
**The support system in Portugal for children deprived of parental care:
guardians and foster care**

Portugal

April 2017

Contents

1.	CHILD PROTECTION SYSTEM IN PORTUGAL – Brief overview	3
1.1.	Grounds for State intervention	4
1.2.	Model of intervention	6
1.3.	On the promotion and protection measures	8
1.4.	The activity of the Committees for Protection of the Children and Young People	10
2.	THE TUTELAGE SYSTEM.....	11
2.2.	Duties and responsibilities of the guardians.....	12
2.3.	Some figures.....	13
3.	CIVIL GUARDIANSHIP.....	14
3.1.	Who can apply to be a civil guardian?	15
3.2.	On the performance of duties.....	16
4.	FOSTER FAMILIES	18
4.1.	Profile of foster families	19
4.2.	Duties of foster families and follow-up.....	21
4.3.	Some quantitative data on foster care families	23



This report has been produced with the financial support of the Rights, Equality and Citizenship (REC) Programme (2014-2020) of the European Union. The contents of this publication are the sole responsibility of CESIS – Centro de Estudos para a Intervenção Social and can in no way be taken to reflect the views of the European Commission.



1. CHILD PROTECTION SYSTEM IN PORTUGAL – Brief overview

In Portugal, a child protection system entered into force in the 1960s although up to the 1990s a child was not considered a subject with rights and there was in the distinction between the measures that were applied, whether the children had committed acts qualified as offences or whether they were situations which constituted a threat to their own safety, health, education and development.

After the Revolution of 25 April 1974, the Constitution of 1976 recognised that the child is entitled to the right to protection by society and the State in relation to her/his full development. Subsequently, the Portuguese State's ratification of the United Nations Convention on the Rights of the Child, in 1990, led to a thorough reformulation of the system based on a new paradigm that sought, on the one hand, the protection of children and young people in situations of danger, victims of circumstances of diverse nature; and, on the other hand, accountability, centred on the "education towards the law" of those that, between the ages of 12 and 16 years of old, had committed acts that, in the light of criminal law, would be considered crimes.

Thus, two new laws about childhood and youth were approved focused on the higher interest of the child:

- i) The Law on Educational Guardianship, Law 166/99, of 14 September, which recognises that a child aged between 12 and 16 years old is a subject with judicial rights;
- ii) The Law of Protection of Children and Young People at Risk, Law 147/99, of 1 September (LPCJP), revised by Law 142/2015, of 8 September¹, which regulates the State's intervention in the promotion and protection of the rights of children in situations of risk when the parents, or legal representative or factual guardian places at risk the safety, health, education and development of the child.

¹ Portugal, Law 142/2015, *second revision of the Law for Protecting Children and Young People at Risk*, 8 September 2015 (*Lei n.º 142/2015, segunda revisão à Lei de Protecção de Crianças e Jovens em Perigo*). Available at: http://www.cnpcir.pt/preview_documentos.asp?r=5611&m=PDF.



Supplementing the above, Decree-Law 98/98, of 18 April created the National Committee for Children and Young People at Risk. In 2015, a legislative revision led to the replacement of the National Committee for the Protection of Children and Young People at Risk by the National Committee for the Promotion of the Rights and Protection of the Children and Young People.² The competences of this Committee were thus extended to include the promotion of the rights of children, with their duties primarily being:

- Planning, monitoring and assessment of a national strategy for the application of the Convention of the Rights of the Child, aimed, in particular, at the collection and treatment of relevant statistical data in the context of the application of this convention;
- Preparation and submission to the approval of the Council of Ministers a multi-annual national plan for promotion and protection of the rights of the child, whose coordination of implementation is the responsibility of the National Committee;
- Reconciliation of the action of all the public and private entities, structures and programmes of intervention in the area of the promotion of the rights and protection of children and young people, in order to strengthen strategies of cooperation and rationalisation of resources, being able to issue recommendations for this purpose;
- Monitoring, support and promotion of mechanisms of supervision and provision of specialised training to the Committees for Protection of Children and Young People, with a view to improving the quality of their intervention.

The National Committee is currently composed of a chairman, a national council and regional coordination bodies. The national council acts as an inter-institutional structure involving, among others: a representative of the Chair of the Council of Ministers; representatives of the areas of youth, internal administration, justice, health, education, solidarity and social security; a public prosecutor; and a representative of the Defender of the People (Ombudsman).

1.1. Grounds for State intervention

² Law 142/2015 of 8 September, second amendment to the Law of Protection of Children and Young People at Risk, approved by Law 147/99, of 1 September, (*Lei n.º 142/2015 de 8 de setembro, segunda alteração à Lei de Proteção de Crianças e Jovens em Perigo, aprovada pela Lei n.º 147/99, de 1 de setembro*). Available at http://www.cnpcir.pt/preview_documentos.asp?r=5738&m=PDF.

The State's intervention among children, towards on their protection, is based on the notion of danger typified in the law. In other words, under the terms of the legislation in force it is considered that a child or young person is in danger when in one of the following situations:

- a) Abandoned or living on their own means;
- b) Subject to physical, psychological or sexual abuse;
- c) Fails to receive the proper care or affection for the age and personal situation in question;
- d) In the care of third parties, during a period of time when their establishment of strong binding relations with these third parties was observed, simultaneously with the non-exercise of their parental duties by the parents;
- e) Forced to carry out activities or work that are excessive or inappropriate to their age, dignity and personal situation or harmful to their personal growth or development;
- f) Directly or indirectly subject to behaviour that severely affects their safety or emotional balance;
- g) Show behaviour or carry out activities or consumption that severely affect their health, safety, personal growth, education or development without their parents, the legal representative or factual guardian objecting in a manner suitable to dislodge this situation.

The notion of danger (literal translation of the Portuguese word “perigo” that in English means also at risk), defined in the law, is not always clearly distinguished from the notion of risk. However, it can be said that “the fundamental difference between one and the other arises from the potential danger embodied by the risk in terms of accomplishment of the rights of the child, while the application of the notion of risks also includes a high degree of probability of occurrence. As is evident, the persistence or exacerbation in factors of risk, simultaneously with the absence or inefficacy in factors of protection in the life of a child might, under certain conditions, be associated with or lead to situations of danger”. (Carvalho, 2013:10)

As defined in the Law of Protection of Children and Young People at Risk, this is based on the idea that “not all risks to the child’s development legitimate the intervention of the State and society in the life and autonomy of the child and her/his family”.

1.2. Model of intervention

The model of protection of children and young people at risk calls for the active participation of the community, in a new relationship of partnership with the State, embodied in the (local) Committees for Protection of Children and Young People (CPCJ). These committees, organised on a municipal basis, operate along the lines of the involvement of different players of the local community, based on the assumption that the protection of children and young people requires multidimensional and concerted action, which can only gain with the active participation and co-accountability of the various entities acting in the field. Therefore, the CPCJ rely on the participation of local government bodies, the Social Security Institute, the health and education services, as well as non-governmental organisations (in Portugal referred to as Private Social Solidarity Institutions abbreviated to IPSS) which intervene in the area of childhood and youth.

The CPCJ's intervention is guided by the following principles:

- a) *Best interest of the child and young person* — the intervention should prioritise the interests and rights of the child and young person, namely the continuity of relations of significant affection of quality, without prejudice to due consideration of other legitimate interest in the context of the plethora of interests present in the specific case in question;
- b) *Privacy* — the rights and protection of the child and young person should be promoted showing respect for intimacy, right to the image and reservation of their private life;
- c) *Early intervention* — the intervention should take place as soon as the situation of danger is known;
- d) *Minimum intervention* — the intervention should be conducted exclusively by the entities and institutions whose action is indispensable for the effective promotion of the rights and protection of the child and young person in danger;
- e) *Proportionality and topicality* — the intervention should be necessary and appropriate to the situation of danger in which child or young person is found at the time when the decision is taken and can only interfere in their life and that of their family to the extent strictly required to that end;

- f) *Parental responsibility* — the intervention should be carried out in a manner so that the parents undertake their duties in relation to the child and the young person;
- g) *Primacy of the continuity of deep psychological relationships* — the intervention should respect the child's right to the preservation of structural relations of affection of major significance and a reference for their healthy and harmonious development, where measures that assure the continuity of securely binding relations should prevail;
- h) *Prevalence of the family* — in the promotion of the rights and in the protection of the child and young person, prevalence should be given to measures of family integration, whether in the child's own biological family or by promoting the child's adoption or other form of stable family integration;
- i) *Compulsory disclosure of information* — the child and young person, the parents, the legal representative or the factual guardian are entitled to be informed of their rights, the motives that led to the intervention and its procedures;
- j) *Compulsory hearing and participation* — the child and young person, separately or accompanied by their parents or person of their choice, as well as the parents, legal representative or factual guardian, are entitled to be heard and participate in the acts and definition of the measure of promotion of the rights and of protection;
- k) *Subsidiarity* — the intervention should be conducted successively by the entities with competence on matters of childhood and youth, by the committees for protection of children and young people and, only ultimately, by the courts.

The CPCJ's intervention necessarily requires the explicit consent of the parents of the child or young person, the legal representative or factual guardian, according to the case. In cases of children or young people aged 12 years old or above, their non-objection to the intervention is also required. For those below this age limit, their opinion is considered relevant, according to their capacity to comprehend the meaning of the intervention.

In situations where the consent required for the CPCJ's intervention is not provided or withdrawn, or when the child or young person objects to this intervention, any action that is being carried out must cease and the CPCJ is duty bound to take the situation to court. In this way, the necessary mechanisms are activated for the case to be verified and the intervention becomes a measure of judicial nature.

Also in cases of lack of consent for the intervention, by the holders of parental power or the factual guardian, and when there is actual or imminent danger to the life or physical integrity of the child or young person, the Law establishes that the CPCJ should request the immediate intervention of the court or police entities. During the period prior to the court's intervention, the police authorities remove the child or young person from the situation of danger and assure their emergency protection in an appropriate institution of the national shelter system. Upon being informed of such an emergency procedure, the territorially competent court conducts the preliminary and indispensable investigations and orders the necessary procedures to confirm the measures taken. The court issues a provisional decision within forty-eight hours, applying the promotion and protection measures defined in article 35 of the Law.

1.3. On the promotion and protection measures

The operationalisation of the CPCJ's intervention, among children and young people in danger, is reflected in the application of the measures established in the law:

- i) in the natural living environment: a) support to the parents; b) support to another family member; c) entrustment to a suitable person; d) support for autonomous living;
- ii) under a placement arrangement: e) foster care; f) residential shelter; g) entrustment to the person selected for adoption, foster care or institution with a view to current or future adoption.

The CPCJ and courts are responsible for the application of these measures, in general referred to as promotion and protection measures. The application of the measure established in subparagraph g) is of the exclusive competence of the courts.

Any of the measures applied by the CPCJ, or in a court proceeding, by negotiated decision, give rise to the establishment of a promotion and protection agreement.

When involving measures applied in placement arrangements, the promotion and protection agreement should include:

- the mode of providing shelter, and the type of foster care or residential home;

- the rights and duties of all those involved, namely the periodicity of the visits and the amounts of the benefit/payment corresponding to the necessary costs to be incurred in relation to the child or young person;
- the periodicity and content of the information to be provided to the administrative entities and judicial authorities, and the identification of the person or entity that should provide it.

The promotion and protection case is individual, with a single case file being organised for each child or young person which is given to a professional of the CPCJ who becomes the “case manager”. If the child is placed in a shelter institution, the case file is given to this institution.

1.4. The activity of the Committees for Protection of the Children and Young People

The Evaluation Report on the Activity of the Commissions for the Protection of Children and Young 2015³ portrays the following details:

- The CPCJ monitored a total of 73,355 children; of which 34,660 correspond to cases which were carried over to 2016.
- Comparing the overall procedural volume for 2015 with 2012, there was an increase of 4,348 children/cases (+5.9%).
- For this number of children, 36 321 promotion and protection measures were applied or under implementation.
- Analysing the type of measures applied by the CPCJ at a national level, it is observed that support to the parents was the measure most applied (77.9%), as indicated in the table below.

Table 1. Measures applied by the Committees for Protection of Children and Young People, 2015

Type of measure	Number	%
Support to parents	28 305	77.9
Support to another family member	3 714	10.2
Entrustment to a suitable person	507	1.4
Support for autonomous living	225	0.6
Foster care	107	0.3
Residential shelter	3 463	9.5

Source: National Committee for Promotion of the Rights and of Protection of the Children, 2016: 138.

³ National Committee for Promotion of the Rights and Protection of Children (2016), Annual Report of Assessment of the Activity of the Committees for Protection of Children and Young People 2015, Lisbon, National Committee for Promotion of the Rights and Protection of Children (*Comissão Nacional de Promoção dos Direitos e de Proteção das Crianças, (2016) Relatório Anual de Avaliação da Atividade das Comissões de Proteção das Crianças e Jovens 2015, Lisboa, Comissão Nacional de Promoção dos Direitos e de Proteção das Crianças*). Available at: http://www.cnpcjr.pt/preview_documentos.asp?r=5752&m=PDF.

2. THE TUTELAGE SYSTEM

Pursuant to the United Nations Committee on the Rights of the Child, in its General Comment number 6, a guardian is defined as an independent person who protects the higher interest of the child and her/his general well-being and who, for such, supplements the limited legal capacity of the child. The guardian acts as the legal representative of the child in all procedures in the same way that the parents represent their child.

In the Portuguese legal system, guardianship is consecrated in the Civil Code (articles 1921 and following),⁴ constituting the means to overcome gaps in terms of parental responsibilities.

The Hague Convention of 1996 on Parental Responsibilities and Measures for the Protection of Children entered into force in Portugal in 2008, regulating, among the countries bound to it, its competencies on matters of protection of illicitly displaced children. For the effects of this Convention, transposed to national law by Decree 52/2008, and along the same lines of the Civil Code, the expression «parental responsibility» refers not only to the parental authority but to any analogous relationship of authority that determine the rights, powers and responsibilities of the parents, guardians or other legal representatives relative to the person or properties of the child.

Under the terms of the law the figure of guardian of the child is appointed in situations of:

- Death of both parents;
- Impediment of both parents (due to reasons of lack of knowledge on their whereabouts; coma; prison) to exercise their parental responsibilities for more than six months;
- Lack of knowledge as to who the parents actually are;
- Disqualification of both parents (by the court) to exercise these same responsibilities.

The guardian can be appointed by the child's parents through a last will and testament or certified document. In other situations, namely when the child is in danger due to the

⁴ Portugal, Law 8/2017, Diário da República, 1st Series, number 45, 3 March 2017 (*Lei n.º 8/2017*). Available at: http://www.pgdlisboa.pt/laws/law_mostra_articulado.php?nid=2655&tabela=laws&ficha=1&pagina=1&so_miolo=.

limitations (or legal disqualification) of the parental responsibilities, the Family and Juvenile Court (Family and Juvenile Section of the Judicial Sub-District) promotes the filing of the guardianship, but before the choice and appointment of the guardian, the court should hear the child (provided that the child has completed fourteen years of age). In addition to the child, the court should hear the “Family Council” (the body that will supervise and collaborate with the guardian).

Adult or emancipated persons who are not excluded by law can be appointed guardians, and among them, preferably family members of the child or persons who, in fact, have cared or are caring for the child or who have demonstrated having relations of affection with the child.

In the case of the child being entrusted to the custody of an institution – as happens with children who enter into the country unaccompanied – the guardianship duties are performed only by the director of the organisation. In practice, the duties of the guardians are, in fact, undertaken on a daily basis by the institution’s professionals under the more or less close coordination of the director.

Thus, in Portugal, the guardianship system is headed by members of the community where the child is integrated and by professionals of the shelter institutions.

2.2. Duties and responsibilities of the guardians

The guardian should strive to protect the child’s interest and cannot carry out acts that are harmful to the child. Pursuant to the Civil Code, the guardians are entrusted with the powers and duties of the parents where one of their duties consists of using the child/young person’s income in the corresponding expenses related to maintenance and education.

It is an underlying assumption of all intervention with children (Law 142/2015; Juvenile Guardianship Organisation; Civil Code – article 1878) that the intervention should be oriented towards safeguarding the child’s interest. Although the law does not define precisely what the higher interest of the child is, what does exist is a consensus of the search for full, harmonious and safe development, where the guardian is responsible for performing her/his duties in a manner consistent with this notion.

In Portugal, the figure of guardian and legal representative converge as whoever is vested with the duties of guardianship also represents the child and her/his interests, except for acts which depend on the court's authorisation.

The guardian's failure to comply with her/his duties in relation to the child, or manifest lack of aptitude for the performance of these duties may lead to her/his exoneration.

The duties of the guardian also terminate:

- when the young person reaches adulthood or emancipation;
- if the young person is adopted;
- is the impediment of the parents ends.

As noted above, the family council is responsible for supervising the way that the guardian's duties are performed. This council is composed of two members chosen by the Public Prosecutor's Office from among the members of the child's family, taking into account their closeness and relations with the child, their aptitudes, age, place of residence and interest indicated by the actual child in the person in question. In the absence of relatives who might be appointed, the court is responsible for selecting between friends of the parents, neighbours or other persons who may be interest in the child's welfare.

The family council's supervision of the guardian, pursuant to the Civil Code, should be exercised on a permanent basis by the members of the family council, referred to as the pro-guardian. Both members of the family council should attend the meetings called by the court.

2.3. Some figures

According to the data of the aforesaid Evaluation Report on the Activity of the Commissions for the Protection of Children and Young of 2015, in that year 507 promotion and protection measures were applied aimed at entrusting a child to a suitable person, corresponding to 1.4% of the total measures applied. This measure consists of the placement of a child or young

person under the custody guardianship of a person who, while not belonging to the child's family, has established reciprocal relations of affection.

On the other hand, according to the same report, 3,714 measures of support to family members (10.2%) were applied, which consists of the placement of a child or young person under the custody of a person belonging to the family, accompanied by support of psychological, pedagogic and social nature and, when necessary, economic assistance.

However, it is not known, how many of those cases a legal guardian.

Taking into account children in institutional care in 2015, 86 (3.3%) left the institution in order to live with a suitable family, legal guardian or civil guardian.⁵

3. CIVIL GUARDIANSHIP

Law 103/2009, of 11 September introduced into the Portuguese legal system a new family legal relationship: civil guardianship. This objective of this figure is to promote the deinstitutionalisation of children and young people in situation of danger who cannot be integrated in an adoptive family or return to their family of origin.

This legal figure could stand between restricted adoption and legal guardianship.

Under the terms of the law, civil guardianship is defined as “the legal relationship, tending towards being of permanent character, between a child or young person and a natural person or family that exercises the specific powers and duties of the parents and with whom binding

⁵ Instituto da Segurança Social, I.P. – Department of Social Development and Programmes/ Childhood and Youth Unit (2016), *CASA 2015 – Annual Characterisation Report of the Situation of Sheltering Children and Young People*, Lisbon, Instituto da Segurança Social, I.P. (*Instituto da Segurança Social, I.P. – Departamento de Desenvolvimento Social e Programas/ Unidade de Infância e Juventude (2016), CASA 2015 - Relatório de Caracterização Anual da Situação de Acolhimento das Crianças e Jovens, Lisboa, Instituto da Segurança Social, I.P.*). Available at: http://www.seg-social.pt/documents/10152/14725795/Relat%C3%B3rio_CASA_2015/f3e06877-ad73-48e4-8395-75b33fedcae0.

links of affection are established that enable the well-being and development of the child or young person, constituted by homologation or judicial decision and subject to civil registration”.

Any child or young person aged less than 18 years old can be taken under the custody of civil guardianship (provided that she/he cannot be adopted) of found in any of the following situations:

- a) in an institutional shelter;
- b) benefiting from any other promotion and protection measure;
- c) in a situation of danger confirmed in a case of the committee for the protection of children and young people or in a judicial proceeding.

It should be noted that this law states that the parents, and/or the rest of the biological family should be assured the right to visit and maintain their relationship with the child or young person and accompany their development (school progression, health situation, etc.). The biological family also undertakes the duty to collaborate with the civil guardians.

Various entities can request the possible civil guardianship of a child or young person, namely: the Public Prosecutor’s Office; the Committee for Protection of Children and Young People at Risk, in the context of cases; the Social Security Institute; the parents of the child or young person; and the actual child or young person if more than 12 years old.

Civil Guardianship is a measure of permanent character and the result of a court decision.

3.1. Who can apply to be a civil guardian?

Pursuant to Decree-Law 121/2010, of 27 October, any person may “propose her/himself” as a civil guardian, provided that this person meets the following conditions:

- Aged over 25 years old;
- Shows maturity, affective capacity and emotional stability;

- Has educational and relational skills able to meet the specific needs of the child or young person;
- Has housing and hygiene conditions;
- Shows economic, professional and family stability;
- Does not have health limitations that prevent provision of the care required by a child or young person;
- Shows motivation and positive expectations in relation to civil guardianship;
- Is willing to respect the rights of the parents or other persons of relevance to the child or young person;
- Shows capacity and willingness to promote cooperation with the fathers/mothers who were responsible for the child or young person's upbringing under conditions appropriate to the well-being and development of the child or young person;
- Has not been condemned due to crimes against life, physical integrity, personal or other freedom and sexual self-determination;
- Is not disqualified from exercising parental responsibilities, nor has this exercise limited due to constituting a danger to the safety, health, moral formation and education of her/his child.

3.2. On the performance of duties

The relationship of civil guardianship is supervised, during a maximum period of 18 months, by a support structure which essentially aims to create or intensify the necessary conditions for the success of the relationship between the civil guardian and the child or young person under her/his custody.

The objective is to ensure that the relationship of civil guardianship should constitute a durable tie between those directly involved. In this regard, the civil guardians are responsible for performing parental responsibilities under terms equivalent to those of the legal guardian, safeguarding any limitations that may feature in the established commitment.

The relationship of civil guardianship can be annulled by initiative of any of its signatories, the Public Prosecutor's Office or the Court, when certain assumptions are observed. For example, non-compliance by the civil guardians with their duties, or the persistent display of behaviour by the child or young person in question that severely affects the family life of the civil guardian. It should be noted that it is compulsory for both the constitution of civil guardianship and its revocation to be recorded at the civil registry.

The civil guardians and the children or young people under their custody have a series of rights, namely:

- Benefit from the system of absences and leave from work equivalent to those of parents and children.
- Receive social benefits under the same terms as those for parents and children, namely allowance for assistance of disabled or chronically sick children, child assistance, allowance for assistance of a third person.
- Accompany one another in assistance due to sickness, as if they were parents and children.

The person who performs the duties of a civil guardian also has other guaranteed rights, specifically:

- Consider the child or young person under custody as dependent for tax purposes.
- Benefit from the status of blood donor.
- Receive technical support from the entity responsible for the signing of the civil guardianship commitment (social security body or committee for protection of children and young people).

Just as the rights of this legal figure of the civil guardian are safeguarded, so are the duties, in particular:

- Exercise the parental responsibilities in relation to the child or young person in custody.
- Promote the necessary material and affective conditions for the well-being and full development of the child or young person in question, namely the provision of food.

- Assure health care suitable to the age of each child or young person.
- Assure that the child or young person attends an education establishment appropriate to their age and development.
- Respect and assure conditions to maintain and strengthen the child or young person's relationship with the biological family.
- Respect the right of the natural family to intimacy and reservation of private life.

The biological parents are entitled to rights in this commitment of civil guardianship, provided that they have not been disqualified from exercising their parental responsibilities due to not having complied with their duties in relation to their daughters/sons. Thus, they have the right to:

- Know the identity of the civil guardians.
- Have means of contacting the civil guardians and their daughter or son.
- Know the location of residence of their daughter/son.
- Receive information on the full development of their daughter/son: school or professional progression, the occurrence of particularly relevant facts or serious problems, namely related to health.
- Regularly receive photographs or other records of images of their daughter/son.
- Visit the daughter or son, under the conditions established in the commitment or judicial decision, namely on the occasion of especially significant dates.

The law also foresees that the biological parents and civil guardians must observe the duty of respect and assurance of the intimacy of private and family life, and cooperate in the creation of appropriate conditions for the well-being and development of the child under custody.

The children/young people maintain their rights, primarily the right of continuing to benefit from family allowances for children and young people, and bonuses for disabled children and young people, allowance for attendance of a special education establishment, life-long monthly grant and study grant, to this end integrating the household of the civil guardians.

4. FOSTER FAMILIES

The placement of a child or young person into foster families implies that an individual person or family is considered competent and trustworthy to that effect. Foster homes should guarantee the temporary integration of the child or young person into a family environment and to provide the adequate care, education and wellbeing in order to ensuring his/her comprehensive development till the return to the family of origin takes place.

Placement should be temporary and may result from a measure of promotion and protection issued by the Commission for the Protection of Children and Young People (CPCJ) or by the Court.

The Law on the Protection of Children and Young People at Risk, revised in 2015, establishes that the placement into a foster home should be preferential for children up to the age of 6 except if, for specific and exceptional reasons, placement into a residential unit is deemed more adequate.

The entity responsible for the selection and follow-up of foster homes is the Institute of Social Security (ISS) or a Private Institution of Social Solidarity (IPSS) with a cooperation agreement with the ISS to this end. In the specific case of the city of Lisbon also the *Santa Casa da Misericórdia de Lisboa* may play this role.

Two different types of placement are possible:

- Placement into a family – for children and young people in peril referred by a CPCJ. Each family may welcome up to two children/young people as long as the total number of children and young people in the household is not higher than four.
- Placement into a professional home – for children and young people with special needs (disability, chronic illness, emotional and behavioral problems). Each professional home may welcome up to two children/young people.

4.1. Profile of foster families

All those wanting to become a foster family should fill-in an application to be delivered in one of the aforementioned entities⁶. They should attach to the application a set of documents regarding their health, economic status and legal situation (medical certificate attesting good health; photocopy of the latest income tax declaration; criminal record of all family member aged over 16; qualification certificate of the applicant). Applicants for a professional home should also attach a CV attesting their experience.

The selection process includes social and psychological interviews, home visits and CV analysis (for applications to professional homes). A final decision should be taken up to a maximum period of 6 months after the application.

In order to be eligible as an applicant the person should:

- Have completed compulsory schooling;
- Have a health condition compatible with the welcoming of children/young people;
- Have adequate housing and hygienic conditions;
- Not be a candidate for adoption;
- Establish the performing of his/her duties as foster home as his/her main or secondary professional activity. In the latter case, the working hours of the main professional activity should be compatible with the duties attached to the role of foster home;
- Not having been convicted for crimes against life, physical integrity, personal freedom, sexual freedom and self-determination;
- Not to be inhibited of exercising parental authority nor to have it limited on the grounds of representing a danger to his/her child(ren)'s security, health, education or moral formation;
- Have maturity, emotional stability and affective capability (this is also applicable to other family members);
- Have formal acceptance by other family members;
- Have social and family stability.

⁶ i.e. the Institute of Social Security, a Private Institution of Social Solidarity with a cooperation agreement with the ISS to this end or the *Santa Casa da Misericórdia de Lisboa*.

Family members of children to whom a measure of promotion and protection is applied cannot apply.

Successful applicants should sign a service agreement with the entity responsible for the follow-up and become included in Social Security's regime for the self-employed. The agreement establishes the operating conditions. These include: the maximum number of children/young people to welcome; the rights and duties of both parties; the monthly value to be paid for each child/young person and the date of payment; the duration period of the contract.

It should be mentioned that the entity responsible for the follow-up may terminate the contract at all times in the event of any of the following situations: the protection or the promotion of the rights of the child become at stake; the duties established are not fulfilled; the conditions for eligibility are no longer matched.

The monthly value to be paid by the ISS for each child/young person is established by Dispatch of the Ministry of Labour and Social Solidarity on a yearly basis. Currently it is set at €176.89/month or at €353.79/month if the child/young person is disabled or impaired. An additional amount of €153.40 is due for the child's maintenance⁷.

During their placement in foster care the child/young person is entitled to the benefits under the system of social protection namely to the child benefit. If the child/young person is disabled or impaired, he/she is entitled to the attendance allowance and/or to the special education allowance. Foster parents are responsible for applying to the benefits.

Whenever the welcoming of a child/young person requires specific equipment, this should be made available by the entity responsible for the follow-up.

4.2. Duties of foster families and follow-up

Foster care should always be seen as temporary solution with the ultimate aim of reintegrating the child/young person in his/her family of origin. The Law on the Protection of Children and Young People at Risk establishes that it should not last more than one year. Exceptionally, in

⁷ Information gathered at: <http://www.seg-social.pt/familia-de-acolhimento-de-criancas-e-jovens>.

order to comply with the child's/young person's best interest, it may be extended up to 18 months.

The duties of foster families include the temporary replacement of family regarding basic needs, health, education, as well as at the juridical, moral and social levels. They also include the responsibility of repairing the damage caused by the previous situation of peril and by family separation. All duties should be embraced within the scope of the child's/young person's best interest. Care provided should take into consideration the child's/young person's individual characteristics and personality.

Reports and other types of information should be elaborated by those providing foster care in professional homes. These should contribute for the assessment of the situation of the child/young person with disability or impairment.

In order to fulfil their duties, foster families are entitled to accede initial and continuous training⁸ as well as to receive technical support from the ISS or another entity responsible for follow-up.⁹

Bearing in mind that foster care is a temporary measure, it is crucial that the family of origin builds its capacity for parenting as well as the strengthening of its relationship with the child/young person, so that reintegration into the family of origin becomes possible. Thus, technical support teams should ensure the continuous training of the natural family.

A set of rights is recognised to the child's/young person's natural family such as:

- To be informed regarding the way foster care will take place
- To receive support from local services and technical support from the entity responsible for follow-up, as established by the promotion and protection agreement or judicial decision, aiming at the child's/young person's reintegration
- To be heard and to participate in the child's/young person's education, unless otherwise stipulated by judicial decision
- To have its intimacy and private life respected.

On the other hand, they should be available to:

⁸ However, no initial or continuous training programs could be identified.

⁹ However, neither the contents nor the criteria for assessment and follow-up could be identified.

- Cooperate with the foster care family and with the entity responsible for follow-up on the implementation of the intervention plan, aiming at promoting the rights and the protection of the child/young person.
- Respect the foster care family's right to intimacy and privacy.
- Contribute, whenever possible, for the payment of the costs with the child's/young person's maintenance.

The involvement and participation of the children and young people placed in foster care is a core element. All children/young people aged over 12 – or below that age is deemed mature enough to understand the meaning of the placement in foster care – have the right to be heard by the entity responsible for the follow-up. They have the right to be heard regarding the process of choice of the foster care family and the elaboration of the intervention plan following the placement in foster care. Simultaneously, this also represents one of their duties. The child/young person also has the right to have his/her intimacy and private life respected.

4.3. Some quantitative data on foster care families

The establishment of the placement in foster care families as a measure of promotion and protection by the Law on the Protection of Children and Young People in Peril was deemed to represent a significant change on the system of child protection. It was intended to be the main measure to be promoted (regarding institutional care), especially for children up to the age of six, whenever the child's family (nuclear or extended) did not have the conditions necessary for providing care.

Number 4 of article 46 of Law on the Protection of Children and Young People at Risk establishes that "Foster care should be privileged over institutional care, especially for children up to the age of 6 except if: a) the exceptional and specific situation imposes the application of a measure of institutional care: b) when it is actually impossible". Foster care is also privileged in the guidelines of the Council of Europe.¹⁰

¹⁰ Conselho da Europa, Rec (2005) 5 – Os Direitos das Crianças que Residem em Instituições; Rec (87) 6, sobre Famílias de Acolhimento.

This perspective “clearly calls the care system – foster care and residential care – for a reformulation allowing for a growingly diversified, balanced and qualified network of residential care directed to the children and young people in need of these measures of promotion and protection” (ISS, 2016:73).

Thus the importance to gradually widen the network of foster homes, weighting the number of families to select in each district or region regarding the incidence of children which would benefit from this measure. It should be noted that, according to the Annual Characterisation Report of the Situation of Sheltering Children and Young People report in 2014 Portugal only had 275 families¹¹ (cfr. ISS, 2015: 26).

Still according to this source,¹² in 2015 the number of children/young people placed in foster care amounted to only 3.5% of the children/young people (303 cases) removed from their family of origin. This represents a progressive decrease since 2009 when the number amounted to 658.

According to data from the Evaluation Report on the Activity of the Commissions for the Protection of Children and Young People regarding the year 2015, only 107 children/young people were placed in foster care, which represents 0.3% of the total of measures applied. Most of these 107 children/young people (53) were aged 15 to 21; 23 were aged 11 to 14; 21 were aged 6 to 10; only 10 children were aged less than 6.

5. PLAN FOR ACTION

Taking into account the ELFO project design and the findings of the national report we propose as a work plan for the coming few months the following:

Analysis / Assessment

¹¹ Within the scope of project ELFO there will be a contact with association *Mundos de Vida* (municipality of Famalicão) which, between 2006 and 2014, trained 112 foster families. This may represent good practice to be considered.

¹² Instituto da Segurança Social, I.P. – Departamento de Desenvolvimento Social e Programas/ Unidade de Infância e Juventude (2016), *CASA 2015 - Relatório de Caracterização Anual da Situação de Acolhimento das Crianças e Jovens*, Lisboa, Instituto da Segurança Social, I.P.. Available at: http://www.seg-social.pt/documents/10152/14725795/Relat%C3%B3rio_CASA_2015/f3e06877-ad73-48e4-8395-75b33fedcae0.

In our national report there is a lack of critical reflection about the system. In order to complete the information collected with a more analytical approach (and not only description) we propose, until September:

- To interview Armando Leandro as a judge and as the President of the National Committee for the Promotion of the Rights and Protection of the Children and Young People.
- To organize a focus group with keep persons: Paulo Guerra, Judge and Professor at the Center for Judicial Studies; Lucília Gago, General Attorney Office; Odete Severino, vice-president of the Committee for the Promotion of the Rights and Protection of the Children and Young People; Miguel Coelho, Ombudsman.

Model definition

From the Portuguese national report it seems to be relevant to address the training to three different target groups:

- Guardians already appointed by Court;
- Foster families;
- People appointed as “suitable persons” by the Commissions for the Protection of Children and Young;
- Voluntaries citizens.

Capacities

Regarding the topics to be covered by the training modules it can be pointed out:

- The CRC and its principles
- Main aspects of the Portuguese law for the protection of children
- Implementation of child best interested
- Childhood, needs and development phases / comprehension of the violence context
- What capacities of adults to deal with children

The training programme should be implemented in an active approach, calling the participation of trainees. The training programme should be suitable for the different target groups.

Dissemination

The training cycle will be disseminated through the National Committee for the Promotion of the Rights and Protection of the Children and Young People.

The project team also intends to constitute an Advisory Board composed with:

- Conselho Português para os Refugiados (Portuguese Refugee Council)
- Instituto de Apoio à Criança (Institut for the Support of Children)
- Instituto de Segurança Social (Institut for Social Security)
- Santa Casa da Misericórdia de Lisboa
- Casa Pia de Lisboa
- UNICEF Portugal
- General Attorney Office
- Portuguese Ombudsman