



MY LAWYER MY RIGHTS COUNTRY REPORT: PORTUGAL



My Lawyer, My Rights
Enhancing children's rights in criminal proceedings in the EU



Défense des Enfants
DEI-BELGIQUE



CONTENTS

LIST OF ABBREVIATIONS.....	4
KEY DEFINITIONS	5
INTRODUCTION.....	6
1. REPORT PURPOSE AND STRUCTURE	6
2. WHO'S INVOLVED?.....	6
3. METHODOLOGY	6
4. LIMITATIONS.....	6
A. LEGAL CONTEXT AT THE INTERNATIONAL AND EU LEVEL.....	7
1. THE INTERNATIONAL FRAMEWORK	7
A) RATIFIED TREATIES	7
B) INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR).....	7
C) THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC)	7
D) THE OPTIONAL PROTOCOL TO THE CRC ON A COMMUNICATIONS PROCEDURE (OP3 CRC)....	7
E) EUROPEAN CONVENTION ON HUMAN AND FUNDAMENTAL RIGHTS (ECHR).....	7
F) EUROPEAN SOCIAL CHARTER	8
G) ADDITIONAL PROTOCOL TO THE EUROPEAN SOCIAL CHARTER AND PROTOCOL AMENDING THE EUROPEAN SOCIAL CHARTER	8
H) ADDITIONAL PROTOCOL PROVIDING FOR A SYSTEM OF COLLECTIVE COMPLAINTS	8
I) EUROPEAN UNION CHARTER OF FUNDAMENTAL RIGHTS.....	8
2. THE RULES OF SOFT LAW	8
B. THE REGIONAL FRAMEWORK	9
1. THE EUROPEAN DIRECTIVES OF THE EUROPEAN UNION.....	9
C. LEGAL CONTEXT AT THE NATIONAL LEVEL.....	10
1. LAWS APPLICABLE TO CHILD SUSPECTS.....	10
2. MINIMUM AGE OF CRIMINAL RESPONSIBILITY	10
2.1 CHILDREN UNDER 12 YEARS OLD	10
2.2 CHILDREN BETWEEN 12 AND 16 YEARS OLD.....	10
2.3 CHILDREN BETWEEN 16 AND 21 YEARS OLD	11
3. DIRECTIVE 2013/48/EU	11
3.1 THE RIGHT OF ACCESS TO A LAWYER	11
3.2 LEGAL AID	12
3.3 CONFLICT OF INTEREST BETWEEN PARENT AND CHILD.....	12
4. THE BEST INTEREST OF THE CHILD.....	12



D. JUVENILE JUSTICE SPECIALISATION OR SPECIAL STATUS AT THE NATIONAL LEVEL	13
I. THE PROFESSIONALS INVOLVED AT DIFFERENT STAGES OF THE PROCEDURE	13
I.1 LAWYERS SPECIALISED TO REPRESENT CHILDREN	13
I.2 TRAINING.....	13
I.3 MATERIALS.....	14
I.4 THE ROLE OF THE SPECIALISED LAWYER	14
I.5 ASSOCIATIONS.....	15
I.6 OTHER PROFESSIONALS.....	15
E. CHILD'S ACCESS TO A LAWYER.....	16
I. INFORMATION FOR THE CHILD.....	16
I.1 FROM THE STATE	16
I.2 FROM ASSOCIATIONS	16
I.3 WHERE THE CHILD IS DEPRIVED OF LIBERTY	16
F. CHOOSING A LAWYER.....	17
G. LEGAL AID SYSTEM	18
I. IS THE LEGAL AID SYSTEM AVAILABLE TO JUVENILES?	18



LIST OF ABBREVIATIONS

NEM	National Execution Measures
LPCYD	<i>Law of Protection of Children and Young People in Danger</i>
LEGA	<i>Law of Educational Guardianship Act</i>
CC	<i>Criminal Code</i>
ICCPR	<i>International Covenant on Civil and Political Rights</i>
CoE	<i>Council of Europe</i>
UN	<i>United Nations</i>
EU	<i>European Union</i>
RAJO	Regime Applicable to Juvenile Offenders
LALJ	Law of Access to Law and Justice
CPC	Criminal Procedure Code
CPRPCY	Commission for the Promotion of the Rights and Protection of Children and Young People

KEY DEFINITIONS

Child	An individual under the age of 18.
Best interests of the child	<p>The concept of the child's best interest is complex and its content must be determined on a case-by-case basis. To read more on this concept, please refer to General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).</p> <p>Article 3, Paragraph 1 of the Convention on the Rights of the Child states that: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'.</p>
Criminal proceedings	Proceedings in court in relation to the prosecution of a person charged or to be charged with the commission of an offence or crime, contemplating the conviction and punishment of the person charged or to be charged. In the framework of this project, we would like you to interpret the term "criminal proceedings" in a broader way that also includes other types of proceedings e.g. proceedings which are specially designed for children and which could lead to protective, corrective or educative measures in cases where the child's alleged actions would be seen as committing an offence or a crime in the adult criminal system.
Lawyer of the child	Lawyer appointed to represent a child during criminal proceedings.
Socio-Legal Defence Centres (SLDC)	A centre which offers children direct access to justice and social-legal support including information provision, referrals to other service providers and legal advice and representation.
Reservation	When a state makes a reservation in relation to a section of a legal instrument, it is saying that it won't give effect to this section.
Declaration	A state makes a declaration as to how they will interpret provisions of a treaty.



INTRODUCTION

I. REPORT PURPOSE AND STRUCTURE

This report has been produced as part of the “My Lawyer, My Rights” project. My Lawyer, My Rights is a national research study, the main objective of which is to acquire an overview of the right to access assistance from a lawyer for children in European Union countries. Such a right is essential to enable children to enjoy and exercise their rights. Even though the right to legal representation for child suspects is recognised, it is unevenly applied across Europe. This report seeks to explain how international and EU procedural safeguards and legal principles relating to the rights of children are applied in the Portuguese legal system. Its goal is to present an overview of the applicable legislation, which professionals can use to achieve child friendly justice in Europe.

Part 1 of this report will explain how this report was created and who it was created by.

Part 2 of this report, titled ‘Legal Context at the International and EU Level’ will outline the relevant international and EU legal instruments that are relevant to Portugal. Any declarations or reservations Portugal has made will be considered.

Part 3 titled ‘Legal Context at the National Level’, will go on to explain the national legal framework in the context of the Portuguese juvenile justice system, with a particular emphasis on the procedural rights of minors who are suspected or accused of committing a crime.

Part 4 titled, ‘Juvenile Justice Specialisation or Special Status at the National Level’, discusses specialised lawyers in national proceedings and the training that they undertake. The legal aid system is considered. The different private and public socio-legal services, which can aid minors in obtaining an optimal respect for their rights during proceedings, are explored.

Part 5 titled ‘Child’s Access to a Lawyer’, considers the role external organisations play in assisting a child obtain access to a lawyer. It explains the process that is involved when obtaining a lawyer

2. WHO’S INVOLVED?

The My Lawyer, My Rights project involves the European Criminal Bar Association and a number of European NGOs who are primarily led by Defence for Children International.

Defence for Children International are a leading, child-rights-focused organisation. They provide direct legal and social services to approximately 100,000 children per year. Their highly trained staff can be found in 45 countries across 5 continents. Their mission is to promote and protect children’s rights at the local, national, regional and international levels. They predominantly achieve this aim by lobbying for changes in legislation; by raising awareness of children’s rights; through the research and analysis of developments relating to child rights issues; and by training a number of professionals who work with children.

A group of lawyers from DLA Piper UK LLP and its partner firm, ABBC Advogados, have conducted national research, the results of which are collated for reports like this one produced for the “My Lawyer, My Rights” project. The lawyers who carried out the research for this report are Carmina Cardoso and Margarida Xavier Marante.

3. METHODOLOGY

To create this report, research was carried out in several different ways:

- Desk based research: existing documentation and literature were studied. Official documentation of the Justice Ministry and the Labour, Solidarity and Social Security Ministry was examined.
- Field research: a number of interviews were carried out, including the interviews of a social worker who specialises in the Legal Aid system and a criminal lawyer who specialises in the Law of Educational Guardianship Act. Information was obtained from the Portuguese Bar Association; the Commission for the Promotion of the Rights and Protection of Children and Young People; and the Portuguese Government.
- Online research: most information regarding the Portuguese judicial system can be found online. Legal databases and legislation were accessed online. Sources include the official websites of the EU and the Portuguese Government.

4. LIMITATIONS

There was a lack of data from which to obtain results. There is no specific legislation or policies in Portugal on how a lawyer should represent a child. Similarly, the Government’s website does not provide specific guidance on children’s rights or information as to how the legal profession can assist in enforcing them.



A. LEGAL CONTEXT AT THE INTERNATIONAL AND EU LEVEL

I. THE INTERNATIONAL FRAMEWORK

a) Ratified treaties

Below you will find the treaties Portugal has acceded to, the dates of ratification and whether any declarations or reservations to them have been made.

b) International Covenant on Civil and Political Rights (ICCPR)

The ICCPR was signed on 7th October 1976 and was ratified on 15th June 1978. No reservations to the ICCPR have been made but the Portuguese Government has objected to declarations made by other states.

On 26th October 1990, the Portuguese Government objected to the declarations made by the Government of Algeria, saying that they were incompatible with the purposes and objectives of the covenant.

On 5th October 1993, the Portuguese Government objected to the USA's reservation of Article 6 Paragraph 5 of the ICCPR, which prohibits the death sentence for crimes committed by persons under the age of 18. The Portuguese government believed this reservation to be in direct contravention with Article 6, Paragraph 1 which seeks to protect the right to life.

On 26th July 2001, the Portuguese Government objected to the Government of the Republic of Botswana's reservation to article 7, which prohibits torture and cruel, inhuman or degrading treatment or punishment. The Portuguese Government recognised that this reservation went against Article 4(2) of the ICCPR which prohibits derogation from article 7. The Government of the Republic of Botswana limited its responsibilities under the ICCPR by invoking general principles of constitutional law, the Portuguese Government said this would create doubts on Botswana's commitment to the Covenant and would contribute to undermine the basis of international law.

The Portuguese Government also raised objections to reservations made by Turkey (13th October 2004), Mauritania (21st November 2005), Maldives (29th August 2017), Pakistan (28th June 2011), reasoning that such reservations undermine the basis of international law.

c) The Convention on the rights of the child (CRC)

The CRC was signed on 26th January 1990 and ratified by Portugal on 21st September 1990. On 15th July 1992 the Portuguese Government objected to the reservations made by Myanmar upon accession, by Bangladesh, Djibouti, Indonesia, Kuwait and Pakistan upon ratification and by Turkey upon signature, citing the common interest of States that treaties to which they have chosen to become parties are respected, as to object and purpose, by all parties.

Subsequently the Secretary-General received further objections of the same nature from the Portuguese Government, in relation to reservations made by Iran (13th December 1994), Malaysia (4th December 1995), Qatar (11th January 1996), Brunei, Darussalam, Kiribati and Saudi Arabia (30th January 1997).

d) The Optional Protocol to the CRC on a Communications Procedure (OP3 CRC)

On 24th September 2013, Portugal ratified the third additional protocol to the UNCRC. The Portuguese government made a declaration upon ratification, saying that it recognises the competence of the Committee on the Rights of the Child in accordance and for the purposes of Article 12 of the Optional Protocol to the OP3 CRC.

e) European Convention on Human and Fundamental Rights (ECHR)

Portugal ratified the ECHR on 9th November 1978. A letter from the Permanent Representative of Portugal, dated 8th November 1978, said that Article 5 of the ECHR (the right to liberty and security) would be applied subject to Articles 27 and 28 of the



Military Discipline Regulations. These Regulations allow placing members of the armed forces under arrest.

Further, Portugal reserved Article 7 (no punishment without law), saying it applies subject to Article 309 of the Constitution of the Portuguese Republic, which provides for the indictment and trial of officers and personnel of the State Police Force.

f) [European Social Charter](#)

The European Social Charter was ratified on 30 September 1991. A declaration contained in the instrument of ratification said that Portugal considered itself bound by the Articles in Part II of the Charter. A reservation to the Charter was also made, Paragraph 4 of Article 6 was said to in no way invalidate the prohibition of lockouts, as specified in paragraph 3 of Article 57 of the Constitution of the Portuguese Republic.

g) [Additional Protocol to the European Social Charter and Protocol amending the European Social Charter](#)

No reservation or declaration to the European Social Charter has been made. The Charter was ratified in 1988 and the Protocol in 1993. It was revised in 1996 and ratified on the 30th May 2002.

h) [Additional Protocol providing for a system of collective complaints](#)

Ratified on the 20th March 1998.

i) [European Union Charter of Fundamental Rights](#)

Ratified on the 19th May 2008. No reservation or declaration to this Charter has been made.

2. THE RULES OF SOFT LAW

The rules of soft law, relevant to the rights of the child, are contained within the following international instruments. These rules are guidelines for the States, without any obligation to conform to them. They are not legally binding.

- Riyadh Guidelines
- UN Basic Principles on the role of the lawyers
- Havana Rules
- UN Guidelines for Action on Children in the Criminal Justice System
- General Comments of the Committee on the Rights of the Child
- UN Principles and Guidelines on Access to Legal Aid in criminal justice systems
- Guidelines on a Child Friendly Justice of the Council of Europe

The aforementioned instruments of soft law are not present in Portuguese legislation. However Portuguese legislation contains many of the same principles and reflects an influence of soft law.



B. THE REGIONAL FRAMEWORK

I. THE EUROPEAN DIRECTIVES OF THE EUROPEAN UNION

The European Union formulated a series of directives to create a common framework for Criminal Justice in EU Member States. The directives were created following criticism of the European Court of Human Rights for violating Articles 5 and 6 of the ECHR.

The directives set common minimum standards in relation to procedural rights for people suspected or prosecuted in criminal proceedings in order to encourage judicial co-operation and mutual trust between the Member States of the EU.

A directive is a flexible instrument mainly used as a means to harmonize national laws. It is binding on the countries to whom it is addressed (one, several or all of them) as to the result to be achieved, while leaving national authorities competence as to form and means. Once adopted on EU level, for a directive to take effect at national level, EU countries must adopt a law to transpose it. This national measure must achieve the objectives set by the directive. National authorities must communicate these measures to the European Commission.

In principle, the directive only takes effect once transposed. However, the ECtHR considers that a directive that is not transposed can produce certain effects directly when:

- the transposition into national law has not taken place or has been done incorrectly;
- the provisions of the directive are unconditional and sufficiently clear and precise; and
- the provisions of the directive give rights to individuals.

When these conditions are met, individuals may rely on the directive against an EU country in court. However, an individual may not rely on making a claim against another individual with respect to the direct effect of a directive if it has not been transposed.

The directives adopted by the European Union regarding procedural rights in criminal procedures are the following:

- Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings;⁵
- Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings;⁶
- Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty;⁷
- Directive 2016/800/EU of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings;⁸
- Directive 2016/1919 of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings;⁹

Portugal has not transposed the above directives as they do not think national execution measures (NEM) are necessary. The deadline to transpose Directive 2016/800/EU is June 2019.

¹ Article 82 of the Treaty on the functioning of the European Union (TFEU)

² http://ec.europa.eu/justice/criminal/criminal-rights/index_en.htm.

³ <http://eur-lex.europa.eu/legal-content/ENG/TXT/?uri=LEGISSUM:II4527>

⁴ <http://eur-lex.europa.eu/legal-content/ENG/TXT/?uri=LEGISSUM:II4527>

⁵ Text available on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF>

⁶ Text available on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:142:0001:0010:en:PDF>

⁷ Text available on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:294:0001:0012:en:PDF>

⁸ Text available on <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0800&from=FR>

⁹ Text available on <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1919&from=EN>



C. LEGAL CONTEXT AT THE NATIONAL LEVEL

This part will outline the legal and regulatory framework on the right of access to a lawyer for children suspected or accused in criminal proceedings at the national level.

1. LAWS APPLICABLE TO CHILD SUSPECTS

The minimum age of criminal responsibility is 16 years old. This age has been established by Article 19 of the first version of the Criminal Code. Whilst the Criminal Code has been amended several times, most recently Law 39/2016 December 19th, the minimum age of criminal responsibility has not changed.

2. MINIMUM AGE OF CRIMINAL RESPONSIBILITY

2.1 Children under 12 years old

The Law on the Protection of Children and Young People in Danger (Law 147/99) (“LPCYD”)¹⁰ applies to children under 12 years of age. It was first published on 1st September 1999. LPCYD has been amended several times. The last amendment was by Law 142/2015 of 9th August.

The LPCYD is based on the idea that a child of this age who commits a crime is probably in danger. For that reason, this law provides a regime to protect children who are involved in dangerous activities to their health, security, education or development.

The principles which orient the LPCYD are: the best interest of the child; the privacy of the child; minimum interference; interference as soon as possible.

When applying the LPCYD, support should be given to parents and other responsible relatives. Custody of the child may need to be granted to another responsible person or to adoptive parents. Permanent or pre-adoptive foster care needs to be considered. The child’s autonomy must be acknowledged.

2.2 Children between 12 and 16 years old

The Law “Educational Guardianship Act” (Law 166/99,)¹¹ (“LEGA”) was first published by the Assembly of the Republic on 14th September 1999. The last amendment of LEGA was on January 15th by Law 4/2015.

LEGA is based on the idea that a child between 12 and 16 years old who has committed a crime should be educated rather than punished. Under the LEGA, the appointment of a Lawyer by the State is always mandatory.

The superior principle to give regard to is the best interests of the child principle. For this reason, LEGA proposes several measures to be taken for a child that requires an educational intervention including:

- compelling the child to take an educational program;
- providing educational support; and
- institutionalising the child in a special educational institution.

Other possible measures which are more punitive include:

- a warning from the judge;
- a prohibition on the child’s driving;
- compelling the child to compensate the victim financially;
- requiring the child to undertake community service;
- compelling the child to adopt certain attitudes (for example, to refrain from contacting a person); and
- internment in detention centres.

These measures can be applied until the child reaches a maximum of 21 years of age.

In particular situations, when there is a necessity to protect the interest of the child, it is possible to apply and interconnect both the LPCYD and the LEGA.

¹⁰ http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=545&tabela=leis

¹¹ http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=542&tabela=leis&so_miolo=



2.3 Children between 16 and 21 years old

As previously mentioned, the Criminal Code (Law 48/95, 15th March)¹² applies to every person over 16 years old. A person over 16 years of age is no longer considered a “child” in criminal proceedings, he/she is therefore considered an adult.

The preamble of the Criminal Code asserts that the State shall build mechanisms to guarantee the people’s freedom. It is therefore necessary that all cases are dealt with efficiently and that a fast response is given by the court. Generally alternative penalties, rather than a prison sentence, are preferred – for example community work or the payment of a fine. Prison sentences should only be given where all other measures are inadequate in addressing the concrete needs of punishment and security.

Article 9 of the Criminal Code outlines the applicability of a special regime to a child offender aged between 16 and 21 years old. This regime is the Regime applicable to Juvenile Offenders (“**RAJO**”) (Law 401/82, 23rd September). RAJO is a special law, but it is not mandatory. It is only to be applied where the judge thinks it is appropriate considering the specific circumstances of the case.

RAJO is based on the idea that the measures applied to a person between 16 and 21 years old should respect the principles of education and the need for correction as much as possible. The goal is to achieve a more corrective and educational criminal system. Under RAJO, the appointment of a Lawyer by the State is not mandatory. A Lawyer is only appointed by the court through the Legal Aid System. The most relevant measure that RAJO provides is the internment in detention centres.

3. DIRECTIVE 2013/48/EU

3.1 The right of access to a lawyer

Directive 2013/48/EU enshrines the right of access to a lawyer. Portugal already has a law establishing the Access to Law and Justice: Law 32/2004, 38 August (“**LALJ**”). LALJ resulted in the transposition of Directive 2003/8/CE, which relates to the improvement of access to justice. As a result, the Portuguese Government did not transpose Directive 2013/48/EU as it considered that the LALJ already embodied the proposed measures. LALJ states that the State has the obligation to ensure that all citizens have the opportunity to access justice, for the purpose of defending their rights. For that reason, the State shall provide legal protection and information.

The European legislation distinguishes the terms « right of access to a lawyer » and « right of assistance by a lawyer ». While Directive 2013/48/EU grants every person suspected or accused in a criminal proceeding the right of access to a lawyer, Article 6 of Directive 2016/800/EU gives every child suspected or accused in a criminal proceeding the right to be assisted by a lawyer.

In addition, while the right of access to a lawyer is formulated as a subjective right of the suspected or accused person, the second directive imposes the authorities an obligation to provide the assistance by a lawyer for the child. So it is not just a right the child has (and that he can possibly renounce) but an obligation for the authorities, independent from the will of the child.

¹² http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=109&tabela=leis



The Portuguese distinguish between the terms “access and assistance” to/by a lawyer. The word “access” is used when referring to justice, whereas “assistance” is used when referring to a Lawyer.

There is an obligation for the State to provide a lawyer to children under the age of 16 in criminal proceedings. To children over 16 years old (considered an adult in criminal proceedings), a lawyer is required only in particular cases¹³ and for every moment when the Legal Aid System is applied.

The Lawyer is assigned to a child from the list provided by the Bar Association. A lawyer is assigned to children under 16 years old when the court requests the Bar Association to appoint a lawyer. For children over 16 years old, the lawyer is assigned with the accusation.

The lawyer will generally contact the child, however the child will be given the name, address and contact information of the lawyer.

3.2 Legal Aid

Unlike the Directive, the LALJ states that the financed access to justice is only given to those who can prove that they are living in difficult economic situations. Articles 8, 8A and 8B LALJ define ‘difficult economic situations’. Under the LALJ, the State does not have the obligation to ensure every person can access a lawyer, their obligation is only to those who cannot access a lawyer due to financial reasons. In this case, a Lawyer is appointed to the case and paid (partially or fully) by the Government.

The LALJ therefore creates a Legal Aid System, applied to those who can demonstrate that they have no economic possibility of accessing a lawyer. The LALJ ensures that social and economic circumstances do not prevent citizen’s from exercising their rights.

There is no national monitoring body or mechanism for the Legal Aid System to control whether rights of access and assistance are respected. If a person cannot get a lawyer through the legal aid system because Social Services denied his/her request, the person can appeal and request a lawyer once again through the Legal Aid System but, this time, by direct application to the court.

If a person wishes to make a complaint about his/her lawyer, he or she must make a complaint to the Court and to the Bar Association.

3.3 Conflict of interest between parent and child

In civil proceedings, where there is a conflict of interest between the child and his parents, it becomes mandatory for the child to be assisted by the Lawyer (if the child does not have a Lawyer, one is officially-appointed through the Legal Aid System).

4. THE BEST INTEREST OF THE CHILD

The concept of the child’s best interest is complex and its content must be determined on a case-by-case basis.¹⁴ To read more on this concept, please refer to General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).

Article 3, Paragraph 1 of the Convention on the Rights of the Child states that: ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’.

In Portugal, the court is responsible for looking after the child’s best interests. There are no derogations from Article 6.8 of the Directive 2016/800/EU.

¹³ Article 64. ° of the CPC: for example, for interrogations and when the accusation is made.

¹⁴ To read more on this concept, please refer to http://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf



D. JUVENILE JUSTICE SPECIALISATION OR SPECIAL STATUS AT THE NATIONAL LEVEL

I. THE PROFESSIONALS INVOLVED AT DIFFERENT STAGES OF THE PROCEDURE

I.1 Lawyers specialised to represent children

In certain countries, lawyers who interact with children in the criminal justice system can be required or encouraged to specialise in juvenile justice. This means that lawyers will undertake training to represent children during criminal proceedings.

I.2 Training

12 EU Member States have mandatory training requirements on the rights and needs of children for judges.¹⁵ 11 Member States have mandatory training for prosecutors,¹⁶ and 7 Member States mandatory training for defence lawyers.¹⁷ In the Flanders region of Belgium, lawyers can only represent children in criminal proceedings when they receive specialised training on this subject matter delivered by the Flemish Bar Association (these lawyers are referred to as “Youth Lawyers”).

In Portugal, there are no “Youth Lawyers” however the Portuguese Bar Association recognises certain areas in which Lawyers can specialise. Since 2015, the Bar Association recognises the ‘Family and Minors’¹⁸ speciality, where Lawyers are trained to deal with family and minors and in the Educational Guardianship Act.

To be considered a specialist, the Lawyer must show education, training and experience relating to the area of specialisation. Training for the Family and Minors area is mandatory. After the Lawyer is considered specialised in “Family and Minors” he/she should have a consistent/regular academic training¹⁹.

There is no specific or compulsory training provided to Portuguese Lawyers on representing children in criminal proceedings during Law School or during the course of their Traineeship. The Bar Association offers a non-mandatory free training related to Minors Legal Rights. However, this is a subject about the Minors Rights in general rather than training on how to represent children. There are post-graduate courses that have been provided by multiple Universities, related to Children’s Rights, in general (not about representing children in criminal proceedings) such as:

- Master Degree on “Law of Minors”, by Faculdade de Direito da Universidade de Lisboa²⁰
- Post Graduate Degree on “Right of Inclusion”, by Faculdade de Direito da Universidade de Coimbra²¹
- Post Graduate Degree on “Legal Protection of Minors”, by Faculdade de Direito da Universidade de Coimbra²²

¹⁵ Austria, Belgium, Bulgaria, Czech Republic, Germany, Estonia, Greece, Spain, France, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Slovenia, United Kingdom (England, Wales & Scotland).

¹⁶ Belgium, Czech Republic, Estonia, Spain, France, Croatia, Hungary, Italy, Latvia, Portugal, Italy, England & Wales.

¹⁷ Belgium, Czech Republic, Estonia, France, Italy, Latvia and Slovenia.

¹⁸ <https://www.oa.pt/upl/%7B03ee0036-6bec-425f-8976-be2090eb3e05%7D.pdf>

¹⁹ <https://www.oa.pt/upl/%7B03ee0036-6bec-425f-8976-be2090eb3e05%7D.pdf>

²⁰ <http://www.fd.ulisboa.pt/wp-content/uploads/2015/02/Direito-Menores-a.pdf>

²¹ <http://www.centrodedireitodafamilia.org/node/67>

²² <http://www.centrodedireitodafamilia.org/node/41>



- Post Graduate Degree on “Protection of Minors and Young People in Danger”, by Faculdade de Direito da Universidade de Coimbra²³
- Post Graduate Degree on “Educational Guardianship Aid”, by Faculdade de Direito da Universidade de Coimbra²⁴
- Post Graduate Degree on “Commissions of Children’s Protection”, by Faculdade de Direito da Universidade de Coimbra²⁵.

The training provided by these Universities is not free, but it is affordable. The training is homogenous but not organised at a national level. The training usually lasts one year and is usually exclusively juridical. There are no practical exercises on how to interview children and the training is generally theoretical rather than practical.

1.3 Materials

In November 2016 the Lisbon regional centre of the Bar Association distributed, in the Family and Minors courts, around 5500 manuals²⁶ called “Johnny goes to the court”. The manual explains how children should attend and be heard in the court. The manual aims to aid judges, lawyers who represent children in parental responsibilities proceedings and other judicial operators such as judges, public prosecutors, court officials and administrative authorities.

1.4 The role of the specialised lawyer

The lawyer’s presence is always recorded at investigative and evidence-gathering acts. Assistance by a lawyer is mandatory, any act requiring that assistance must be delayed if a Lawyer is not available.

The lawyer cannot comment on police reports. The Lawyer is required to be present upon the carrying out of investigative or other evidence-gathering acts such as identity parades, confrontations or reconstructions of the scene of crime²⁷. This applies to children under or over 16 years old.

Generally the child and the lawyer communicate face-to-face. However they can communicate by phone as well. The child has the Lawyer’s number, and can call the Lawyer at all stages of the process.

All communication between lawyer and child is confidential.

A child can meet his/her lawyer at the Lawyer’s office or in the child’s house. If the child is deprived of liberty, they can meet in the place that the child is held.

The “Family and Minors” area is more directed to civil family cases. Even though it might deal with criminal cases or relevant criminal matters, such as domestic violence, in general “Family and Minors” area does not always apply to child suspects.

On the other hand, the “Educational Guardianship Act” (where LEGA applies) is an area directly related to “criminal proceedings” involving children between 12 and 16 years old, as a suspect in a criminal proceeding.

²³ <http://www.centrodedireitodafamilia.org/node/1007>

²⁴ <http://www.centrodedireitodafamilia.org/node/1056>

²⁵ http://www.cnpcjr.pt/preview_documentos.asp?r=5962&m=PDF

²⁶ <http://igualdadeparental.org/wp-content/uploads/2016/11/OJoaovaiaoTribunal.pdf>

²⁷ See: Article 3.3 c) of the Directive 2013/48 and article 6.3 b) of the Directive 2016/800



Under the LALJ, for legal aid cases, the Lawyers are generally officially-appointed Lawyers. This means they are appointed from an official list. However, please note that the list includes Lawyers that are not specialised since specialisation is not required in order for one to be registered on the list. These Lawyers are not specialised, they are simply registered to work in an area that involves child matters.

Lawyers can be appointed to represent children in criminal proceedings when they are registered on the list under the areas of Criminal Law, Family and Minors or Educational Guardianship Act.

The role of a specialised lawyer is not defined by any specific rules. The Lawyer will use his own judgement in deciding how to act. Most lawyers will know that the age and capacity of the child should have a great influence on their actions, as should the child's needs, fears and doubts.

Although there are no written rules on this, the majority of Lawyers recognise the importance of understanding the capacity of the child and adapt their role to the child's age.

There are currently 11,402 Lawyers registered in the Family and Minors area and 10,074 registered in the Educational Guardianship Act area.²⁸

A report made by Rui Alves Pereira “O papel do advogado no direito da família e das crianças” which means “The role of the lawyer in the family law and children”²⁹, captures the views of lawyers who represent children in criminal proceedings. Rui Alves Pereira, who was the first Lawyer to be appointed to represent a child in a proceeding regarding parental responsibilities. He was specialised in Family and Minors law. Pereira

comments on the recent specialisation “Family and Minors”, recognized by the Bar Association. He also criticizes the lack of education involving this area in Portugal. In the report, he states that is necessary for all Lawyers who represent children to undergo multidisciplinary training in order to comprehend the child's doubts, needs and rights.

1.5 Associations

In Portugal, the ‘Child's Voice Association’ specialises in representing children in criminal proceedings. The Association is dedicated to protecting children inside the court. It was founded in 2013 by a small group of Lawyers, specialised in Family and Minors Law. The main goal of the Association is to influence the Portuguese Government to implement measures concerning the right of the child to be heard in court, as well as measures explaining how the child should be heard, by whom and where. They also intend to create a ‘Children Law Code’.

1.6 Other professionals

The court often requests the assistance of social workers or psychologists. They are called to join the case and assist the child (under or over 16 years old). It is the court's responsibility to request. There are no defined standard roles for the social workers or psychologists. Their main goal is to help the child thought out the criminal proceeding. Naturally, that may involve helping the relationship between the Lawyer and the child.

²⁸ This information was provided to us by the Portuguese Bar Association, via email.

²⁹ <http://julgat.pt/wp-content/uploads/2016/09/20160908-ARTIGO-JULGAR-O-papel-do-advogado-no-direito-da-fam%C3%ADlia-e-das-crian%C3%A7as-Rui-Alves-Pereira.pdf>



E. CHILD'S ACCESS TO A LAWYER

I. INFORMATION FOR THE CHILD

I.1 From the state

The State does not play a role in giving information to children regarding their access to lawyers. The subject is not touched upon in schools, nor are there public campaigns to raise awareness.

I.2 From Associations

The Minors Protection Commission³⁰ provides information through its website and information bulletins.

I.3 Where the child is deprived of liberty

Where a child is deprived of liberty³¹, e.g. detained at a prison, police station or hospital, he/she must be informed of the right to access a lawyer. There is no obligation to provide the information in a child friendly language.³² However, where this information needs to be translated, the Government will cover the cost of translation. In general, for children under 16, this information will be given to the child's parents or legal guardians. The child is entitled to have access to a free translation of all relevant documents.

³⁰ Created by the Law n° 147/99, 1st of September

³¹ Where the child is not permitted to leave at will

³² Please see the definition of "child-friendly language" in the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (pg. 29 & 84).



F. CHOOSING A LAWYER

Where a child's case does not fall under the Legal Aid System, a child of any age is free to choose their lawyer. The child is helped by their parents or legal guardians when choosing a lawyer. If the case is funded by Legal Aid, the lawyer will be appointed by the court from an official list.

A child under 16 years old must be represented by a Lawyer and so cannot waive his/her right of access to a lawyer.

A child of over 16 years old is considered an adult in criminal matters. However, even though it may be legally acceptable to waive the right to a lawyer, the presence of a lawyer is normally required.



G. LEGAL AID SYSTEM

I. IS THE LEGAL AID SYSTEM AVAILABLE TO JUVENILES?

For children between 12 and 16 years old, access to a Lawyer is mandatory. For that reason, if the child does not present a Lawyer with him/her, a Lawyer is automatically nominated through the Legal Aid System.

For children over 16 years of age, the adult regime applies and legal aid is not automatic. In order to access a lawyer through the legal aid system, a child of over 16 years of age must demonstrate they are in poor economic conditions and cannot pay for a lawyer.

In any case, whenever a crime is involved a Public Defender is nominated.

The legal aid system is organised nationally, with the government being in charge of the management and oversight. The system is financed by the government.

Lawyers working within the legal aid system do not receive further training in order to represent children in criminal proceedings. The only requirement for a legal aid lawyer is that he must be registered with the Bar Association in the area he wishes to be appointed for.

A child benefiting from this system cannot choose their lawyer, defence counsels are appointed by the acting authority. There is no legal remedy available to challenge the decision, however a request (with justifications) can be made to the court to appoint another defence council. If the child is not happy with their lawyer, they can make a complaint to the Bar Association. As a last resort, the child can engage a lawyer outside the legal aid system to replace the officially-appointed lawyer. In this case, the child shall cover the cost of the lawyer.



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