



T-ES(2014)ADD-PT

LANZAROTE CONVENTION

Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse

**Addendum to the Replies to the
General Overview Questionnaire**

PORTUGAL

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Article 11 of the Lanzarote Convention, under the heading “*Principles*” requires each party to take “*the necessary legislative or other measures to ensure that when the age of the victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance measures provided for children shall be accorded to him or her pending verification of his or her age*”.

1. The Committee considers that in Portugal the victim’s age is presumed on the basis of a general praxis (*in document T-ES(2014)7_en, observations on the replies to the general overview of the questionnaire, based on the reply to question 1b) of the General Questionnaire*).

2. The Committee questions the non-existence of objective criteria to determine whether a minor between 14 and 16 years old has been sexually abused (*in document T-ES(2014)7_en, observations on the replies to the general overview of the questionnaire, based on the reply to question 1c) of the General Questionnaire*).

As to number 1

As to question 1b) and in addition to the information already provided, it may be said that, in the scope of the protection of minors, victims of trafficking in human beings or of illegal labour, the law requires that all must be done to establish the identity (nationality) of an unaccompanied minor, such as defined in article 99(5) of the Aliens Act (Law 23/2007, of 4 July), or in other words, to determine whether the minor is a national of a third State or a stateless person, if he/she is under 18 years old and has entered national territory alone or not in charge of a responsible adult, in virtue of the law or tradition, or if the minor has been abandoned after entering national territory (article 114(4) of the Law 23/2007).

As to number 2

As to question 1c), it should be referred that there are objective criteria to determine whether a minor between 14 and 16 years old has been sexually abused. These are specified as “*Signs and symptoms connected to sexual abuse*” in Annex II of the Minister of Health’s Order 31292/2008, published in the Official Journal, of 5 December¹, which has approved the document “*Ill treatment of children and young people – Health intervention*” drafted by the Directorate-General of Health. This document, viewed as “technical orientations” is heretofore designated as “*Health actions towards children and young people at risk*”. The text is available at www.dgs.pt and at the National Commission for the Protection of Children and Young People at Risk in (http://cnpjcr.pt/preview_documentos.asp?r=2217&m=PDF).

The “*Health actions towards children and young people at risk*” is addressed to children and youngsters up to 18 years old, living in different life contexts; the intervention may, however, last until they are 21, if it has started before they are of age or, after they come of age if the youngster so requests it, as provided for in the Law 147/99, of 1 September.

There are also several guides, with objective indicators, that help the professionals that work with children, victims of sexual abuse; they can be found on the Internet: “*Promotion and protection of the rights of the child – Guidelines for social work professionals when approaching situations of ill treatment or other risky situations*” in http://www.cnpjcr.pt/guias/Guia_Acao_Social.pdf: “*Promotion and protection of the rights of the child – Guidelines for social work professionals when approaching situations of ill treatment or other risky situations*” http://www.cnpjcr.pt/guias/Guia_FS_AGO2011.pdf: “*Promotion and protection of the rights of the child – Guidelines for social work professionals when approaching situations of ill treatment or other risky situations*”, in http://www.cnpjcr.pt/preview_documentos.asp?r=3968&m=PDF. Cf. the “*Guidelines in cases where there is evidence of sexual abuse of Children and Young People*” (a joint work, elaborated under the supervision of Prof. Tilman Furniss of Munster University, between several Institutions, in particular, the National Commission for the Protection of Children and Young People at Risk, the Casa Pia of Lisbon, the Social Security

¹ Cf. <http://dre.pt/pdf2s/2008/12/236000000/4920749231.pdf>

Institute, I.P., Santa Casa da Misericórdia of Lisbon, the Public Prosecution and the Criminal Police) in:

<http://www.casapia.pt/LinkClick.aspx?fileticket=SR7ymSSjLKY%3D&tabid=105&language=pt-PT>.

Finally, please also see the “*Core manual for dealing with children, victims of sexual violence, Part II* “*Victim Support Portuguese Association*” in

http://www.apav.pt/pdf/core_proceder.ped (Part II).

Article 10 of the Lanzarote Convention, under the heading “*National measures of coordination and collaboration*” requires, in its paragraph 2, each Party to take the “*necessary legislative or other measures to set up or designate: a) independent competent national or local institutions for the promotion and protection of the rights of the child, ensuring that they are provided with specific resources and responsibilities*”.

The Committee refers, in the document T-ES(2014)5_en, *observations on the replies to the general overview of the questionnaire*, based on Portugal’s reply to question 5a) to the General Questionnaire, that :

- 1) It has no information on the Ombudsman’s responsibility as regards the promotion and protection of the rights of the child, and is concerned with the level of resources allocated to him, in accordance with the Conclusions of the UN Committee on the Rights of the Child;
- 2) It observes that the independence of the Commissions for the Protection of Children and Young People at Risk is dependent upon the consent of the parents or of the child that is 12 years old or older;
- 3) It considers that subparagraph e) “*competent national or local institutions for the promotion and protection of the rights of the child*” has too broad a meaning which may include independent and non-independent institutions;
- 4) It has no information on how the resources of CNPJCR, of the Minors’ Court, of the Public Prosecution and other institutions referred to in e) are secured;
- 5) Regarding the Ombudsman, the Committee considers that this institution may be in accordance with the provisions set forth in the Convention and sources of information, but is concerned about its resources. A mention is also made to ENOC (European Network of Ombudspersons for Children) where its autonomy concept is proposed for the purposes of this Convention;
- 6) As to the other institutions, the Committee notes that, due to lack of specific information, it is difficult to assess the situation; they might probably not be in conformity as, save for the Commissions for the Protection of Children and Young People at Risk, there is not a specialized body or mechanism.

In order to clarify these matters, the following is referred:

As to numbers 1 and 5

The Ombudsman, besides acting as an Ombudsman institution in line with the institutional model set up in Sweden at the beginning of the XIX century, is also considered, since 1999, the Portuguese National Institution for Human Rights, having the statute A, in accordance with the Principles of Paris.

Human rights are present in several aspects of the institution, starting by its mandate which is delineated in a broad way around the protection and promotion of the fundamental rights and not only from the standpoint of administrative justice. From a thematic point of view, such approach is especially intense in matters related to the rights of the child.

The Ombudsman, while a National Institution for Human Rights, is also competent in matters related to the disclosure of and education on human rights.

Lastly, the emphasis put on the human rights also reflects itself in the way the Ombudsman's powers are defined, including the power to recommend – in particular the legislative recommendation – and the power to take the initiative next to the Constitutional Court.

These two prerogatives, in particular, when linked with the capacity to intervene on its own initiative, allow this institution to contribute towards the Portuguese legislative and practical alignment with human rights matters, as well as with the recommendations issued by international monitoring bodies with respect to such rights.

On its turn, the knowledge and experience acquired by the Ombudsman in the course of his functions enable him to provide the international institutions with an impartial and detailed insight of the situation on human rights in Portugal, thus ensuring that they perform their mission in a more informed way.

The Ombudsman may delegate into one of his deputies the powers related to the rights of the child, in order to have them performed in a specialized manner.

The Ombudsman's budget, approved in 2014, is of 4.736.725,00 Euros (<http://dre.pt/pdfgratis/2013/11/22600.ped>).

It should be recalled that the Convention “*does not seem to require countries to have a specialized ombudsman, even though this is not specifically stated in either the Convention or the Explanatory Report*” (page 4 T-Es(2014)5-en) and that the ENOC Statutes (European Network of Ombudspersons for Children, <http://www.crin.org/en/library/publications/enoc-statutes-2006>) requires the exclusivity of the institutions (article 4 of the ENOC Statutes) .

As to number 2

The intervention of the commissions for the protection of children and young people depends upon the express consent of their parents, of their legal representatives or of the persons that have the *de facto* custody of the child, as applicable, and on the non-opposition of the child or of the youngster that is 12 years old or older. The opposition of a child that is not yet 12 years old is also relevant taking into account the child’s capacity to understand the sense of the intervention (article 8, 9 and 10 LPCJP).

One cannot see how this characteristic may limit the independence of the Commissions in their activity.

The more so as, whenever there is no consent or when such consent is withdrawn, or if the child opposes it, the commission, according to the legal terms, refrains from intervening and conveys to the competent Public Prosecution said situation, the process or the elements that it considers relevant for the assessment of the situation (article 95 LPCJP).

In urgent situations (defined as situations of present or eminent danger to the life or to the physical integrity of the child or of the youngster, on the terms of article 5(c) of LPCJP), in which it is not possible to obtain the consent for the intervention (article 91 LPCJP), both the institutions competent in matters related to children and youth (art.º 7 LPCJP) and the commissions take the adequate measures for their immediate protection and request the court’s or the police authorities’ intervention.

In these cases- urgent proceedings in the absence of consent - the police authorities immediately convey the situation to the Public Prosecution or, when such is not possible, as soon as the cause of impediment ends. When the court’s intervention is not immediately possible, the police authorities remove the child or the youngster from the danger and ensure their urgent protection, on a temporary basis, in a foster home, within

the premises of institutions competent in matters related to children and youth or in any other adequate place.

The Public Prosecution, as soon as it receives the communication sent by any one of the entities above referred to, immediately requests the competent court to issue a judicial urgent procedure.

As to number 3

Portugal's reply to the question "*Please indicate the independent institution(s) (national or local) in charge of promoting and protecting the rights of the child. Please specify its/their responsibilities and indicate how resources are secured for it/them*" started by referring, in a sequential manner: "*By the entities competent in matters regarding children and young people, public or private, with activities in areas related to children or to young people – schools, social solidarity private institutions (such as, "Misericórdias", parents' associations, Institute for Child Support).*"

The purpose of this response was to emphasize that the promotion of the rights and the protection of children and of young people at risk is, first of all, entrusted to the entities competent in matters related to children and young people, which can be public or private, or belonging to the social economy and, subsequently, to the commissions for the protection of children and young people and to the courts.

Schools

When public, the schools depend upon the budget of the Ministry for Education. They can also be private or cooperative.

The evolution of the public expense on education is the following (in millions of euros):

2011 – 7.878.5

2012 – 6.622.4

2013 – 7.108.4

Source: Entities: DGO/MF, PORDATA²

² Last update: 2014-07-02 in <http://www.pordata.pt/Portugal/Despesas+do+Estado+execucao+orcamental+por+algumas+funcoes-720>

Social solidarity private institutions

Non-profit social solidarity private institutions (IPSS), are formed by private initiative, with the purpose to give an organized expression to the moral duty of solidarity and justice between individuals, not run by the State or by a local governmental body and designed to give, *inter alia*, social support (goods and services) to families, children and to young and old people by socially integrating them in the community³.

In 2010⁴, in a total of more than 55 thousand units of the Satellite Account of Social Economy, there were more than 5 thousand organizations that had the IPSS statute and that mainly developed their activity in the social area (64% of the overall total).

These IPSS have approximately presented a net financial need of 232.9 million of euros. In 2010, the resources of these organizations were about 5 111.4 millions of euros, which came specially from production (64,1%) and transfers and subsidies (27,0%). The expenses have amounted to 5 344.4 millions of euros, being the main expenses related to remunerations (31,5%), to social transfers (31,5%) and to intermediate consumption (21,3%). The IPSS have presented, in 2010, a positive current savings (328.4 million of euros). The gross capital has exceeded this value and has amounted to 590.2 million of euros.

61,9% of the IPSS resources have been directed to social action.

If the structure of the resources by activity is analysed, it is possible to observe that the production constituted the main source of resources in all the activities, with a bigger emphasis on the health area and on the well-being (76,9%) and culture, sport and recreation activities (71,5%). The transfers are also quite relevant in most of the activities, with a bigger focus on education and on investigation (36,3%), social activity (31,8%) and cults and congregations (31,7%).

As to the IPSS expenses, the social action has remained the activity with the bigger relative weight (62,7% of the overall total).

³ Statute of the Social Solidarity Private Institutions, published in Annex to the Decree-Law 119/83, of 25 February.

⁴ Cf. Satellite Account of Social Economy, 2010 (published in 2013) in http://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_publicacoes&PUBLICACOESpub_boui=157543613&PUBLICACOESmodo=2

In order to pursue its objectives, every year protocols are entered into between the Social Security and Solidarity Ministry and the major organizations, such as the National Confederation for Solidarity Institutions, the Portuguese Misericórdia Union and the Portuguese Mutual Association, a public and social partnership based on the sharing of common interests and on the distribution of duties and responsibilities between the State and the Institutions. For 2013, the financial participation, foreseen in the norm XXII, n. 1 of the Normative Order 74/92, of 20 May and in the Clause VII, n. 3(b) of the social solidarity cooperation pact, has increased 1.3%, when compared with 2012.

National Commission for the Protection of Children and Young People at Risk

The logistic administrative and financial support that is needed for the National Commission for the Protection of Children and Young People at Risk to function is ensured by the Social Security Institute I.P. (ISS, I.P.). It is considered logistic support, for instance, the facilities and material means of support, including transport. The administrative and financial support covers the legal proceedings deemed indispensable to the acquisition and management of goods and services and to the allocation of human resources to the National Commission and to its administrative management, in compliance with its proposals. The ISS. I.P. budget comprises a specific fund related to the functioning of the National Commission, elaborated once this one has been heard on the yearly amount to be proposed (DL 98/98, of 18 April (article 6-A), with the reading given by DL 65/2013, of 13 May).

Commissions for the protection of children and young people

The Commissions for the protection of children and young people, heretofore designated as protection commissions, are official non-judicial institutions with functional autonomy that purport to promote the rights of the children and of the young people and to prevent or end situations likely to affect their safety, health, formation, education or full development.

The protection commissions carry out their duties according to the law and decide with impartiality and independence.

The administrative authorities and the police force collaborate with the protection commissions in the course of their functions. The duty to collaborate also rests on the natural and legal persons, whenever so requested.

The facilities and the material means of support, in particular, the capital fund, that the protection commissions need in order to function are ensured by the local power and cooperation protocols may, to such effect, be entered into with State services represented in the National Commission for the Protection of Children and Young People at Risk.

The capital fund is designed to support occasional small amount expenses, resulting from the protection commissions' activity next to the children and to the young people, their families or to those that have their *de facto* custody.

The protocol entered into on 10 January 2001, between the Government (the Ministers of Justice and of Labour and Solidarity) and the National Association of Portuguese Municipalities, sets forth, in its number 2(b), that the charges related to the logistic support to the Commissions for the Protection of Children and Young People (CPCJ), are entrusted to the municipalities in virtue of article 14 of the Law on Protection, and may be subject to contract up to the monthly amount of 300.000 Escudos⁵. According to joint order 562/2001 this distribution is based in one only criterion that takes as reference the resident population less than 15 years, and three levels⁶.

The protection commissions are competent in the municipality where they have their headquarters. The protection commission functions in an extended or restricted way, being both composed of representatives from several entities, amongst them the municipalities and the social solidarity private institutions or Non-Governmental Organizations; multi-disciplinarily and inter-institutional purposes is sought.

The extended commission is entrusted with developing the promotion of the rights and to prevent children and young people from incurring in risky situations. The restricted commission operates on a permanent basis and intervenes in situations where the child or the youngster is in danger, on the terms provided for by law.

The members of the protection commission represent and bind the services and entities that designate them. The functions of the members of the protection commission, in the scope of its jurisdiction, have priority over the tasks that they have in their respective

⁵ 1496 Euros.

⁶ Joint order 562/2001. Cf. <http://www.cnpcjr.pt/left.asp?14.02.01>

services.

The deliberations of the protection commission are binding and have to be compulsory carried out by the services and entities therein represented, except in case of a duly grounded opposition. The protection commission conveys to the Public Prosecution the situations where a service or an entity opposes the execution of its deliberations.

Article 10(2/b) of the Convention (*National measures of co-ordination and collaboration*), part of Chapter III - *Specialised authorities and co-ordinating bodies*, requires each party “*to take the necessary legislative or other measures to set up or designate mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection*”.

The Committee refers in document T-ES(2014)6_en *observations on the replies to the general overview of the questionnaire*, and based on Portugal’s response to question 5(b) to the General Questionnaire, that although the collection of data is precise and clear, the situation remains hard to assess. It also shows some caution as to the concerns of the Committee for the Rights of the Child on the absence of a global entity that may produce, collect and coordinate statistical data, in a desegregated manner, on the several aspects of the children’s life. Thus, the Committee considers that:

1. It has no information on the compliance with the requirements related to the protection of personal data;
2. It has no information on the work developed in collaboration with the civil society.

The following may be said:

As to number 1

There is in Portugal specific legislation regarding the protection of personal data. As set out in article 35(3) of the Portuguese Constitution of the Republic, computers shall not be used to process statistical data that cannot be individually identified, and on the terms of paragraph 4 of the same article access to personal data by third parties shall be prohibited, save in exceptional cases provided for by law.

The law 67/98, of 26 October, transposes into the domestic legal order the Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

As to the protection of data obtained during the identification process of foreigners, see article 212 of the Law 23/2007, of 4 July, that ensures the safeguard of personal data, through the establishment of a set of guarantees, as well as article 88 of the Law 147/99, of 1 September, on the restrictive nature of the process of promotion and protection of children and young people at risk.

As to number 2

The criminal police (PJ) collaborates with the civil society. Specific examples may be given:

The signing of a protocol between PJ and the Portuguese Association for Missing Children – APCD and PJ have signed a protocol on 13 October 2011 in which they purport to give support to the families during the most critical hours of the disappearance and afterwards when the missing child is located, as well as in the elaboration of joint studies on disappearance and sexual exploitation of minors. Equally important is the joint execution of action plans on primary prevention with the intensive use of both institutions' sites and the actions, also jointly carried out, in schools, municipalities, shopping centres, holiday camps, stadiums and other places where there is a lot of people, to counsel parents, teachers, administrative public entities, those responsible for the safety of large public spaces and other stakeholders on the measures to take to avoid, as much as possible, the accidental disappearance of children and on the best way to act when they know of such occurrences;

Participation in SOS – missing child (phone line-IAC).