The impetus to incorporate this mechanism is significant, but neither system is perfect, nor do they fully reconcile the needs of children with the demands of due process. However, its implementation has helped to strengthen the position that the criminal justice system recognizes for children, promoting more active participation as a result of the development of the protective framework built around them.

The Spanish model has features that could optimize the use of video-recorded testimony in England and Wales. These include making both recordings at the same time and allowing cross-examination to be conducted by someone other than the defence representative. Similarly, the English experience offers elements that could be highly beneficial to the Spanish system, as raising the age limit and incorporating regulation on actively listening to minors when deciding on special measures. These reciprocal lessons could significantly enrich the consolidation of this mechanism as the standard method of taking statements from children. Although it would be ideal if children and adolescents did not have to experience situations related to the criminal justice system, in reality, their exposure can be limited, reducing the significant effects on their development and helping to preserve their integrity.

Taking into account the main findings of this comparative law analysis, it is recommended that both legal systems adopt a series of reforms aimed at optimizing the use of this mechanism, with the dual objective of improving the practice of using the video-recorded testimony as evidence and preventing additional negative consequences arising from the underage witnesses in the criminal justice system. Specifically, the main proposals are as follows: 1) extension of the measure to all victims and witnesses under the age of 18; 2) expansion of the list of offences for which the use of pre-recorded evidence can be authorized; 3) greater involvement of the child or adolescent in decision-making on the adoption of protective measures, accompanied by strengthened guarantees of information and support; 4) development of evaluations to assess the measure's impact, benefits, and areas for improvement;

5) unified examination and cross-examination into a single act; and 6) involvement of specialized professionals in conducting the interview with the minor.

Beyond this, both jurisdictions share not only an interest in reducing the risk of secondary victimization, but also a certain apprehension and mistrust of this and similar mechanisms. This scepticism is based both on consideration for the passive subject of the process and the protection of their rights of defence, as well as on the preservation of the structural principles of the procedure, which delimit the functions traditionally assigned to the judicial authority or the jury. These tensions remain evident, despite progress in this area, and persist as problems that resist legislative solutions. Only increased awareness and sensitization of our societies and those who administer justice can lead to their resolution. Overall, while the process of integrating child-friendly justice perspective into the traditional criminal justice system has begun, there is still a long way to go.

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