



Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Portugal

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Executive summary

Overview of the general elements of child-friendly justice in criminal proceedings

The Portuguese legal system seeks to protect the child in danger, whether the child is a victim of crime or the child is under 12 years old and has committed a crime, provided that they were considered to be in danger. A child under the age of 12 who has committed an offence is deemed to be needing protection, instead of punishment. The State may intervene when the child is considered to be in danger because of an absence of the educational care needed for their development. Such intervention takes place through the system of promotion of the rights and protection of children in danger. The Portuguese legal system also provides special procedures for the judgment of a crime committed by a child aged over 12 years old, which takes place through the educational guardianship system and the criminal system.

The age of criminal responsibility is 16 years of age.

Child victims may intervene in judicial proceedings either as an *assistente*¹ in criminal proceedings, or, if the child is deemed to be in danger, in a promotion and protection procedure.

Overview of children's involvement before, during and after judicial proceedings

A child suspect can be dealt with under different legal regimes, depending on age.

- If the child is aged less than 12, he or she is considered to be in need of protection. Thus, he/she is referred to the system of promotion and protection.
- If the child is aged 12 or over but under 16, he/she will be the subject of an educational guardianship procedure.
- Finally, if the child has reached the age of 16 – the age of criminal responsibility, the child will be treated as an adult. Nevertheless, for children aged between 16 and 21 years old, specific rules apply.

The current system recognises children as subjects in any proceedings. Child victims and offenders in judicial proceedings enjoy the following rights: right to be heard, to be informed, to be assisted by a lawyer, to lodge an appeal against a decision or to participate in the decision-making process.

Child witnesses are not necessarily subject to special treatment in criminal proceedings, except in two cases: a) when the child is especially vulnerable or in danger because of their status as a witness; or b) when the child is a victim of domestic violence.

Promotion and monitoring of a child-friendly approach to criminal justice, with an overview of strengths and potential gaps

One of the strengths of the Portuguese system is that children in criminal proceedings are considered autonomous participants, having autonomous rights, such as the right to be heard, the right to information, to be legally assisted and to appeal. Portuguese law also takes into account children's special vulnerability. Both as victims and as offenders, children can be subject to measures, aimed mainly at protecting or educating them. Custody and placement measures are applicable as a last resort. Moreover, the opinion of the child is taken into account in the choice of the measure. A child placed in a centre has several rights and the child's treatment is not at the full discretion of the placement centre.

However, procedures are often very lengthy. Some criminal procedures can take years to reach a final decision. Lengthy procedures may be quite difficult for the child, especially when they have to give testimony several times.

¹ The "*assistente*" is the person who, by being a victim of the crime or because the law grants him/her legitimacy to be recognised as a victim, required his/her intervention in the criminal proceeding to the court in order to defend his/her interests. This intervention can be either in conjunction with the Public Prosecutor (for public and semi-public crimes) or alone (private crimes).

Nevertheless, children aged over 16 are treated as adults and standard criminal procedure and penalties are applicable to them. The law on child offenders does not provide a satisfactory transition from the educational guardianship procedure to the criminal procedure. Furthermore, criminal penalties are applied to children over 16 in the same way as they are to adults. No references to educational needs or rights, for example, are made in relation to the execution of criminal penalties by offenders aged over 16.

Abbreviations

APAV	Association for Victims' Support
CA	Competent Authority
CNPCJR	National Commission for Protection of Children at Risk
CPCJ	Commission for the protection of children and juveniles
CoE	Council of Europe
CRC	UN Convention on the Rights of the Child
EC	European Commission
EU	European Union
n.	number
UN	United Nations

1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children

Under Portuguese law, a child is a person who is under 18 years old. A juvenile is a child aged over 16². However, for the purpose of this study, which concerns children as defined by the UNCRC (persons under 18 years old), only the term child offender/suspect will be used for children criminally liable. The current system recognises children as subjects in any proceedings. Procedures are in place to guarantee their right to be heard, to be informed, to be assisted by a lawyer, to lodge an appeal against a decision or to participate in the decision-making process, where they are involved in criminal proceedings as a victim or as an offender. Some of the final decisions taken in criminal proceedings depend on the child's consent. This is explained in more detail in [Section 3](#).

Following several recommendations of the United Nations Committee on the Rights of the Child, Portugal adopted the [Law on the Promotion and Protection of Children and Juveniles in Danger](#) and the [Law on Educational Guardianship](#) in 1999. These laws guarantee several principles enshrined in the Convention on the Rights of the Child (CRC), such as the best interests of the child, the primacy of the family, the principle of the participation of the child, amongst many others.

As the 2nd Portuguese Report to the UN Committee on the Rights of the Child mentions, 'there is a growing awareness that no decision in respect of a child can be fair if it does not take account of the child's view; court decisions often refer to the right of the child to respect for his or her deep psychological bonds. This is why, when a child should not or cannot be heard by the judge, for example because of age, his or her view should be heard by a psychologist'³. Thus, children have a proactive role in criminal proceedings where they intervene. For that purpose, all the participants in criminal proceedings are required to use clear and simple language in order to be understood by the children involved, taking account of their age and stage of development, as explained below in [2.1.6](#)

This section aims to provide an overview of Portugal's approach to children in criminal proceedings. Three main aspects will be analysed here: firstly, the types of proceedings where the child may intervene in the criminal context ([2.1.](#)), secondly, the specialised services dealing with children in those proceedings ([2.2.](#)), and finally, the legal responses to discrimination against children in criminal proceedings ([2.3.](#)).

Children in Criminal Proceedings

The Portuguese legal system seeks to protect the child in danger. That is the case when the child is a victim of crime. That is also the case when the child is under 12 years old and has committed a crime, provided that they were considered to be in danger. This is because children under the age of 12 are deemed to be incapable of breaching criminal law. Therefore, the fact that a child under the age of 12 commits an illegal act implies that he/she needs protection, instead of punishment. The State may intervene where the child is considered to be in danger because of an absence of the educational care needed for their development⁴. Such intervention takes place through the system of promotion and protection ([2.1.1.](#)).

The Portuguese legal system also provides special procedures for the judgment of a crime committed by a child aged over 12 years old. This would take place through the educational guardianship system and the criminal system ([2.1.2.](#)).

² Article 1, n. 2 of the [Law on the regime applicable to juvenile delinquents](#), Decree-Law 401/82 of 23 September.

³ II Portuguese Report to the UN Committee on the Rights of the Child, p. 48.

⁴ II Portuguese Report to the UN Committee on the Rights of the Child, p. 137.

The system of promotion and protection

The legal provisions on protection of children in danger have been in force since January 2001⁵. They apply to a child who has committed a crime before reaching the age of 12 (including for children between 16 and 18). They can also be applied to a child who is a victim of a crime and considered to be in danger. That would be the case if he or she is in one of the following situations:

- Abandoned or living alone;
- Suffers physical or mental mistreatment or is a victim of sexual abuse;
- Does not receive the care or affection appropriate to their age and personal circumstances;
- Is obliged to work in excessive or inappropriate conditions for their age, dignity, personal situation or in a way considered harmful for their education or development;
- Is subject, directly or indirectly, to behaviour that seriously affects their safety or their emotional balance;
- Behaves or indulges in activities or consumes substances that severely affect their health, safety, training, education or development, without the parents, legal representatives or guardians acting adequately against it⁶.

All State intervention for the promotion of the rights and protection of children in danger, or of children who are aged below 12 years old and have committed a crime must respect several principles. The paramount principles are the following⁷:

Interests of the child - the intervention is aimed at protecting the interests and rights of the child;

Privacy – the promotion of the rights of the child should be carried out with respect for their intimacy and private life and their right to protect their personal image. Thus, all parties involved are bound to secrecy;

Early intervention – the intervention should take place as soon as the danger is known;

Minimal intervention - the intervention must be developed exclusively by those entities and institutions whose action is essential for the effective promotion and protection of the rights of children in danger;

Proportionality and timeliness - the intervention should be adjusted to the necessity and danger of the situation and can only interfere in the child's life and the life of their family in what is strictly necessary for that purpose;

Parental responsibility - the intervention should be carried out in a way that allows the parents to assume their duties towards their children;

Prevalence of family – measures that integrate the child into his or her family or that promote adoption should be given priority;

Mandatory information - children, parents, and legal representatives or guardians are entitled to be informed of their rights, about the basis of State intervention and how it is processed;

Hearing and compulsory participation - children, as well as parents, have the right to be heard and to participate in all parts of the procedure, including the decision on the measures to be applied;

⁵ [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n.º 147/99 of 1 September.

⁶ Article 3 of the [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n.º 147/99 of 1 September.

⁷ Article 4 of the [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n.º 147/99 of 1 September.

Subsidiarity - interventions should be carried out initially by the entities that deal most directly with the child on a daily basis.

The protection of children in danger relies on the active participation of the community. That protection is exercised in the first place by their families and by the public or private entities which deal with children in their daily life. Thus, all entities coming into contact with children who are in danger must immediately undertake measures aimed at protecting them if they are deemed to be in danger. Schools, health centres, hospitals, local authorities, police forces, cultural associations, sports and recreation facilities and non-governmental organisations aimed at supporting children are examples of these entities.

On a secondary level of intervention, the Commissions for the Protection of Children and Juveniles - CPCJs (composed of representatives of various social and community areas, including health, education, parents' associations, municipalities, social services, and security forces, amongst others) are involved.

Finally, on a third level, child and family courts are competent to protect the child. If such courts do not exist in the territorial area of residence of the child, the district court is the competent court⁸.

Anyone who acknowledges that a child is in danger must report that fact to the competent authorities - the police, to the CPCJ or directly to the judicial authorities. Entities with competence over children and child offenders must communicate to the CPCJs all dangerous situations that come to their attention in the exercise of their activity, whenever they cannot ensure the timely protection that the circumstances may require. The police and judicial authorities are under the same obligation. Despite the power of the entities in the first line of intervention, only CPCJs or the courts are competent to apply any promotion or protection measure (on these measures, see **Error! Reference source not found.**).

The intervention of CPCJ, however, is conditional on the consent of those who hold parental responsibility, legal representation or guardianship of the child. If no such consent is given or if it is withdrawn, the CPCJ must communicate this to the public prosecutors because, from then on, the intervention will be up to the courts. The court also intervenes directly whenever there are no CPCJs in the area of residence of the child. The Portuguese system of promotion and protection is, therefore, a system of shared and subsidiary responsibilities. It is a pyramid structure with successive levels of intervention, starting with the entities closest to civil society, then moving to the CPCJ which is responsible for implementation measures under consent and, ultimately, the courts.

The educational guardianship system and the criminal system

When a child is suspected of having committed a crime, he or she can be dealt with under different legal regimes, depending on age.

- If the child is aged less than 12, he or she is considered to be in need of protection. Thus, he/she is considered as a child in danger and referred to the system of promotion and protection which was summarised above.
- If the child is aged 12 or over but under 16, he/she will be the subject of an educational guardianship procedure.
- Finally, if the child has reached the age of 16 – the age of criminal responsibility, the Criminal Code and the Criminal Procedure Code will apply. Thus, the child will be treated as an adult. Nevertheless, for children aged between 16 and 21 years old, specific rules apply⁹.

⁸ Articles 28-30 of the [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n.º 147/99 of 1 September. The Portuguese judiciary map is currently under review. The new map foresees child and family courts in every judicial circumscription.

⁹ [Law on the regime applicable to juvenile delinquents](#), Decree-Law n. 401/82 of 23 September.

The educational guardianship system

The educational guardianship system is aimed mainly at ensuring better integration of the child in community life, primarily through understanding and acceptance of the rules of society¹⁰. The educational guardianship procedure runs in the Children and Family Courts or, if none exist in the area, in the district court of the place of residence of the child. It entails an emergency procedure, which investigates whether a crime has been committed and whether the child suspect needs education measures. If both these questions are answered positively, the judge should sentence the child to an educational guardianship measure.

During the educational guardianship procedure, the public prosecutor chairs the investigation. She/he should report, at any time to the competent authorities, such as social services, all cases of children who lack social protection. Furthermore, the public prosecutor can also require the application of measures of promotion and protection¹¹. Moreover, the public prosecutor may appeal against court decisions to protect the child's interests.

Throughout the investigation, the public prosecutor is assisted by the criminal police who gather evidence. She/he is also assisted by social reintegration services, which are responsible for monitoring children and their families through the preparation of social reports¹².

If the public prosecutor does not file the procedure, she/he must request the opening of the judicial phase of the procedure, chaired by a judge. This phase is aimed at proving the allegations made against the child, assessing the need for the application of a guardianship measure and, if so, to decide which measure to apply. If the prosecutor suggests the application of a placement measure in an educational centre, the court must be formed by one judge (magistrate) and two social judges, that is, two representatives of civil society¹³.

Throughout the educational guardianship procedure, the judicial authorities may request attendance by or support from social workers, probation, health, psychology, and other workers with special and suitable competences¹⁴. The judicial authorities may also ask for the cooperation of public or private mediation services¹⁵.

Apart from the child and any witnesses, the parents, legal representatives or guardians are also heard in court.

The criminal system for child offenders

The common criminal and procedural laws apply, to children of 16 years and over, as if they were adults.

Nevertheless, specific rules apply to children who are over 16 and under 21 years old¹⁶. For example, instead of applying penalties under the Criminal Code, special reduced prison sentences or education measures can be applied¹⁷. (for children up to 18 years old) or remedial action (for those who are over 18 and under 21 years old). Such measures are, however, not mandatory and are applied at the discretion of the judge, considering the personality of the child and the circumstances of the case.

¹⁰ Article 2, n. 1 of the [Law on the Educational guardianship](#), Law n.º 169/99 of 14 September.

¹¹ Article 43 of the [Law on the Educational guardianship](#), Law n.º 169/99 of 14 September.

¹² Article 75, n. 1, of the [Law on the Educational guardianship](#), Law n.º 169/99 of 14 September.

¹³ [Decree-Law n. 156/78 of 30 June](#).

¹⁴ For example, Articles 82 and 99, n. 3 of [Law on the Educational guardianship](#), Law n.º 169/99 of 14 September.

¹⁵ Article 42 of the [Law on the Educational guardianship](#), Law n.º 169/99 of 14 September.

¹⁶ [Law on the regime applicable to juvenile delinquents](#), Decree-Law 401/82 of 23 September.

¹⁷ Provided in the Educational Guardianship Law.

The child as a witness in criminal proceedings

A child is not necessarily subject to special treatment when a witness in criminal proceedings, except in two cases: a) when the child is especially vulnerable or in danger because of their status as a witness; or b) when the child is a victim of domestic violence.

When the child is considered as especially vulnerable or when his or her life, physical or psychological integrity or freedoms are at risk because of participation as a witness in a case, the Regime for the Protection of Witnesses in Criminal Proceedings applies¹⁸. This law foresees special measures for the collection of evidence and for the protection and security of witnesses. Examples include, the concealment of the witness's identity, monitoring of the procedure by a specially qualified worker or psychological support.

A child victim of domestic violence is also entitled to special protection from the State¹⁹. This protection encompasses several measures, such as special safety precautions and safeguarding of privacy, confidentiality, psycho-social support, dedicated phone assistance, free legal consultation and technical monitoring by specially-trained workers.

Specialised services dealing with children involved in criminal proceedings

Several entities may contact children while they are involved in criminal proceedings.

Firstly, the CPCJs play a role in promotion and protection proceedings. These institutions include, representatives of at least five of the following entities: social services, security forces, private institutions developing sporting, cultural or recreational activities for children, youth services, doctors and people appointed by the city council from among electors, preferably with special knowledge or ability to intervene in the area of children in danger²⁰.

Administrative authorities and police authorities and all natural and legal persons have a duty to cooperate with the CPCJs if asked to do so. The CPCJs are monitored, supported and assessed by the National Commission for the Protection of Children at Risk - CNPCJR²¹, responsible for planning state intervention and for coordinating, monitoring and evaluating the performance of public entities and the community in protecting children in danger.

Moving on to the court system, matters pertaining to children are generally dealt with in the Children and Family Courts, except when there are no such courts in the area of residence of the child. In that case, the power is exercised by the district court in the same area.

Child and Family Courts are competent to judge proceedings in the promotion and protection system, as well as in the educational guardianship system. In the criminal system, i.e., when an adult has committed a crime against a child, or a child aged above 16 years old has committed a crime, the common courts are competent.

The public prosecutor is the judiciary authority that represents the interests of children at national level. In Portugal there is no ombudsman for children. Nevertheless, the Office of the Portuguese Ombudsman²² works in the area of child protection, and runs a telephone hotline named 'Messages from Children'. Only the Autonomous Region of Azores, has an Ombudsman specifically for children who are under a placement measure²³.

All Portuguese magistrates - judges and prosecutors - receive training in family and child law, during their time at magistrates school (CEJ - Centre for Judicial Studies). Education

¹⁸ [Regime for the Protection of Witnesses in Criminal Proceedings](#), Law n.º 93/99 of 14 July.

¹⁹ [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September.

²⁰ Article 25, n. 2 of the [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n. 147/99 of 1 September.

²¹ Created by the [Decree-Law n. 98/98 of 18 April](#).

²² The Portuguese Office of the Ombudsman aims at defending and promoting the citizen's rights, freedoms, safeguards and legitimate interests by reviewing, without power of decision, complaints concerning acts or omissions on the part of public bodies and issuing recommendations to the competent organs as are necessary to prevent or make good injustice (Article 23 of the [Constitution of the Portuguese Republic](#)).

²³ [Decreto Legislativo Regional n. 2/2004/A, of 23 January](#).

and awareness-raising on the rights of the child is included in the initial and continuing training of judges and prosecutors. However, there is no specific training on how children should be dealt with.

Moreover, the placement of judges in Children and Family Courts is not conditional on any particular experience, requiring only that he/she has at least 10 years of effective judiciary activity as a judge or prosecutor, and with a performance evaluation of, at least, 'good with distinction'. If there are no Children and Family Courts, jurisdiction is exercised by the court of general jurisdiction, which may be chaired by a judge in the early stages of his or her career.

Court officials receive no specific training regarding children. However the Bar Association has developed several courses and seminars on Justice for Minors, but attendance is not mandatory.

Police forces receive specific training for dealing with children²⁴. The various colleges for members of the security forces currently include "rights of minors" in their curricula²⁵. The Officer Training School of the Criminal Investigation Department also includes the rights of the child in its curriculum²⁶. The High Institute of the Judiciary Police and Criminal Sciences provides life-long training courses on sexual abuse of children and trafficking of human beings. The Judiciary Police also has personnel specially trained to deal with children in danger.

The National Republican Guard has developed the 'Women and Child Centre' project, within which specialist teams were created for the prevention, monitoring and investigation of violence against women and children. Additionally, all police forces participate in conferences, actions and other initiatives organised by both public entities and NGOs directed at children, parents and professionals, where these themes are discussed.

Finally, all professionals working in educational centres have specialised training for this purpose, provided at the beginning of their employment.

Training measures are regularly developed by the Social Security Institute, aimed at social security professionals with representation in CPCJs and at multidisciplinary teams supporting courts within the scope of the promotion and protection procedures. Also the National Commission for the Protection of Children and Young People at Risk organises several training sessions, aimed particularly at teachers, police and legal officers and social workers²⁷.

The 2nd Portuguese Report to the UN committee of the rights of the child states that 'given the legally-recognised right of children to be heard, technical support and training activities for staff working with children emphasise the importance of seeking the child's views'²⁸.

In general, there is no data on the regular monitoring of the various professionals working with and for children to ensure their suitability for the job. Anyone who works with children must have their criminal record checked to prove suitability for the job. This applies in the public and the private sector.²⁹ Furthermore, all judges and prosecutors are evaluated every four years, to guarantee they remain suitable for the job.

Despite the system as explained above, there is no coordinating entity or system for the full assessment of all these institutions, except for CNPCJR (which is formed by government

²⁴ The National Commission for Protection of Children at Risk – CNPCJR – provides, in its website, [guiding principles](#) for the police forces who deal with children in danger.

²⁵ II Portuguese Report to the UN Committee on the Rights of the Child, p. 48.

²⁶ I Portuguese Report to the UN Committee on the Rights of the Child, p. 7.

²⁷ Summary Record of 731st Meeting: Portugal. 06 March 2003. CRC/C/SR.731 (Summary Record), para. 5.

²⁸ II Portuguese Report to the UN Committee on the Rights of the Child, p. 41.

²⁹ [Law n.º 113/2009 of 17 September](#). This law implemented Article 5 of the Council of Europe Convention against sexual exploitation and sexual abuse of children.

and civil society representatives). This Commission coordinates and evaluates the operations of all CPCJs.

Nevertheless, there have been several attempts to coordinate all stakeholders' activities. The Public Prosecutor General's Office – the upper body of the public prosecution service - has issued two orders aimed at standardising procedures for cooperation between prosecutors and the CPCJs. It has also issued, a Joint Directive with the CNPCJR to standardise procedures in the same matter. In turn, the CNPCJR signed protocols of cooperation and coordination with the Institute of Legal Medicine (competent at providing an expert opinion on personality, mental health or sexual crimes) and the Ministry of Health (under a Joint Directive on appointment and duties of health representatives in CPCJs). Furthermore, the CNPCJR has adapted and translated into Portuguese several manuals on best practice in the promotion and protection of children's rights produced by the Government of the Spanish Autonomous Community of Valencia (*Generalitat Valenciana*). These manuals are aimed at the entities which are on the front line when dealing with children. They are available on the website of the CNPCJR³⁰.

The Government and the National Association of Portuguese Municipalities has also concluded several protocols in order to ensure the better functioning of CPCJs. Finally, protocols have also been developed between the Ministries of Education and Labour and Social Solidarity, to streamline the functioning and composition of CPCJ.

Finally, on 11 April, 2012, the Government established the Task Force for an Agenda for Children, composed of people active in the defence of children's rights. This Task Force is charged with producing, among other things, an analysis of obstacles and constraints to the full completion of children's rights.

Discrimination

The principle of non-discrimination is enshrined in article 13 of the Portuguese Constitution. Article 69 specifically sets out the right of children to protection from society and the State against any form of discrimination. In order to implement non-discrimination on the basis of ethnicity or nationality, the Portuguese Government has established the High Commissioner for Immigration and Ethnic Minorities³¹. This office is responsible for the integration of immigrants. It provides a support centre where legal advice and other services can be provided. Therefore, it may help immigrant children when they intervene in criminal proceedings, advising them, and also accompanying them to the CA. Moreover, it has developed several programmes aimed at promoting the social inclusion of children of migrants and of people from ethnic minorities, particularly through the prevention of crime³².

Immigrant children can also be entitled to legal aid when they do not have sufficient financial resources. Nevertheless, legal aid is only provided to those aliens who are nationals of the European Union or who have a valid residence permit in a Member State of European Union. Other aliens would only have the right to legal protection if Portuguese citizens have the same right in their countries of origin. Thus, immigrant children can be excluded from legal aid when they do not reside legally in Portugal³³. Nevertheless, asylum-seeker children must always have access to legal aid³⁴. Moreover, the administrative authorities dealing with asylum-seeker or refugee children who are victims of crimes should take them to the CA responsible for their protection³⁵.

³⁰ <http://www.cnpcjr.pt>.

³¹ [Decree-Law 3-A/96 of 26 January](#). Today this institution is called High Commissioner for the Immigration and Intercultural Dialogue.

³² [Choices Program](#), which was established by [Resolution of the Council of Ministers No. 4 / 2001 of 9 January](#).

³³ [Law on the access to Justice and to Courts](#), Law n.º 34/2004, of 29 July.

³⁴ Article 49, n. 1, d) of the [Law on conditions and procedures for granting asylum, subsidiary protection or refugee status](#), Law n.º 27/2008, of 30 June.

³⁵ Article 78 of the [Law on conditions and procedures for granting asylum, subsidiary protection or refugee status](#), Law n.º 27/2008, of 30 June.

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

A child who is a victim of a crime may intervene in two different judicial proceedings: either as an *assistente*, in criminal proceedings, or, if the child is deemed to be in danger, in a promotion and protection procedure.

2.1.1 Reporting a crime

All public servants who become aware of a crime during the exercise of their functions must report it to the CA³⁶. This applies both to adults and children. Regarding crimes against children specifically, Portugal has set up mandatory reporting systems for professionals working with children, who identify the use of corporal punishment in the family³⁷. The Ministry of Health has approved a document, 'Child and Youth Maltreatment – Health Intervention', which provides technical guidelines enabling health professionals to identify abusive situations³⁸. There are also manuals on how police officers should deal with children³⁹. These manuals provide several indicators and a checklist of psychological and physical signs that may determine whether the child has been a victim of a crime⁴⁰.

For support in emergency situations, the Health National Call Centre (*Saúde* 24: 808242424) can be contacted. It provides information and guidance regarding any suspicious or confirmed situations of child maltreatment.

Moreover, any person who knows that a child is a victim of a crime that endangers their life, physical or psychological integrity or freedom, has the obligation to report the crime to the CA⁴¹.

Recently, several telephone hotlines have been created to facilitate the reporting of cases of child abuse and maltreatment: the Ministry of Social Solidarity, the [Ombudsman](#) and NGOs, like the [Child Support Institute](#) or [Victim Support Association](#) have such telephone hotlines.

Portuguese criminal procedural law distinguishes between three kinds of crimes as regards the prosecution regime: public, semi-public or private. For public crimes, no complaint is necessary, so the Public Prosecutor is competent to start a procedure against anyone suspected of a crime. For that, a notice of the crime is sufficient, regardless of the source of that notice (as long as the notice of the crime has a minimum level of credibility). This means that a report from a witness, a report from the child (or a complaint, even if, in this case, unnecessary), or from anyone who knows or suspects a crime was committed, or any other way the police or the public prosecutor acknowledges the crime was committed, is sufficient to start a procedure. For semi-public crimes a complaint is needed. Finally, for private crimes, the procedure requires a complaint and the victim has to intervene as *assistente*, being the initiator of the prosecution – and only then can the public prosecutor decide whether or not to follow that 'private accusation'.

Thus, if a child is a victim of a public crime, no complaint is necessary. If a child is a victim of a private or semi-public crime, a complaint must be filed. All crimes against sexual liberty

³⁶ Article 242 of the [Criminal Procedure Code](#).

³⁷ Article 65 of the [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n.º 147/99 of 1 September.

³⁸ [Order n. 31292/2008 of 5 December](#).

³⁹ CNPCJR, [Guide for the Security Forces Professionals while dealing with cases of child abuse or endangered children](#).

⁴⁰ CNPCJR, [Guide for the Security Forces Professionals while dealing with cases of child abuse or endangered children](#), p. 174 et seq.

⁴¹ Article 66 of the [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n.º 147/99 of 1 September.

and self-determination of children (except for the crime of sexual intercourse with adolescents), the crime of domestic violence and of maltreatment are now public. Therefore, no complaint is necessary to trigger investigation of these crimes.

If the child was a victim of a private or semi-public crime, then a complaint is necessary. According to the general rules of the criminal code, the complaint must be filed by the victim⁴². However, if the victim is under 16 years old, their parents, legal representatives, guardians or directors of child placement centres must file the complaint. Where the interests of the child demand it, and the right to complain cannot be exercised by the person who has legal standing because he/she committed the crime, the Public Prosecutor should start the proceedings within six months of becoming aware of the facts and the identity of the offenders⁴³.

If no complaint is filed by those who have legal standing, the child can file the claim from the day they reach 16 years of age⁴⁴.

A complaint can be filed in written form or orally, at the Public Prosecution Service, in any police office or judiciary police service, in the Legal Medicine Institute, or online through the "[Electronic Complaint Portal](#)" of the Internal Administration Ministry.

As a general rule, the complaint must be filed within six months of:

- the complainant becoming aware of the facts of the crime and the identity of the accused;
- the death of the victim;
- the day the victim became incapable.

If the victim has not reached 16 years of age and those who have the legal standing to file a complaint on the child's behalf do not do so, the right of complaint is extinguished six months after the victim's 18th birthday⁴⁵.

2.1.2 Provision of information

Criminal procedures

Whenever the CA acknowledges that a child has suffered damage as a consequence of a crime (whether the child is the victim or not), it must inform their parents, legal representatives or guardians about the right to bring a claim for civil damages⁴⁶. If the child was a victim of a private crime, he or she is also informed about the obligation to intervene as an *assistente* and on the procedures to follow⁴⁷. These provisions are generally applicable to all victims, and are not specific to children.

The right to information is specially protected in cases where a child has been a victim of domestic violence⁴⁸. A leaflet entitled 'Procedural Status of the Victim' should be given to them. It explains the rights and duties of victims within the procedure.

Several NGOs also provide information to victims of crimes. One example is the Association for Victim Support (APAV). It provides assistance to victims of crime and their families through information and legal support. Its manual on good practices states that all victims should be kept informed during all stages of the procedure⁴⁹.

⁴² Article 113 of the [Criminal Code](#).

⁴³ Article 113, n.3, a) of the [Criminal Code](#).

⁴⁴ Article 113, n.6 of the [Criminal Code](#).

⁴⁵ Article 115, n.2 of the [Criminal Code](#).

⁴⁶ Article 75, n.1 of the [Criminal Procedure Code](#).

⁴⁷ Article 246, n. 4 of the [Criminal Procedure Code](#).

⁴⁸ Article 11 and 15 of the [Law for Protection of Victims of Domestic Violence](#), Law 112/2009 of 16 September.

⁴⁹ APAV, Children and Juvenile Victims of Violence: Understanding, Intervening and Preventing, p. 118 et seq.

Promotion and protection procedures

The right to information is one of the paramount principles of the promotion and protection procedure⁵⁰. A child, together with his or her parents, legal representatives or guardians must be informed of their rights and about the development of the procedure, in a language deemed to be understandable for someone of his or her age⁵¹. If a placement measure is applied to protect the child, the placement centre must give him or her a welcome guide, providing information on their rights and the following steps of the procedure⁵². Moreover, during the execution of the promotion and protection measure, the child can have access to their files through their lawyer. Furthermore, the judge can authorise personal access for the child to his/her file, after taking into account his or her level of maturity⁵³.

2.1.3 Protection from harm and protection of private and family life

Protection from harm

Criminal procedures

Where children are considered especially vulnerable or where their lives, physical or psychological integrity or freedom are at risk because of their participation as a witness⁵⁴ in a particular procedure, special security and privacy measures apply. Such measures are foreseen in the Regime for the Protection of Witnesses in Criminal Proceedings⁵⁵. This regime is applicable to all witnesses in need of special protection, but contains special measures for children, as stated below.

a) General rules

The court may decide (officially or by request) that the child should provide their testimony while hidden from view and/or with voice distortion, so that the he or she is not identifiable⁵⁶.

In cases of more serious crimes, testifying through videoconference is also possible, provided the court finds it necessary for the protection of the witness⁵⁷. The court may also limit access to the place where the child will testify, only allowing technical personnel, clerks and security agents to be present⁵⁸. When the testimony is given by videoconference, a judge must also be present in the place where the child testifies, in order to identify the child, help with the hearing and decide on the measures necessary for the security of everyone involved⁵⁹.

The identity of the victim can be concealed throughout various stages of the procedure or throughout the entire procedure, when the following situations occur simultaneously:

- The testimony or statements relate to crimes of human trafficking, criminal association, terrorism, international terrorism, terrorist organisations, crimes punishable by no less than eight years of imprisonment, crimes against life, physical integrity, freedom of the people, sexual freedom or sexual self-determination, corruption, aggravated fraud,

⁵⁰ Article 4 of the [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n.º 147/99 of 1 September.

⁵¹ Article 86 of the [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n.º 147/99 of 1 September.

⁵² Social Security Institute,

⁵³ Article 88 of the [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n.º 147/99 of 1 September.

⁵⁴ The term 'witness' is referred to in the [Regime for the Protection of Witnesses in Criminal Proceedings](#) as any person who, regardless of his or her particular statute in the proceeding and as a result of having information or knowledge of relevant facts is put at risk or endangers other person.

⁵⁵ [Regime for the Protection of Witnesses in Criminal Proceedings](#), Law n.º 93/99 of 14 July.

⁵⁶ Article 4 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁵⁷ Article 5 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁵⁸ Article 8 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁵⁹ Article 10 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

damaging the administration, or crimes committed by someone belonging to an organised criminal association, for the purposes of that association;

- The life, physical integrity, freedom or property of the witness, his/her family, or other people close to them is seriously at risk;
- The credibility of the witness is not in question;
- The testimony or statement is relevant evidence⁶⁰.

A decision on concealment of identity is made during a complementary procedure. Such a procedure is urgent and confidential, and only the judge and whoever he/she allows have access to it⁶¹. For the purpose of this special procedure, the Portuguese Bar Association designates a public defender for the witness⁶². If the judge decides on concealment of the identification of the child, he/she will henceforth be identified in the criminal procedure by a codename⁶³.

Whenever the security of the child demands, other security measures may apply, such as:

- using an address other than the child's official place of residence;
- transportation in a vehicle provided by the state;
- private room available in the police or court facilities, with security and surveillance, if necessary;
- police protection for the child and his/her family;
- if in prison, the child should be isolated from other inmates and be transported in a separate vehicle;
- provision of alternative accommodation⁶⁴.

Also, provided that the conditions mentioned above are met, a special security programme might be implemented, in order to protect the child witness, his/her family or others during and after the procedure⁶⁵. Examples include issuing new identity documents, providing safe housing or offering transportation or financial support⁶⁶.

b) Specific rules for children

The law on protection of witnesses also provides solutions for especially vulnerable witnesses, such as children.

Whenever the CA acknowledges the special vulnerability of a witness, such as a child, it must designate a social work professional or other specialised professional to assist them, and, if necessary, provide psychological support⁶⁷.

During the investigation stage, the child's testimony must be given as soon as possible after the crime was committed⁶⁸. If possible, the testimony should not be repeated during the investigation stage.

The child may give a statement during the investigation phase of the criminal process⁶⁹. Such declarations must be made in an informal and appropriate environment. The child should be accompanied by a specially qualified professional.

⁶⁰ Article 16 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁶¹ Article 18 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁶² Article 18, n. 3 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁶³ Article 18, n. 5 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁶⁴ Article 20 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁶⁵ Article 21 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁶⁶ Article 22 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁶⁷ Article 27 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁶⁸ Article 28, n. 2 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

During the subsequent stages of the procedure, the judge may ensure that the child does not meet or face other people involved in the procedure.

By request of the Public Prosecutor, the judge may decide that the child should be removed on a temporary basis from his/her normal environment⁷⁰. In such cases, though, the judge should hear the child, and other people deemed relevant, namely the social workers⁷¹.

Promotion and Protection procedures

Where a child who is a victim of a crime is considered to be in danger, the promotion and protection procedure aims specifically to put an end to the risk to the child.

In case of clear and present danger to the health, security or life of the child, an urgent promotion and protection procedure is initiated, the parents', legal representative's or guardian's consent is not required for this. The child should then be taken to a place of safety. The court has to approve the measure as soon as possible. For emergency situations, there is a national social emergency service run by the Institute of Social Security, which has a dedicated emergency helpline.

The alternative care of children at risk should encompass⁷²:

- Emergency Units (which ensure immediate shelter for children in situation of serious, real, actual or imminent danger, for a period which should be no longer than 20 days).
- Temporary Residential Care Centres⁷³ (which provide urgent and temporary shelter for children in danger, for a period which should be no longer than six months).
- Children's Homes (which provide shelter for more than 6 months).
- Autonomy-building Apartments (which is a social mechanism developed in local communities to help young people aged 15 years or over to build an independent life in a safe environment).
- Foster families (which are qualified and technically prepared families that provide care to children).

Protection of private and family life

Criminal procedures

The general rule is that the criminal procedure is public in all its stages. The public nature of the procedure encompasses:

- a) Access for the general public at the pleadings stage.
- b) Narration of pleadings by the media; but the transmission or recording of images and sounds at hearings is forbidden, unless the CA specifically allows it and the person concerned does not oppose it⁷⁴.
- c) Access to the case file and obtaining certificates and copies of any parts of it.

However, during the investigation stage, the judge can restrict public access when it would adversely affect the rights of the accused, the victim or other participants, at their request⁷⁵.

⁶⁹ Article 28, n. 1 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁷⁰ Article 31, n. 1 and 2 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁷¹ Article 31, n. 3 and 4 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁷² Institute of Social Security, Portuguese Child Policy Social Security, Lisbon, 2007.

⁷³ The Institute of Social Security provides, on its [website](#), information regarding alternative care. Information on the rights and duties of children in placement centres is also provided.

⁷⁴ Article 88, n.2, b) of the [Criminal Procedure Code](#).

⁷⁵ Article 86, n.2 of the [Criminal Procedure Code](#).

The Public Prosecutor may also decide that the procedure should be confidential during the investigation stage, namely when the rights of the participants so demand. His/her decision must be validated afterwards by the judge.

Criminal procedures relating to crimes against sexual freedom and sexual self-determination where the victim is a child aged below 16 years old must take place in private. Moreover, the media is forbidden to publish, by any means, the identity of children aged under 16 who are victims of certain crimes including against sexual freedom and sexual self-determination⁷⁶.

If the child is a victim of domestic violence, their right to privacy is specially protected. Thus, the support professionals working with them must guarantee the confidentiality of the information they provide⁷⁷.

Finally NGOs dealing with victim support (such as APAV) should also respect the duty of confidentiality⁷⁸.

Promotion and Protection procedures

Where a child who is a victim of crime is considered to be in danger, the protection of their intimacy, the right to preservation of their image and to the protection of their private life are considered paramount guiding principles⁷⁹.

Therefore, the first bodies called upon to protect them are those who have least impact on their privacy – such as schools, hospitals, day-care. The CPCJs and courts only intervene as a second and last resort⁸⁰. The Portuguese courts have also stressed that interventions aimed at protecting children in danger must be reduced to the strictly necessary and must avoid unnecessary interference in their family and private life⁸¹.

The promotion and protection procedure is confidential. Only the members of the CPCJ, the parents, the legal representatives or the child's guardian may have the right to consult the process. Other interested persons can consult the files if so authorised by the judge or by the president of the CPCJ. Files are destroyed when the child reaches the age of majority⁸². The files can also be consulted for research purposes. Where that is the case, all those involved must not reveal the identity of the child or others involved in the case.

The media cannot broadcast the identity of children who are subject to a promotion and protection procedure. A child's identification through interviews given to the media is strictly forbidden⁸³.

The Portuguese courts have already decided that it is irrelevant whether the child or their legal representatives have agreed to the broadcasting of an interview where a child reports a crime⁸⁴. Such broadcasting is always forbidden.

⁷⁶ Articles 87 and 88 of the [Criminal Procedure Code](#). See also Article 14, n.1, g) of the [Journalist's Statute](#), Law n. 1/99 of 1 January.

⁷⁷ Article 8 of the [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September.

⁷⁸ APAV, Children and Juvenile Victims of Violence: Understanding, Intervening and Preventing, p. 132 et seq.

⁷⁹ Article 4 of the [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n.º 147/99 of 1 September.

⁸⁰ This is the consecration of the subsidiary principle, foreseen in Articles 4, 7, 8 and 11 of the [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September.

⁸¹ Ruling of the Appeal Court of Lisbon dated 9 June 2011.

⁸² Article 88 of the [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n.º 147/99 of 1 September.

⁸³ Article 88 of the [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n.º 147/99 of 1 September.

⁸⁴ Ruling of the Appeal Court of Lisbon dated 19 April 2007.

2.1.4 Protection from secondary victimisation and ensuring a child-friendly environment

Criminal procedures

There are several guidelines on how police officers should deal with children, but they are not legally binding.

The guide prepared by the CNPCJR⁸⁵ highlights the importance of a friendly setting. It also provides information on how interviews and inquiries should be carried out, including where and how the police officer must be seated, the presence of family members, and the best way to gain the child's trust.

The guide recalls the need to protect victims or witnesses from stressful situations. It is stressed that priority should be given to the child's protection, over the needs of the investigation. The manual also highlights the dangers of secondary victimisation. It recommends, among other things, that interviews should not be duplicated. If necessary, a collective interview with several professionals can take place⁸⁶.

Special attention is also given to the protection of victims from further attacks by the aggressor.

The Judiciary Police also provide a manual on good practices where the importance of avoiding secondary victimisation is highlighted⁸⁷.

NGOs which provide protection and support for victims also address secondary victimisation. APAV, for example, issued a manual on good practices for the reception of children who are victims of crimes. It provides guidance on waiting times, waiting rooms, communication and interview techniques and how to provide a friendly environment for children⁸⁸. APAV also provides social, psychological and legal support⁸⁹.

If the child is a victim of domestic violence, they are specially protected from secondary victimisation. For example, the judge can decide to hear them in private⁹⁰. In any case where a child is a victim of domestic violence, he/she has the right to be heard in an informal and safe setting.

A child is also entitled to immediate psychological and psychiatric support, provided by professionals specially trained in the effects of these crimes on victims⁹¹. Moreover, they may have access to psychological support and telephone assistance for a period of no longer than six months⁹².

Where the child is 12 years old or over, in order for the special rules foreseen by the Law for the Protection of Victims of Domestic Violence to apply, the child, his/her legal representative or whoever the court determines, must agree to the application of the provisions. Where the child is 16 years old or over, only he or she must agree. Children aged under 12 must be heard on the application of the special rules for victims of domestic violence⁹³.

The [Regime for the Protection of Witnesses in Criminal Proceedings](#) also provides special protection from secondary victimisation. Amongst other measures, (referred to in [section](#)

⁸⁵ CNPCJR, [Guide for the Security Forces Professionals while dealing with cases of child abuse or endangered children](#).

⁸⁶ CNPCJR, [Guide for security force professionals while dealing with cases of child abuse or endangered children](#), p. 126.

⁸⁷ Information provided by email by the Judiciary Police.

⁸⁸ APAV, *Children and Juvenile Victims of Violence: Understanding, Intervening and Preventing*, p. 118 et seq.

⁸⁹ APAV, *Children and Juvenile Victims of Violence: Understanding, Intervening and Preventing*, p. 118 et seq.

⁹⁰ Article 20 of the [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September.

⁹¹ Article 22 of the [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September.

⁹² Article 20 of the [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September.

⁹³ Article 9 of the [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September.

[2.1.3](#)), the judge may also allow the child to visit the place where the testimony is to be given. The purpose is to better acclimatise the child to that environment⁹⁴.

Promotion and Protection procedures

Children who are victims of crimes and considered to be in danger can be assisted during the procedure by doctors, psychologists or other experts or by a person the child trusts. The CA may also use any technical means they deem appropriate⁹⁵.

The child can only be subject to medical examinations that cause them embarrassment if it is strictly necessary and if their interests so demand. They must be accompanied by their parents, or by someone they trust. Medical examinations must be conducted by specialised doctors. Moreover, psychological support must be provided for the child, both during and after the examination⁹⁶. Guidelines address how healthcare professionals should treat children who are victims⁹⁷.

2.1.5 Protecting the child during interviews and when giving testimony

The CNPCJR's manual for police forces provides details on how interviewers must deal with children. It provides good practice on conducting the interview, e.g. avoiding interruptions or repetition, and the use of supporting materials. Interview techniques are thoroughly explained, and organised by age group. It also provides advice on the best ways to lead children to remember the facts. The need to protect victims or witnesses from stressful situations is highlighted, and given priority over the needs of the investigation. The guide also gives information on criteria for *not* proceeding to interview – e.g. if the child is suffering severely from the effects of the crime, the recommendation is that the child should not be interviewed until he/she is fully recovered⁹⁸. Interviews can also be waived if it would be possible to obtain evidence by other means.

At hearings, the court should remove the defendant from the court room when the witness is under 16 years old and there are reasons to believe that he/she may be seriously harmed by the presence of the defendant⁹⁹. Regardless of the witness's age the court may also remove the defendant from the court room if there are reasons to believe that his/her presence may prevent the witness from telling the truth¹⁰⁰.

A child under 16 years of age who is heard at court (whether as *assistente* or witness – see [section 2.1.6](#) and [2.2](#)) is never obliged to take the oath. The credibility and strength of the child's testimony in criminal proceedings is assessed by the judge in accordance with the age and maturity of the child.

All witnesses in criminal proceedings (adults and children alike) are obliged to give testimony, except:

- a) When they are relatives (up to the 2nd degree), adopter, adopted or married to the defendant.

⁹⁴ Article 30, n. 1 of the [Regime for the Protection of Witnesses in Criminal Proceedings](#).

⁹⁵ Article 86 of the [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n.º 147/99 of 1 September.

⁹⁶ Article 87 of the [Law on the Promotion and Protection of Children and Juvenile in Danger](#), Law n.º 147/99 of 1 September.

⁹⁷ For example, see APAV, Children and Juvenile Victims of Violence: Understanding, Intervening and Preventing, p. 192 et seq.. Measures aimed at causing the least embarrassment to the victim as possible are foreseen. The place to do medical exams must provide a friendly environment and privacy. Interview techniques are also suggested. See also CNPCJR, [Guide for the healthcare professionals while dealing with cases of child abuse or endangered children](#). Indicators for detecting a child abuse situation are provided. Moreover, this manual also suggests how the professionals should deal with children while examining them.

⁹⁸ CNPCJR, [Guide for the Security Forces Professionals while dealing with cases of child abuse or endangered children](#), p. 127.

⁹⁹ Article 352, n. 1, b) of the [Criminal Procedure Code](#).

¹⁰⁰ Article 352, n. 1, a) of the [Criminal Procedure Code](#).

b) If the witness was married to the defendant, lives or has lived with the defendant as if they were married and the procedure concerns facts committed during the marriage or the period they lived together¹⁰¹.

The CA should inform the witness about this right to refuse to testify, otherwise the testimony is considered null and void¹⁰².

Finally, no witness is obliged to answer incriminating questions¹⁰³. Children aged below 16 should only answer questions asked by the judge. Thus, any questions or clarification sought by the public prosecutor or the lawyers must firstly be approved by the judge who will then directly question the child¹⁰⁴.

Children who are victims of domestic violence are entitled to special protection during interviews¹⁰⁵. Firstly, they can only be heard when it is strictly necessary for the criminal procedure¹⁰⁶. Moreover, they must be protected from contact with the offender during the criminal process. If they must give a statement in the presence of the accused, that should be done through videoconferencing or teleconferencing. The victim can request this¹⁰⁷.

Finally, if the child is unable to be present at court, he or she must be allowed to testify from wherever he or she is staying, at an appointed time decided by the court¹⁰⁸. The child may also be admitted to testify during the investigation phase of the criminal procedure, at their own request or at the request of the Public Prosecutor¹⁰⁹. Their testimony can be taken into account during the trial phase. During their testimony, children must be accompanied by a healthcare professional, who has been providing psychological or psychiatric care to them. The taking of statements is performed in an informal and appropriate setting, with a view to ensuring, in particular, the spontaneity and sincerity of the answers.

The child victim of sexual abuse is also entitled to special protection. The child should testify through making declarations for future use during the investigation phase of the criminal procedure¹¹⁰. These declarations can be recorded for future use as evidence during the process. These statements must be given in an informal and reserved environment. The child should be accompanied by a specially-qualified professional.

See [section 2.1.3](#) for other measures of protection.

2.1.6 Right to be heard and to participate in criminal proceedings

Criminal procedures

During criminal proceedings, a child victim of a crime can be heard either as a witness or as *assistente*. These are general rules, as no specific legal provisions exist for children.

As *assistente*, the child becomes a participant in the proceedings, cooperating with the public prosecutor. As *assistente*, the child has the right to intervene in the investigation stage (offering evidence and requesting the actions he/she considers necessary). The *assistente* is

¹⁰¹ Article 134, n. 1 of the [Criminal Procedure Code](#).

¹⁰² Article 134, n. 2 of the [Criminal Procedure Code](#).

¹⁰³ Article 132, n. 2 of the [Criminal Procedure Code](#).

¹⁰⁴ Article 349 of the [Criminal Procedure Code](#).

¹⁰⁵ Article 20 of the [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September.

¹⁰⁶ Article 16 of the [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September.

¹⁰⁷ Article 32 of the [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September.

¹⁰⁸ Article 34 of the [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September.

¹⁰⁹ Article 33 of the [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September.

¹¹⁰ Article 271 of the [Criminal Procedure Code](#).

also entitled to issue an accusation against the defendant and to appeal against decisions contrary to their interests, even when the public prosecutor does not appeal¹¹¹.

See [section 2.1.8](#) on who represents the child under 16 years of age when participating as *assistente*.

In general, the credibility and strength of the child's testimony in criminal proceedings is assessed by the judge in accordance with the age and maturity of the child. But professionals are strongly recommended to take the child's views into account. For example, the CNPCJR's guide for police forces stresses that the entire testimony provided by a child should be considered valid, provided that the child has enough memory and cognitive ability¹¹². Thus, the guide recognises that testimonies of children aged above 3 years old can be taken into account, provided that their language, memory and cognitive ability so allows.

Promotion and protection procedures

The right to be heard is strongly protected in promotion and protection procedures.

Children aged 12 and over must always be heard by the CPCJ or by the judge on the situation that gave rise to the procedure. They must also be heard on the definition of the measure aimed at promoting and protecting their rights, as well as on the revision or termination of the measure. The child can be heard individually or accompanied by his or her parents, legal representative, lawyer or person he/she trusts¹¹³. If the child is 12 years old or over, a protection measure can only be applied if the child does not oppose it. The right to oppose can be exercised by the child alone or together with their parents or a person chosen by him or her¹¹⁴. If the child is under 12 years old, his or her opposition is taken into account depending on the capacity to understand the aim of the intervention¹¹⁵.

2.1.7 Right to legal counsel, legal assistance and representation

Criminal procedure

General rules apply in criminal proceedings, irrespective of the victim's age.

Whenever a child participates in the criminal proceedings as *assistente*¹¹⁶, they must be represented by their legal representative or, if none exists, a parent or, if there is no parent, their siblings or the sibling's descendants¹¹⁷. A child who has reached the age of 16, can intervene personally in the procedure as *assistente*¹¹⁸, but must have a lawyer.

If the child, parents, legal representatives or guardians prove not to have sufficient funds to mandate a lawyer, they may ask social services for legal aid. In this case, the lawyer will be appointed by the Portuguese Bar Association¹¹⁹.

The same regime applies if the child asks for legal counsel, prior to the criminal proceeding, and has no funds to consult a lawyer¹²⁰.

If the child is a victim of domestic violence, they have the right to free legal counsel¹²¹.

¹¹¹ Article 69 of the [Criminal Procedure Code](#).

¹¹² CNPCJR, [Guide for security force professionals while dealing with cases of child abuse or endangered children](#), p. 125.

¹¹³ This right is specially protected by Articles 35 and 84 of the [Law on the Promotion and Protection of Children in Danger in a Natural Living Context](#), Decree-Law n. 12/2008 of 17 January.

¹¹⁴ Article 4 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September.

¹¹⁵ Article 12 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September.

¹¹⁶ See [section 2.1.6](#) on the right or obligation on constituting as 'assistente'.

¹¹⁷ Article 68, n.1, c), d) of the [Criminal Procedure Code](#).

¹¹⁸ Article 68, n.1, d) of the [Criminal Procedure Code](#).

¹¹⁹ Articles 16, n.1, b) and 30, n.1 of the [Law on Judiciary Support](#).

¹²⁰ Articles 7, 14 and 15 of the [Law on Judiciary Support](#).

Promotion and Protection procedures

In the promotion and protection procedures, the parents, legal representatives and guardians of the child should be assisted by a lawyer. The child has the right to an autonomous lawyer in cases where his or her rights are in conflict with the parents' rights¹²². The child can also ask the court for a lawyer when he or she has adequate maturity to do so. The child must always be assisted by a lawyer during the judicial debate. The adversarial principle is applicable to promotion and protection procedures, so the child can offer evidence and ask for investigation measures¹²³.

2.1.8 Remedies or compensation exist for violation of rights and failure to act

Any individual – including a child – is entitled to compensation for damages resulting from crimes. The child may bring a claim for civil damages even if he/she does not or cannot act as a civil claimant (a role in the proceedings which can be assumed by the victim or by his or her heirs or legal representatives, and which involves joining a civil action to the criminal proceedings). It is the responsibility of the Public Prosecution Service to bring a claim for civil damages on behalf of the State and the people and interests that it is required to represent by law, such as children¹²⁴. When parents, legal representatives and guardians do not present a claim for civil damages on behalf of the child, the Public Prosecution Service can do so.

A child who is a victim of domestic violence has the right to compensation from the offender, even if he/she did not ask for compensation on civil liability grounds¹²⁵. They must also receive compensation for the costs of participation in the criminal procedure¹²⁶. Furthermore, if victims suffer severe economic hardship as a result of the crime, they are entitled to ask for an advance of payment of the compensation¹²⁷.

Children who have suffered serious damage to their physical or mental health due to acts of violence also have the right to an advance of compensation when¹²⁸:

- The injury has caused permanent disability, temporary incapacity to work of at least 30 days (except in cases where the child is a victim of a crime against his or her sexual freedom and sexual self-determination).
- The act has caused a considerable decrease in the level and quality of the life of the victim.
- If the offender did not or if it is reasonably expected that the offender will not repair the damage, and it is not possible to obtain another source of effective compensation.

¹²¹ Article 18 of the [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September.

¹²² Article 103 of the [Law on the Promotion and Protection of Children in Danger in a Natural Living Context](#), Decree-Law n.º 12/2008 of 17 January.

¹²³ Article 104 of the [Law on the Promotion and Protection of Children in Danger in a Natural Living Context](#), Decree-Law n.º 12/2008 of 17 January.

¹²⁴ Article 483 of the Civil Code.

¹²⁵ Article 21 of the [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September and Article 82-A of the [Criminal Procedure Code](#).

¹²⁶ Article 19 of the [Law on the Protection of the Victims of Domestic Violence](#), Law n.º 112/2009 of 16 September.

¹²⁷ Article 5 of the [Law on the Payment of Compensation to the Victims of Violent Crimes or Domestic Violence](#), Law n.º 104/2004 of 14 September.

¹²⁸ Article 2 of the [Law on the Payment of Compensation to the Victims of Violent Crimes or Domestic Violence](#), Law n.º 104/2004 of 14 September.

2.2 The child as a witness

2.2.1 Reporting a crime

See [section 2.1.1](#).

There are no specific rules regarding children in criminal proceedings. In general, if a child witnesses a crime, he/she may report the fact to the authorities, namely the police or the Public Prosecution Service.

2.2.2 Provision of information

There are no specific rules regarding children in criminal proceedings.

See [section 2.1.5](#) for the information on the right of any witness to refuse to testify.

A witness who has a legitimate interest, has the right to consult files on the procedure, provided it is not confidential, and to be informed of the final decision taken by the court in the procedure where he/she testified¹²⁹.

2.2.3 Protection from harm and protection of private and family life

See [section 2.1.3](#).

2.2.4 Minimising the burden of proceedings and ensuring a child friendly environment

See [section 2.1.4](#).

2.2.5 Protecting the child during interviews and when giving testimony

Besides the protection described in [section 2.1.5](#), any witness, regardless of their age, has the right to be accompanied by a lawyer during hearings¹³⁰. The questions asked of witnesses cannot be suggestive or impertinent¹³¹.

Witnesses aged under 16 are interrogated by the judge or the president of the court. Afterwards, the other judges, members of the jury, the Public Prosecutor and lawyers may ask the judge/president to ask the child additional questions¹³².

2.2.6 Right to be heard and to participate in criminal proceedings

See [section 2.1.6](#), except for the information that applies explicitly to the *assistente*, as only victims can be *assistantes*.

2.2.7 Right to legal counsel, legal assistance and representation

See [section 2.2.5](#) on the right of the witness to be assisted by a lawyer during hearings.

See also [section 2.1.6](#), except for the information about the *assistente*, as only victims can be *assistantes*.

2.2.8 Remedies or compensation for violation of rights and failure to act

Witnesses are entitled to be compensated for their participation in the process¹³³. This rule applies to both children and adults.

¹²⁹ Article 90 of the [Criminal Procedure Code](#).

¹³⁰ Article 132, n. 4 of the [Criminal Procedure Code](#).

¹³¹ Article 138, n. 2 of the [Criminal Procedure Code](#).

¹³² Article 349 of the [Criminal Procedure Code](#).

¹³³ Article 317, n. 4 of the [Criminal Procedure Code](#).

2.3 The child as a suspect/ defendant

When a child is suspected of having committed a crime, he or she can be dealt with in different ways, as explained in [section 1](#).

Thus, all the questions dealt with in section 3 are divided into three different options, depending on the child's age. The promotion and protection procedure must be applied to a child aged under 12; the educational guardianship procedure must be applied to children aged between 12 and 16. Finally, if the child has reached the age of 16, the criminal procedure will be applicable. For the purpose of this study, which is only concerned with children (persons under 18 years of age), the terms child offenders/suspects will be used; not juveniles.

2.3.1 Age of criminal responsibility

The age of criminal responsibility is 16 years old, but there are special disciplinary measures applicable to children aged over 16 and under 21 who have committed a crime¹³⁴.

2.3.2 Provision of information

Promotion and protection procedures

See [section 2.1.2](#) on information regarding promotion and protection procedures. In cases where a child has been a victim of domestic violence, the right to information is specially protected in that the child is given a leaflet entitled 'Procedural Status of the Victim' which explains the rights and duties of victims within the procedure¹³⁵.

Educational guardianship procedures

The Law on Educational Guardianship expressly guarantees that child offenders aged between 12 and 16 should be informed of their rights¹³⁶. As such, they must be also informed on their right to remain silent regarding questions about their character or their personality¹³⁷. This right is guaranteed only to the child suspect. The Law on Educational Guardianship does not specify how such information should be transmitted to the child.

Criminal procedures

There are no specific rules applicable to children in criminal proceedings, so the general rules apply.

A suspect has no rights or duties, since he/she only acquires legal status as a participant in the criminal procedure after becoming a formal 'defendant' (*arguido*).

When a suspect acquires the status of defendant (*arguido*), he/she must be informed of all the rights they enjoy¹³⁸. At that point, the defendant should receive a document identifying the procedure, the public defender (if one has been appointed) and their rights and obligations.

During the procedure, the defendant has the right to be informed by any judicial authority or police force about his/her rights, as well as to be informed about all aspects of the procedure, including during the investigation stage, unless the procedure was declared confidential (see [section 2.1.3](#)). In this case, once the procedure is public again, the defendant has access to the documentation on all acts which took place during the confidential stage.

¹³⁴ Article 19 of the [Criminal Code](#).

¹³⁵ Article 11 and 15 of the [Law for Protection of Victims of Domestic Violence](#), Law 112/2009 of 16 September.

¹³⁶ Article 45, n. 2, h) of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

¹³⁷ Article 45, n. 2, c) of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

¹³⁸ Article 58, n. 2 of the [Criminal Procedure Code](#).

The defendant also has the right to be informed of the facts which are the basis of the charge, before testifying to any authority¹³⁹.

There is no specific provision on how information should be transmitted to the child.

2.3.3 Immediate actions following first contact with police or other relevant authority

Promotion and protection procedures

If a child aged under 12 has committed a crime and is considered to be in danger, any judicial or police authority should report the situation to the CPCJ¹⁴⁰.

Additionally, any person who is aware that a child has committed a crime and may be in danger, may report the situation to the competent bodies, to the police, the CPCJ or the judicial authorities¹⁴¹. If any person is aware of a situation that threatens the life, physical or psychological integrity or freedom of a child, that person is obliged to report it.

Educational guardianship procedures

A child may be arrested if he/she is caught in the act of committing a crime. Any police or judicial authority may arrest a child. If no-one from such an authority is present, or if it is not possible to reach any authority, any person can make the arrest, provided that they deliver the child to the CA as soon as possible¹⁴².

The Public Security Police have developed [guidelines](#) regarding the procedures to be followed by police forces involved with the arrest of children.

Arrested children must be presented to the judge as soon as possible and at the latest, within forty-eight hours of the arrest¹⁴³. The child's parents, legal representative or guardian, must be informed as soon as possible¹⁴⁴.

Children can only be arrested in the act of committing a crime where the crime in question is punishable by imprisonment. The arrest only remains where the child has committed a crime against a person punishable by imprisonment of more than three years, or where the child has committed two or more other crimes, also punishable by imprisonment of more than three years¹⁴⁵.

If these conditions are not met, the child cannot be arrested, and should only be identified.

The identification of children must respect the formalities provided for in criminal proceedings, with the following particularities. If the child does not have any documents, the police must contact the parents, legal representatives or guardians. Additionally, the child cannot remain in the police station for more than three hours¹⁴⁶.

An arrest may also be ordered by the judge, on his/her own initiative or at the request of prosecutors during the investigation. Arrest should only take place where the child's presence cannot be guaranteed by the parents, legal representative or guardian. It can have two purposes:

- For a judicial hearing or for the purposes of enforcing an order, the child must be presented within twelve hours.

¹³⁹ Article 561, n. 1, c) of the [Criminal Procedure Code](#).

¹⁴⁰ Article 64, n. 1 of the [Law on the Promotion and Protection of Children in Danger in a Natural Living Context](#), Decree-Law n. 12/2008 of 17 January.

¹⁴¹ Article 66, n. 1 of the [Law on the Promotion and Protection of Children in Danger in Natural Living Context](#), Decree-Law n. 12/2008 of 17 January.

¹⁴² Article 52 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

¹⁴³ Article 51, n. 1, a) of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

¹⁴⁴ Article 53 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

¹⁴⁵ Article 52, n. 1 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

¹⁴⁶ Article 50 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

- To perform a psychiatric or personality analysis on the child, either as an outpatient or inpatient¹⁴⁷.

The parents, legal representatives or guardians can attend the first judicial hearing, but they may not interfere¹⁴⁸.

Criminal procedures

There are no specific rules in criminal procedures for child suspects/defendants.

When a child is suspected of having committed a crime, the police may identify him/her. Before asking for identification of the suspect, the police must have good grounds to justify the request and inform the suspect of the circumstances that lead to the identification procedure¹⁴⁹. If a child suspect is not able to provide identification, the police may take him/her to the police station for the time needed to obtain such identification, provided that does not exceed six hours¹⁵⁰. The child suspect has the right to contact anyone he or she trusts¹⁵¹.

The police may also question the suspect to obtain information related to the crime¹⁵². However, if during the inquiry, a justifiable suspicion is created that the suspect has committed a crime, the inquiry must be suspended immediately. The suspect must then be treated as a defendant (*arguido*)¹⁵³. See [section 2.3.2](#) for details on the information given to the defendant at the moment he or she becomes an *arguido*.

If there is a suspicion that a child is carrying any object related to the crime with him/her, the judicial authorities may require a search of the suspect¹⁵⁴, by means of a search warrant¹⁵⁵.

Finally, where a crime punishable by imprisonment is being committed, any police or judicial authority may detain the suspect and conduct him/her to the court within 48 hours¹⁵⁶. At the moment of detention, a suspected child should be treated as an *arguido*.

Once the child is in court, a trial may take place immediately, or a judicial hearing may take place in order to decide whether a cautionary measure should be applied to him/her¹⁵⁷.

Detention is also possible by means of a detention warrant or by police decision (without a warrant) where the following conditions are met:

- the suspect or *arguido* has committed a crime for which pre-trial detention is applicable by law;
- there is risk of absconding;
- it is not possible for a judicial authority to intervene due to the urgency and danger of the situation¹⁵⁸.

Whenever the police detain a suspect or *arguido*, they should immediately inform the judicial authority¹⁵⁹.

¹⁴⁷ Article 51, n. 1, b), c) and 2 of the [Law on the Educational guardianship](#), Law n.º 169/99 of 14th September.

¹⁴⁸ Article 55 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

¹⁴⁹ Article 250, n. 1 and 2 of the [Criminal Procedure Code](#).

¹⁵⁰ Article 250, n. 6 of the [Criminal Procedure Code](#).

¹⁵¹ Article 250, n. 9 of the [Criminal Procedure Code](#).

¹⁵² Article 250, n. 8 of the [Criminal Procedure Code](#).

¹⁵³ Article 59, n. 1 of the [Criminal Procedure Code](#).

¹⁵⁴ Article 174, n. 1 of the [Criminal Procedure Code](#).

¹⁵⁵ Article 174, n. 1 of the [Criminal Procedure Code](#).

¹⁵⁶ Articles 254, n. 1, and 255, n.1 of the [Criminal Procedure Code](#).

¹⁵⁷ Article 254, n. 1, a) of the [Criminal Procedure Code](#).

¹⁵⁸ Article 257 of the [Criminal Procedure Code](#).

¹⁵⁹ Article 259 of the [Criminal Procedure Code](#).

Whenever a detention does not respect the conditions mentioned above, the suspect must be released immediately¹⁶⁰.

2.3.4 Conditions for pre-trial detention/ custody

Promotion and protection procedures

In promotion and protection measures, a child aged under 12 who has committed a crime and is considered to be in danger, can only be placed before the CPCJ or the court in cases of urgency. That can only happen in the case of clear and present danger for the health, security or life of the child.

In such emergency situations, police authorities remove children from danger, ensuring their protection in temporary shelters, in the facilities of any entity with competence over children or in another suitable location¹⁶¹ and should report immediately to the Public Prosecutor. The latter should immediately require the court to begin an urgent promotion and protection procedure¹⁶².

See [section 2.1.3. b\)](#) on this procedure.

Educational guardianship procedures

In educational guardianship procedures, before detention, the judge appoints legal counsel for the child (if the child has not chosen one)¹⁶³.

The judge can also apply the following provisional measures to the child¹⁶⁴:

- deliver the child to his/her parents, legal representative or guardian, imposing certain duties on the child;
- placing the child in a public or private institution;
- placing the child in an educational guardianship centre.

The latter measure may not last more than three months, but can be extended for three more months in especially complex cases. The other provisional measures have a maximum duration of 6 months¹⁶⁵. The measures must be reviewed every two months. The public prosecutor and the child are heard in the review¹⁶⁶.

The time that a child spends in an educational guardianship centre during the procedure is deducted from the final sentence imposed¹⁶⁷.

Provisional measures are only applicable if conditions are met, namely:

- there is some evidence that the child has committed the crime;
- the application of an educational guardianship measure is likely to occur;
- there is a risk of absconding¹⁶⁸.

Only the judge has the competence to decide on provisional measures. This can be done at the request of the prosecutor during the investigation or later. It is always necessary to hear

¹⁶⁰ Article 261 of the [Criminal Procedure Code](#).

¹⁶¹ Article 91, n. 3 of the [Law on the Promotion and Protection of Children in Danger in a Natural Living Context](#), Decree-Law n. 12/2008 of 17 January.

¹⁶² Article 91, n. 4 of the [Law on the promotion and protection of children in danger in natural living context](#), Decree-Law n. 12/2008 of 17 January.

¹⁶³ Article 46 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

¹⁶⁴ Article 57 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

¹⁶⁵ Article 60 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

¹⁶⁶ Article 61 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

¹⁶⁷ Ruling of the Supreme Court of Justice dated 17 February 2009.

¹⁶⁸ Article 58 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

the prosecutor. The child's lawyer, and, whenever possible, the parents, legal representative or guardian are also heard.

Criminal procedures

There are no specific rules for pre-trial detention/custody of children in criminal proceedings, so general rules apply.

As with all cautionary measures, pre-trial detention should only be used where a suspect already has the status of *arguido* and must comply with the principles of necessity and proportionality¹⁶⁹. Moreover, these measures should only be used when there is a risk of absconding, danger of damaging the evidence or a risk of commission of other crimes or disturbing public order.

Furthermore, pre-trial detention (as well as home detention) should only be applicable when all other cautionary measures are deemed to be inadequate or insufficient¹⁷⁰. If that is the case, the court may oblige the defendant not to leave home without authorisation¹⁷¹ or, if that is inadequate, remand him or her in custody.

Pre-trial detention can only be used if there is a suspicion that the child has committed one of the following crimes:

- crimes punishable by more than 5 years of imprisonment;
- crimes of terrorism, violent or highly organised criminality punishable by more than 3 years of imprisonment;
- if the defendant entered or remained illegally in national territory or a procedure of expulsion is pending¹⁷².

Only a judge has the competence to impose pre-trial detention¹⁷³. The defendant has the right to appeal against this decision¹⁷⁴. Moreover, the decision should be communicated immediately to a relative or person in a position of trust, designated by the defendant¹⁷⁵.

There are no specific rules on the execution of the remand in custody for children. In particular, there are no rules preventing the detention of children together with adults. However, in prisons, specific programmes should be implemented which take account of the profile and characteristics of the inmates. Such programmes should promote the acquisition or strengthening of personal, social and emotional skills, and promote changes in behaviour and control of aggression. The General Regulation of Prisons makes particular reference to the application of such measures to children¹⁷⁶.

2.3.5 Protection of private and family life

Promotion and protection procedures

See [section 2.1.3](#).

¹⁶⁹ Articles 192 and 193, n. 1 of the [Criminal Procedure Code](#).

¹⁷⁰ Article 193, n. 2 of the [Criminal Procedure Code](#).

¹⁷¹ Article 201 of the [Criminal Procedure Code](#).

¹⁷² Article 202, n. 1 of the [Criminal Procedure Code](#).

¹⁷³ Article 202, n. 1 of the [Criminal Procedure Code](#).

¹⁷⁴ Article 219 of the [Criminal Procedure Code](#).

¹⁷⁵ Article 28, n. 3 of the [Constitution of the Portuguese Republic](#).

¹⁷⁶ Article 91 of the [General Regulation of Prisons](#), Decree-Law n.51/2011, of 11 April.

Educational guardianship procedures

The educational guardianship procedure is held in private until a date for the judicial hearing is set. After that, any disclosure must be made with respect for the personality and private life of the child. The child's identity is also kept private as far as possible¹⁷⁷.

Files relating to the execution of educational guardianship measures must be destroyed when the child reaches the age of 21¹⁷⁸.

Criminal procedures

If the judicial authority decides during the investigation stage that the procedure should be confidential, all participants (and any person who has had contact with the procedure for whatever reason) are forbidden from disclosing any information regarding it, as well as forbidden from participating in any part of the procedure for which they have not been specifically appointed¹⁷⁹. The violation of these prohibitions is a crime¹⁸⁰.

Even when the procedure is public, any private and family information that does not constitute evidence should not be disclosed. The judicial authority may decide, officially or by request, which data should remain confidential and order the destruction of that information or its return to its owners¹⁸¹.

2.3.6 Alternatives to judicial proceedings

Promotion and protection procedures

As stated in [section 1](#), the intervention of the court only takes place when all other alternatives have been exhausted. Judicial intervention within the promotion and protection procedure is the last resort¹⁸².

Educational guardianship procedures

There are two alternatives to judicial proceedings in educational guardianship procedures: the suspension of the procedure, and mediation.

In cases which are not particularly serious, the prosecutor can order provisional suspension of the proceedings at any time during the investigation if that would be fair and equitable in the circumstances.

The prosecutor would then impose certain obligations or standards of conduct which the child must comply with for a certain period of time. At the end of that period, if the child has complied, the case is definitively dropped. This mechanism is designed not only to deal expeditiously with less serious cases but also to create an opportunity for mediation and consensus between children committing criminal offences and their victims. For that reason, the child must agree and the victim must confirm that he or she does not object. Where the child is under 14 years old and where suspension may lead to a restriction of his or her fundamental rights, the consent of the parents or legal representatives is also required¹⁸³.

Access to mediation is also expressly foreseen as part of the educational guardianship procedure. The child, the parents, legal representatives or guardians, and the child's lawyer can ask for mediation. The judicial authority can also send the case for mediation. For

¹⁷⁷ Article 41 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

¹⁷⁸ Article 132 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

¹⁷⁹ Article 86, n. 8 of the [Criminal Procedure Code](#).

¹⁸⁰ Article 371 of the [Criminal Code](#).

¹⁸¹ Article 86, n. 7 of the [Criminal Procedure Code](#).

¹⁸² Article 4 of the [Law on the Promotion and Protection of Children in Danger in a Natural Living Context](#), Decree-Law n.º 12/2008 of 17 January.

¹⁸³ II Portuguese Report to the UN Committee on the Rights of the Child, p. 136.

example, if no agreement on educational guardianship measures is reached during the preliminary hearing, the judge may suspend the hearing and send the case for mediation¹⁸⁴.

The following options are possible¹⁸⁵:

- Mediation between offender and victim aimed at conciliation and / or redress. If agreement is reached, a copy is sent to the public prosecutor. If he or she approves it, the agreement is implemented and the case is closed.
- Drafting of a plan of conduct that may lead to the suspension of the procedure.

In both interventions, access to mediation depends on the fulfilment of certain requirements:

- the victim must assess the damage caused;
- the offender must recognise his or her responsibility and the damage caused;
- the offender and the victim must agree on the mediation process;
- the offender and the victim must show willingness to reconcile and / or find solutions to repair the damage.

The age, maturity or intellectual capacity of the parties should be taken into account.

Execution of the agreement is monitored. In cases where the child does not meet his or her commitments, the public prosecutor may decide that the educational guardianship procedure should continue.

Criminal procedures

In criminal procedures, general rules apply.

Mediation may take place in proceedings regarding private crimes or semi-public crimes¹⁸⁶. Mediation in semi-public crimes can only take place where the crimes were committed against people or property¹⁸⁷.

Children under 16 years old cannot take part in mediation. Mediation is also not possible when certain types of crimes are involved. These include crimes where a sentence of more than 5 years of imprisonment can be imposed and crimes against sexual freedom or self-determination¹⁸⁸.

If the Public Prosecutor believes it appropriate, and provided that sufficient evidence exists as to who committed the crime, he/she may appoint a mediator¹⁸⁹. The Public Prosecutor should also appoint a mediator if the victim or the defendant asks for one¹⁹⁰. The mediator will then contact the defendant and the victim in order to obtain their consent to mediation. He/she should explain their rights and obligations, as well as the nature, aim and rules of the mediation process¹⁹¹. Once the defendant and the victim consent to mediation, the mediator works to obtain an agreement. An agreement must be written¹⁹² and validated by the Public Prosecutor¹⁹³.

The defendant and the victim may be assisted by a lawyer throughout the mediation process¹⁹⁴. The content of all sessions is confidential and cannot be used in the criminal

¹⁸⁴ Article 104 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

¹⁸⁵ The following information was provided by the Directorate General of Social Security.

¹⁸⁶ See [section 2.1.1.](#) for the definition of private and semi-public crimes.

¹⁸⁷ Article 2, n. 1 and 2 of the [Mediation Regime in Criminal Proceedings](#), Law n.º 21/2007 of 12 June.

¹⁸⁸ Article 2, n. 3 of the [Mediation Regime in Criminal Proceedings](#), Law n.º 21/2007 of 12 June.

¹⁸⁹ Article 3, n. 1 of the [Mediation Regime in Criminal Proceedings](#), Law n.º 21/2007 of 12 June.

¹⁹⁰ Article 3, n. 2 of the [Mediation Regime in Criminal Proceedings](#), Law n.º 21/2007 of 12 June.

¹⁹¹ Article 3, n. 5 of the [Mediation Regime in Criminal Proceedings](#), Law n.º 21/2007 of 12 June.

¹⁹² Articles 4, n. 1 and 5, n. 3 of the [Mediation Regime in Criminal Proceedings](#), Law n.º 21/2007 of 12 June.

¹⁹³ Article 5, n. 5 of the [Mediation Regime in Criminal Proceedings](#), Law n.º 21/2007 of 12 June.

¹⁹⁴ Articles 8 of the [Mediation Regime in Criminal Proceedings](#), Law n.º 21/2007 of 12 June.

procedure¹⁹⁵. If mediation fails or if the defendant or the victim withdraws consent, the mediator informs the Public Prosecutor and the criminal procedure resumes¹⁹⁶.

The mediation procedure should not last longer than three months, which can be extended for a maximum of two more months¹⁹⁷. A signed agreement amounts to the withdrawal of the complaint. However, if the defendant fails to meet the terms of the agreement, the victim may renew the complaint¹⁹⁸.

2.3.7 Minimising the burden of proceedings and ensuring a child-friendly environment

Promotion and protection procedures

See section [2.1.4](#) for children who have committed a crime and are considered to be in danger.

Educational guardianship procedures

The educational guardianship procedure provides several measures aimed at providing a child-friendly environment. Firstly, only one procedure can be initiated for each child, even if they have committed several offences¹⁹⁹.

When children are being transported, their dignity and maturity, as well as their physical, intellectual and psychological health must be respected. Steps should be taken, as far as possible, to avoid giving the appearance of a judicial intervention²⁰⁰.

The Judiciary Police have adequate facilities to accommodate children in any of its regional offices²⁰¹. The rooms guarantee privacy and provide a friendly environment.

A judge may decide to carry out the preliminary hearing in a place outside the court. Such a decision can be based on the particular nature and seriousness of the situation and also on the age, personality, and physical and psychological condition of the child. The judge may decide to dispense with the requirement for uniforms or court apparel, on account of the child's personality or the particular circumstances of the case²⁰². The judge may also restrict public access or publicity for the hearing, where the presence of the public is likely to affect the mental or psychological health of the child²⁰³. Also, the court may forbid the media from broadcasting specific parts of the process, and from disclosing the child's identity.

Furthermore, evidence should be presented in a way that does not offend the child or other children involved in the procedure. Their age and their level of intellectual and psychological development must be taken into account by the judge. The court may also require the presence of doctors, psychologists, specialists or other people who the child trusts. It may also decide to use technical or procedural tools to lower the burden of the procedure²⁰⁴. The judge is always required to use clear and simple language²⁰⁵.

Criminal procedures

Regarding criminal proceedings, general rules apply, so that no specific rules exist for child suspects/defendants over 16 years of age.

¹⁹⁵ Article 4, n. 4 of the [Mediation Regime in Criminal Proceedings](#), Law n.º 21/2007 of 12 June.

¹⁹⁶ Article 3, n. 6 of the [Mediation Regime in Criminal Proceedings](#), Law n.º 21/2007 of 12 June.

¹⁹⁷ Article 5, n. 1 and 2 of the [Mediation Regime in Criminal Proceedings](#), Law n.º 21/2007 of 12 June.

¹⁹⁸ Article 5, n. 4 of the [Mediation Regime in Criminal Proceedings](#), Law n.º 21/2007 of 12 June.

¹⁹⁹ Article 34 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁰⁰ Article 48 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁰¹ Information provided by the Judiciary Police.

²⁰² Article 96 of the [Law on Educational guardianship](#), Law n.º 169/99 of 14 September.

²⁰³ Article 97 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September. However, the reading of the decision is always public.

²⁰⁴ Article 99 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁰⁵ Article 104, n. 1 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

2.3.8 Protecting the child during interviews and when giving testimony

Promotion and protection procedures

See section [2.1.5](#) for children who have committed a crime and are considered to be in danger.

Educational guardianship procedures

In educational guardianship procedures, children must always be heard by a judicial authority²⁰⁶. The judicial authority may appoint a social worker or other person specially authorised to accompany the child in pleading and, where appropriate, provide them with psychological support²⁰⁷. Children can also have the legal right to be assisted by a psychiatrist or psychologist whenever they require, for the purpose of evaluating the need for an educational guardianship measure²⁰⁸. Moreover, they have the right to be accompanied by a parent, legal representative or guardian, unless otherwise decided²⁰⁹. The hearing schedule must be compatible with the child's age and with their social, physical and psychological condition²¹⁰.

Children aged below 16 do not take an oath under any circumstances²¹¹.

Criminal procedures

Regarding criminal proceedings, general rules apply, so no specific rules exist for child suspects/defendants over 16 years of age.

2.3.9 Right to be heard and to participate in criminal proceedings

Promotion and protection procedures

See section [2.1.6](#).

Educational guardianship procedures

The right of the child to be heard and to participate in the educational guardianship procedure is guaranteed. Children who commit a breach of criminal law or are suspected of having done so are treated as participants in trial proceedings. They can participate in any procedural act, even when they are in detention or custody. Such participation must respect the freedom of the child and cause the least discomfort possible²¹². Children may be accompanied by their parents or a legal representative at every procedural step. These persons cannot be barred from attending unless there are special circumstances, and in particular, that it is in the interests of the child that they do not attend.

Specifically, a child has the right to be heard at any stage of the procedure, at their own request or at the request of the judicial authority²¹³. They also have the right to silence, in relation to questions about the acts they are suspected of having committed, or about the content of their statements. The Law on Educational Guardianship expressly guarantees that child offenders aged between 12 and 16 should be informed of these rights²¹⁴, including the right to remain silent regarding questions about their character or their personality²¹⁵. The

²⁰⁶ Article 47 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁰⁷ Article 47 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁰⁸ Article 45, n. 2, d) of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁰⁹ Article 45, n. 2, f) of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²¹⁰ Article 100 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²¹¹ Article 45, n. 3 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²¹² Article 45 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²¹³ Article 45, n. 2, a) of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²¹⁴ Article 45, n. 2, h) of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²¹⁵ Article 45, n. 2, c) of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

Law on Educational Guardianship does not specify how such information should be transmitted to the child.

The Public Prosecutor must hear the child in the investigation phase as early as possible²¹⁶.

Finally, the right to provide evidence and make applications is also recognised²¹⁷.

The participation of the child is also important in relation to reaching a final decision. The CA must choose the measure that is most likely to be adhered to by the child and his/her parents, legal representative or guardian²¹⁸.

The public prosecutor suggests a specific measure. The judge asks the child, and their parents, legal representatives or guardians, whether they agree with the decision. If they agree, the procedure may end at the preliminary hearing. If no agreement is reached, the judge suggests another measure that they can agree to. The judge decides unilaterally only if no agreement can be reached²¹⁹.

Some educational guardianship measures can only be applied if the child agrees. That is the case for measures which require the child to submit to medical, psychiatric or psychological treatment programmes. If the child is over 14 years old, he or she must agree to the treatment. The judge must always try to secure the child's adherence to the treatment programme, even if the child is younger²²⁰.

Finally, the child is also heard in relation to the revision of educational guardianship measures, whenever it is deemed appropriate²²¹.

Criminal procedures

There are no specific rules in relation to children who are defendants in criminal proceedings, so general rules apply.

The rights of the defence are guaranteed by the criminal process²²². The investigation is conducted according to the adversarial principle²²³. The defendant has the right to attend any procedural act that concerns him/her, and to be heard by the court whenever a decision against him/her may be issued²²⁴.

The defendant is also entitled to refuse to answer questions posed by any authority about the facts alleged against him/her. The same rule is applicable to statements made by the defendant on those facts²²⁵.

Furthermore, the defendant may intervene in the investigation stage offering evidence and requiring actions to be taken as he/she deems necessary²²⁶.

The defendant also has the right to appeal against decisions which are contrary to his/her interests²²⁷.

²¹⁶ Article 77 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²¹⁷ Article 45, n. 2, g) of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²¹⁸ Article 6 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²¹⁹ Article 104 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²²⁰ Article 14 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²²¹ Article 137 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²²² Article 32, n. 1 of the [Constitution of the Portuguese Republic](#).

²²³ Article 32, n. 5 of the [Constitution of the Portuguese Republic](#).

²²⁴ Article 61, n. 1, a) and b) of the [Criminal Procedure Code](#).

²²⁵ Article 61, n.1, d) of the [Criminal Procedure Code](#).

²²⁶ Article 61, n. 1, g) of the [Criminal Procedure Code](#).

²²⁷ Article 61, n. 1, i) of the [Criminal Procedure Code](#).

2.3.10 Right to legal counsel, legal assistance and representation

Promotion and protection procedures

See section [2.1.7](#).

Educational guardianship procedures

A child who commits an act qualified by law as a crime has the right to legal counsel and legal assistance from a lawyer. The child, their parents, the legal representative or guardian may require the appointment of a counsellor at any stage in the procedure²²⁸. They must be informed of this right as soon as possible. Moreover, when arrested, the child has the right to communicate in private with the legal counsellor²²⁹.

The presence of a counsel is compulsory in certain situations, namely:

- (a) at all hearings during the decision-making phase;
- (b) at the court hearing itself;
- (c) in appeals;
- (d) at all procedural stages, if the child is blind, deaf or dumb and has difficulty in understanding the Portuguese language, or the meaning of the trial proceedings.

Apart from these situations, and in cases where no lawyer has been appointed, it is the responsibility of the public prosecutor (during the investigation stage) or the judge (during the decision-making stage) to appoint a defence counsellor for the child, if the latter so requests or when the circumstances of the case make it reasonable that the child should be assisted by a defence counsellor.

The legal counsellor is a lawyer or, where that is not possible, a trainee lawyer²³⁰. It is preferable that the lawyer should have specialist training, and appear on the list prepared by the Bar Association²³¹.

Children or their legal representatives are exempt from paying legal costs when appealing against decisions that apply, change or cease educational guardianship measures²³².

Criminal procedures

In criminal proceedings, where the defendant is under 21 years old, assistance from a lawyer is mandatory at any act of the procedure²³³. If the child has not chosen a lawyer, the judicial authority will appoint a public defender. If, at the moment the charge is issued, the child defendant has not appointed a lawyer and no public defender has been appointed to him/her, the Public Prosecutor should appoint one²³⁴. When the child is notified of the charge, he or she is also notified that if convicted, he/she will have to pay the costs of the public defender, unless he/she asks for judicial support²³⁵.

As with all defendants, a child defendant has the right, at any moment of the procedure, to mandate a lawyer or to ask for a public defender appointed by the State²³⁶. While in detention, the defendant also has the right to communicate in private with his/her lawyer²³⁷.

²²⁸ Article 46 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²²⁹ Article 45, n. 2, e) of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²³⁰ Article 46 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²³¹ Article 46 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²³² Article 4, n. 1, l) of the [Judicial Costs Regulation](#), Decree-law 34/2008 of 26 February.

²³³ Article 61, n. 1, c) of the [Criminal Procedure Code](#).

²³⁴ Article 64, n. 4, of the [Criminal Procedure Code](#).

²³⁵ Article 64, n. 4, of the [Criminal Procedure Code](#).

²³⁶ Article 61, n. 1, e) of the [Criminal Procedure Code](#).

²³⁷ Article 61, n. 1, f) of the [Criminal Procedure Code](#).

If the defendant does not have the financial resources to support judicial costs, including the fees due to the mandated lawyer or the public defender, he/she may apply to social services for judicial support. In this case, provided the defendant can prove his/her financial situation, social services will bear the judicial costs²³⁸.

2.3.11 Remedies or compensation for violation of rights and failure to act

There are no specific rules regarding children, so general rules apply.

If the rights of the child defendant are violated during a procedure, he or she has the right to claim compensation, for which he/she should file a claim against the State, in the Administrative Courts²³⁹.

The defendant has also the right to appeal to higher courts, and the right to appeal to the European Court of Human Rights once all domestic remedies have been exhausted.

²³⁸ [Law on Judiciary Support.](#)

²³⁹ [Law on Civil Responsibility of the State and other Public Entities,](#)

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

3.1.1 Provision of information

The child always has a right to information, both as a victim or an offender.

That is the case for children to whom a promotion and protection measure is applicable. In this context, besides the child's right to information, their parents, legal representatives and guardians also have the right to be informed during the execution of the measures²⁴⁰.

The right to information is expressly protected in cases where the child has been a victim of domestic violence²⁴¹. Specifically, they must be informed about their right to compensation, the final decision, and also about the release of anyone convicted of a crime of domestic violence involving the child. The victim may opt not to receive information on the release of the convicted person.

In educational guardianship procedures, the child has to be present when the decision is read. The decision must be explained to him/her²⁴². The child has the right to appeal against all decisions that are unfavourable to him/her²⁴³. Children (as well as their legal representatives) are exempt from paying procedural legal costs when appealing decisions that apply, change or terminate educational guardianship measures. Children have legal standing to appeal autonomously²⁴⁴.

During the execution of the educational guardianship measure, the child also has the right to consult the information provided by the CA in relation to the execution²⁴⁵. The child must also be informed of any review of the measure²⁴⁶.

The obligation to inform the child is binding on any authority which takes part in the proceedings.

3.1.2 Sentencing

Depending on the child's age, several measures can apply to sentencing. The principle of legality (*nulla poena sine lege*) is always applicable, irrespective of the legal discipline at stake. This principle is enshrined in the [Constitution of the Portuguese Republic](#)²⁴⁷. Thus, only measures expressly foreseen by law can be applied.

Promotion and protection measures

Where the child is under 12 years old, the child is seen more as a victim than as an offender. Thus, promotion and protection measures apply. These measures are aimed at eradicating the danger, at promoting the child's security, health, wellness, education and full personal development, and also at guaranteeing their full physical and psychological recovery²⁴⁸.

²⁴⁰ Article 22 of the [Law on the Promotion and Protection of Children in Danger in Natural Living Context](#), Decree-Law n.º 12/2008 of 17 January .

²⁴¹ Article 11 and 15 of the [Law for the Protection of Victims of Domestic Violence](#) , Law 112/2009 of 16 September.

²⁴² Article 113 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁴³ Article 45, n. 2, i) of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁴⁴ Article 123 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁴⁵ Article 131 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁴⁶ Article 137 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁴⁷ Article 29, n. 3.

²⁴⁸ Article 34 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September.

Such measures can be divided into two groups: measures in the normal living environment and placement measures²⁴⁹.

a) Measures in the normal living environment

These measures are enforced where the child lives. The child victim can be subject to one of the following measures²⁵⁰:

- support for the parents (providing them with the necessary tools to be responsible parents. These tools can be psychological, or economic and social support)²⁵¹;
- support for another family member (when another family member has the child's guardianship)²⁵²;
- foster the child with a suitable person (normally whoever maintains a close relationship with the child)²⁵³;
- family foster care²⁵⁴ (where a chosen family takes care of the child);
- foster to a person selected for adoption.

The child must be heard before the application of one of these measures, about the measure and its execution. The child also has the right to be heard by the CPCJ or the court, during the execution of the measure, whenever he or she so requests, at any time. The scope of the hearing depends on the child's ability to understand the meaning of the intervention²⁵⁵.

Furthermore, during the execution of the measure, the child has the right to protection and education, in order to ensure the full development of their personality. Thus, the enforcement of these measures guarantees health care, educational, vocational and professional training, and participation in cultural, sporting and recreational activities, according to the child's motivations and interests²⁵⁶.

In order to protect privacy and family unity, the child also has the right to maintain contact with their family members and with those whom he or she maintains close relationships, and, if possible, not to be separated from their siblings²⁵⁷.

b) Placement measures

Placement measures are the following:

- placement in an institution²⁵⁸ (the institution has to be a permanent institution with all the necessary structures and professions to provide support for and care of children, in particular, their education and well-being);

²⁴⁹ Article 35 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September. The execution of the measures are dealt with in articles.

²⁵⁰ These measures are regulated in detail by the [Law on the Promotion and Protection of Children in Danger in a Natural Living Context](#), Decree-Law nº 12/2008 of 17 January.

²⁵¹ Article 39 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September.

²⁵² Article 40 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September.

²⁵³ Article 43 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September.

²⁵⁴ Article 46 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September.

²⁵⁵ Article 17 and 22 of the [Law on the Promotion and Protection of Children in Danger in a Natural Living Context](#).

²⁵⁶ Article 22 of the [Law on the Promotion and Protection of Children in Danger in a Natural Living Context](#), Decree-Law n.º 12/2008 of 17 January.

²⁵⁷ Article 22 of the [Law on the Promotion and Protection of Children in Danger in a Natural Living Context](#), Decree-Law n.º 12/2008 of 17 January.

- placement in an institution for adoption purposes.

While in placement, the child has several rights. The child has the right to be visited, in private, by their family members, as well as by those with whom they have a close relationship. Moreover, they have the right to confidential contact with the CPCJ, with the public prosecutor and the judge, and with their lawyer. The child has the right to education, healthcare, and to participate in cultural activities and sports. The child also has the right to autonomy according to their age, namely to have their own space at the institution and the right to have pocket money and receive private mail. Finally, they have the right not to be transferred from the institution where they are staying²⁵⁹.

The measures are regularly reviewed by the CA. The frequency of reviews is set out in the promotion and protection agreement or by the judicial decision. As a minimum, reviews must take place every six months²⁶⁰. The child, his or her parents, or the legal representatives or guardians may ask for an early revision of the measure²⁶¹. Following the revision, the CA may decide to continue, to end or to replace the measure. Where the measure is considered no longer necessary, it is revoked. Thus, a measure of deprivation of liberty can be replaced by a less intrusive measure²⁶².

The CPCJ may only impose these measures if the parents, the legal representatives or the guardians have agreed to that. The agreement is made through the signature of a promotion and protection agreement²⁶³. The agreement contains several provisions, as specified in Article 56. The educational, health and alimony rights of the child must always be regulated, as well as his or her professional education and the right to work and leisure. The agreement can also impose certain obligations on the child, such as places and people that he or she cannot visit, or substances that he or she cannot use.

In the case of a placement measure, the agreement must mention the type of institution, visits and the periodic assessment of the placement by the CA²⁶⁴.

If no agreement is reached, only the judge can impose a promotion and protection measure on the child²⁶⁵.

The execution of the measure is always monitored by the CA²⁶⁶ which drafts a rehabilitation plan for the child.

The protection measure lasts for the period foreseen in the promotion and protection agreement or by the judicial decision. Measures applied to the child in his or her normal home environment cannot last for more than one year. This period can be extended by up to 18 months.

²⁵⁸ Article 49 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September.

²⁵⁹ Article 58 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September. The placement institution shall contain, in its internal regulations, all these rights.

²⁶⁰ Article 62 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September.

²⁶¹ Article 62 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September.

²⁶² Article 62 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September.

²⁶³ Article 55 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September.

²⁶⁴ Article 57 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September.

²⁶⁵ Article 11 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September. The agreement is regulated under Article 36.

²⁶⁶ Article 59 of the [Law on the Promotion and Protection of Children and Juveniles in Danger](#), Law n.º 147/99 of 1 September.

Educational guardianship measures

If the child is aged over 12 and under 16 when the offence is committed, the child is then treated as an offender. The judge will decide on an educational guardianship measure. These measures should be educational, promoting a sense of duty. Their purpose is the integration of the child into society.

Educational guardianship measures involve those listed below:

- Admonition, which is a solemn warning given by the court, expressing the unlawfulness of the child's conduct and its consequences. It also encourages him or her to adapt their behaviour to legal norms and values and to live in the community in a dignified and responsible manner²⁶⁷.
- Deprivation of the right to drive motorcycles or apply for a permit to ride motorcycles, for a period from one month to up to one year²⁶⁸.
- Compensation to the victim. The compensation can be one of the following three types: the child can be sentenced to apologise to the victim, to compensate him or her financially, or to carry out work on their behalf. In the latter case, the child cannot be deprived of school time and leisure periods. The work has a maximum length, which cannot be more than twice a week and three hours per day, and twelve hours overall. Financial compensation can be paid in phases. The judge must take the economic situation of the child into account²⁶⁹.
- Payment of economic benefits or community work (the child is sentenced to pay a certain amount or to provide community work to non-profit public or private organisations. The activity cannot exceed sixty hours, during three months maximum)²⁷⁰.
- Imposition of rules of conduct (this measure aims at educating the child to live better in society through the fulfillment of some obligations, such as a prohibition on going to certain places, attending certain events, dealing with certain people, drinking alcoholic beverages, attending certain groups or associations, or possessing certain objects. These measures cannot override the autonomy of the child and cannot last for more than two years)²⁷¹.
- Imposition of obligations (this measure aims at strengthening the education or vocational training of the child. It consists of the following measures: enrolment in an educational establishment with reviews of attendance and success; attendance at vocational training; attendance at orientation sessions at teaching institutions and respect for their guidelines; attendance at youth organisations, submission to medical, psychiatric, psychological treatment programmes. This latter measure is intended in particular for the treatment of alcoholism, substance abuse, sexually transmitted or infectious diseases, as well as psychological anomalies. The judge must, in all cases, seek the child's consent to the treatment. If the child is over 14, he or she must agree to the treatment)²⁷².
- Attendance at training programmes (training programmes consist of programmes of leisure, sex education, road safety education, sports, educational psychology, screening programmes and career guidance, and also programmes aimed at developing personal and social skills. Such measures cannot be imposed for more than one year. Exceptionally, the court may decide that the child must live with a suitable person or institution)²⁷³.

²⁶⁷ Article 9 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁶⁸ Article 10 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁶⁹ Article 11 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁷⁰ Article 12 and 20 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁷¹ Article 13 and 21 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁷² Article 14 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁷³ Article 15 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

- Educational monitoring (through this measure, the court decides a personal educational project that the child must accomplish. It may include educational monitoring, attendance at training programmes or the fulfillment of certain obligations. The project is drafted by the social reinsertion services and approved by the court. The child is encouraged to participate in the development of the project. The social reinsertion services monitor the execution of the project. Measures of educational support have a minimum duration of three months and a maximum of two years)²⁷⁴.
- Placement in an educational centre (through this measure, the child is temporarily removed from his or her usual environment. The execution of this measure is explained below, in section [3.1.3](#))²⁷⁵.

While choosing one of the educational guardianship measures mentioned above, the judge must pay due attention to the seriousness of the acts and to the child's need to be educated to respect the law²⁷⁶. The measure must be commensurate with the need to correct the child's personality without being out of proportion with the gravity of the act committed. The court must choose the measure ensuring the lowest possible level of judicial action while complying with those principles²⁷⁷.

The judge cannot sentence the child to two different measures. The only exception is the deprivation of the right to drive motorcycles or seek permission to ride motorcycles, which can be enforced jointly with other measures²⁷⁸. If different measures are applied successively, they are enforced according to their level of seriousness, beginning with the most serious measures²⁷⁹.

Irrespective of the duration of the measure, it cannot continue after the child reaches the age of 21²⁸⁰.

The Educational Guardianship Law foresees several hypotheses that may lead to the revision of the measure. That would be the case when the execution of the measure has become impossible, excessively burdensome or inadequate for the child. That would also be the case if the child persists in disrespecting the rules imposed, or if he/she undermines the achievement of the goals of the measures. Finally, the measure is also reviewed if, due to the progress achieved by the child, the continuation of the measure is deemed to be unnecessary. The measure is also reviewed if the child is over 16 years old and has committed a new crime²⁸¹.

Reviews can be conducted on the court's own motion, or at the request of the prosecutor, the child, their parents, legal representative, guardian, or of the social reinsertion services. Reviews must be conducted as a minimum, on an annual basis. Reviews can take place at any time during the procedure. The only exception is the measure of placement, which can only be reviewed every three months. When a placement measure is being executed under the semi-open regime or the closed regime, it is reviewed every six months²⁸².

The review of the educational guardianship measure may lead to the substitution, cessation or modification of the measure. Its length can also be reduced²⁸³. In principle, the review cannot lead to the imposition of a more serious measure. However, if the review is as a

²⁷⁴ Article 16 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁷⁵ Article 17 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁷⁶ Article 7 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁷⁷ II Portuguese Report to the UN Committee on the Rights of the Child, p. 139.

²⁷⁸ Article 19 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁷⁹ Article 133 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁸⁰ Article 5, a) of [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁸¹ Article 136 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁸² Article 137 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁸³ Article 138 and 139 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

result of the child's bad behaviour, more serious conditions may be imposed. In particular, on placement measures, the child's release can be postponed.

Irrespective of the duration of the measure, it cannot continue after the child reaches 21 years old²⁸⁴.

Criminal penalties

The normal criminal and procedural laws apply to children who have reached the age of 16, as if they were adults. A child over 16 years can be sentenced on the basis of the penalties foreseen in the [criminal code](#) for the crime in question. These penalties are imprisonment and a fine. There are also several ancillary sanctions for specific crimes. Ordinary penalties can be replaced by substitutive measures²⁸⁵, such as the obligation to remain at home, imprisonment for weekends or days off or through semi-detention, community work and admonition. Also, imprisonment can be suspended. The court may decide, jointly with the suspension of imprisonment, to impose rules of conduct, duties or a social reinsertion plan²⁸⁶.

However until the age of 21, the child or young adult is entitled to a more favourable legal regime, especially applicable to child delinquents²⁸⁷. This regime is aimed at softening the effects of ordinary criminal law.

The regime provides for several special measures. Firstly, it states that a sentence of imprisonment shall be specially reduced, when that is deemed to be better for the child's social reinsertion²⁸⁸.

Secondly, if a child aged under 18 has committed an offence punishable by imprisonment of two years maximum, the judge can decide to adopt an educational guardianship measure instead²⁸⁹.

Finally, for those who have reached the age of 16 and are under 21, the judge can decide on correctional measures, instead of the penalties that would usually apply under the Criminal Code. Those measures can be the following: admonition, imposition of certain obligations, a fine and detention²⁹⁰.

If the child offender does not meet their obligations, the measure is replaced by detention²⁹¹. A fine can be replaced by the imposition of obligations. The non-payment of a fine, motivated by a child's economic difficulties, cannot lead to the application of a placement measure²⁹².

Finally, detention is for a minimum of three months and a maximum of six months²⁹³. At the end of the period, the judge may decide that release must be accompanied by orientation and monitoring measures²⁹⁴. The child offender can be obliged to attend the detention centre, for example, for a maximum of six hours.

²⁸⁴ Article 5, a) of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

²⁸⁵ Article 43 of the [Criminal Code](#).

²⁸⁶ Article 50. of the [Criminal Code](#).

²⁸⁷ [Decree-Law 401/82 of 23 September](#).

²⁸⁸ Article 4 of the [Law on the Regime Applicable to Juvenile Delinquents](#), Decree-Law n. 401/82 of 23 September. The attenuation must be done accordingly with Articles 73 and 74 of the [Criminal Code](#).

²⁸⁹ Article 5 of the [Law on the Regime Applicable to Juvenile Delinquents](#), Decree-Law n. 401/82 of 23 September.

Article 6 of the [Law on the Regime Applicable to Juvenile Delinquents](#), Decree-Law n. 401/82 of 23 September.

²⁹¹ Article 8 of the [Law on the Regime Applicable to Juvenile Delinquents](#), Decree-Law n. 401/82 of 23 September.

²⁹² Article 9 of the [Law on the Regime Applicable to Juvenile Delinquents](#), Decree-Law n. 401/82 of 23 September.

²⁹³ Article 10 of the [Law on the Regime Applicable to Juvenile Delinquents](#), Decree-Law n. 401/82 of 23 September.

²⁹⁴ Article 10 of the [Law on the Regime Applicable to Juvenile Delinquents](#), Decree-Law n. 401/82 of 23 September.

Detention can be executed through placement in a detention centre, under full custody, or a semi-custodial or weekend custody regime. Detention centres are small institutions functioning along the lines of the reception, education and training centres, in particular with regard to the educational and training nature of the programmes to be developed and their openness to the outside world²⁹⁵. Where the child offender does not comply with the rules of the detention centre or the detention conditions, or where the child offender does not behave correctly, detention can be revoked. The judge would then apply one of the penalties foreseen in the criminal code for the crime committed by the child offender²⁹⁶.

Despite the existence of legal rules regarding the application of a special detention measure, there are no special detention centres for child delinquents.

Finally, it is important to highlight that the measures provided for in this law are not mandatory. They will only be applicable where the judge, taking into account the personality of the child and the circumstances of the acts, finds that to apply them would favour rehabilitation and reintegration.

3.1.3 Deprivation of liberty

As a general rule, children must be deprived of liberty only as a last resort. Portuguese courts have stressed several times that placement measures must only be applicable as the final solution²⁹⁷.

Promotion and protection measures

For children who have committed a crime but are aged below 12 years old, where a measure aimed at protecting them is applied (promotion and protection measures), the least invasive measure must be the chosen. Thus, the child is only placed in an institution if other legal measures are deemed insufficient. The support of the family is deemed to be the preferable measure. For example, the ultimate goal of family foster care is to ensure the return of the child to his or her family²⁹⁸. Nevertheless, in cases of conflict, the superior interest of the child must prevail.

Educational Guardianship measures

For children aged over 12, an educational guardianship measure can apply. The CA should choose the measure that is deemed to be the least intrusive for the child's autonomy²⁹⁹. Portuguese courts frequently stress that non-placement measures should be favoured³⁰⁰.

Placement measures in an educational centre should be used as a last resort, only when other available measures are deemed to be insufficient. They are enforced under one of the following regimes:

- open regime;
- semi-open regime;
- closed regime.

A measure of placement in a semi-open regime is applicable when the child has committed a crime against a person, punishable by law by imprisonment of more than three years, or has committed two or more crimes punishable by law by imprisonment of more than three years. The measure of placement in a closed regime is applicable when the child is at least 14

²⁹⁵ Article 10 of the [Law on the Regime Applicable to Juvenile Delinquents](#), Decree-Law n. 401/82 of 23 September.

²⁹⁶ Article 11 of the [Law on the Regime Applicable to Juvenile Delinquents](#), Decree-Law n. 401/82 of 23 September.

²⁹⁷ Ruling of the Lisbon Appeal Court, dated 24 July 2009.

²⁹⁸ Article 3 of the [Law on Family Foster Care](#), Decree-law n. 11/2008 of 17 January.

²⁹⁹ Article 6 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁰⁰ Rulings of the Appeal Court of Lisbon dated 31 March 2009 and 25 January 2011.

years old and has committed a crime punishable by law by imprisonment of more than five years, or has committed two or more crimes against a person punishable by law by imprisonment of more than three years³⁰¹.

A placement in an open or semi-open regime lasts for a minimum of three months and maximum of two years. A placement in a closed regime lasts for a minimum of six months and normally does not exceed two years. However, the measure can apply for longer, depending on the seriousness of the crime³⁰². However a child offender can never be detained for a longer period than the punishment foreseen by the criminal code for the crime in question³⁰³.

Under the open regime, the child sleeps at the educational centre, but attends school and other activities outside the centre. They may be allowed to leave the centre for specific periods of time, such as weekends or vacations³⁰⁴. Under the semi-open regime, the child sleeps and attends school at the educational centre, but is allowed to attend other activities outside. Children may also be allowed to spend holidays with their parents or guardians³⁰⁵. Under the closed regime, the child may only leave the educational centre to attend court or for health reasons. Any other leave must be authorised by the court³⁰⁶. The execution of the placement measure is organised into different stages, aimed at progressively providing the child with more autonomy and freedom³⁰⁷.

There are three types of educational centres, one for each of the different placement measures³⁰⁸. There are also special centres, aimed at children with special educational needs. The social reintegration services choose the educational centre where the child must be placed. They take several different considerations into account, such as the child's educational needs and the child's place of residence³⁰⁹. The centres have a maximum capacity - 14 places for the open regime, 12 places for the semi-open regime and 10 places for the closed regime³¹⁰.

Admission to the centre is highly regulated³¹¹. Children have the right to be informed personally and appropriately at the time of admission, about their rights and duties, about regulations, the disciplinary system and how to make requests, complaints or appeals. The child's parents, legal representatives or guardian can accompany the child when they enter the educational centre, if the vehicle that transports the child so allows³¹².

Each educational centre has its own internal regulations which must respect the general regulation applicable to all educational centres³¹³. According to this regulation, educational

³⁰¹ Article 17 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁰² Article 18 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁰³ Article 7 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁰⁴ Article 167 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September and Article 13 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³⁰⁵ Article 168 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September and Article 14 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n.323-D/2000 of 20 December.

³⁰⁶ Article 169 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September and Article 15 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³⁰⁷ Article 12 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³⁰⁸ Thus, there are open, semi-open and closed educational centres. See Article 10 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December. Nevertheless, the same centre may have different units corresponding to these different types.

³⁰⁹ Article 151 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³¹⁰ Article 12 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³¹¹ Article 35 and 53 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³¹² [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³¹³ The [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December. See also Article 163 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

centres must treat children as autonomous subjects, with their own rights and obligations. They retain all their social and cultural rights as long as they are not deemed to be incompatible with the placement³¹⁴.

Each child in a placement centre has his/her own 'personal educational project'³¹⁵. It sets out the purposes of the placement measure; its stages, its development, as well as how these objectives should be achieved. The personal project has to be approved by the court. The project must take into account the child's particular training needs in the fields of civic education, schooling, vocational training and useful occupation of leisure time. The child must participate in the drafting of the project³¹⁶.

The placement must comply with several principles. First of all, the socialisation principle, according to which the child keeps all their social rights as long as they are not incompatible with the placement³¹⁷. The child therefore keeps all their family and social ties to the maximum extent possible, as well as their educational and social activities. Moreover, children in placement centres are still bound to attend compulsory education. If possible, they attend schools outside the educational centre. Only if the placement regime does not allow it, should they attend school in the educational centre itself³¹⁸. The child is also entitled to vocational guidance and professional training, inside and outside the educational centre³¹⁹. Each educational centre must develop a range of educational activities³²⁰. These activities should encompass educational training, vocational guidance, sports, socio-cultural activities and also health education. Each child has his or her own compulsory activities, defined in their personal project³²¹.

Furthermore, the Law on Educational Guardianship and the General and Disciplinary Regulation of Educational Centres clearly states the rights and duties of children in placement centres³²². These children, as well as their parents and legal representatives, must be informed of their rights and duties³²³. Firstly, they are entitled to respect for their personality and for their ideological and religious freedom³²⁴. The educational centre must take care of their health and physical integrity³²⁵. Their dignity and privacy must also be respected. They have the right to be called by their name. They have the right to use their

Internal regulations must rule internal schedules and organisation, provision of clothing, shoes and toiletries, as well as security and delivery of objects and personal values; awards to students; standards of hygiene and safety; use of common spaces, visits to the centre; use of personal objects, among other aspects.

³¹⁴ Article 2 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³¹⁵ Article 164 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September and Article 21 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³¹⁶ Article 171 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September and Article 21 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³¹⁷ Article 159 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³¹⁸ Article 160 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September. The provision of education in schools is regulated by the [Joint Decision n. 998/2003 of 27 October](#).

³¹⁹ Article 161 of the [Law on Educational guardianship](#), Law n.º 169/99 of 14 September.

³²⁰ These programmes are heavily regulated by the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December, Articles 25 et seq.

³²¹ Article 26 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³²² Article 171 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³²³ Article 5 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³²⁴ On religious freedom, see Article 175 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September, Article 75 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December, and also the [Regulation on Religious Assistance to Prisons](#), Decree-law n. 252/2009 of 23 September.

³²⁵ On their healthcare, see Article 174 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

own clothes whenever possible, or those provided by the establishment³²⁶, to use their own personal hygiene items (provided that such items were authorised by the centre³²⁷), to carry with them their own documents, pocket money³²⁸, and personal belongings. They have the right to a night's rest of at least eight hours³²⁹. They should have a private room or, where that is impossible, they should share a room with a maximum of two other children³³⁰. They are also entitled to have a personal place to keep their authorised personal belongings³³¹. They have the right to have four daily meals, which are provided according to their needs and to their religion³³². They also have the right to attend compulsory education, and to exercise their civil, political, social, economic and cultural rights, unless the purpose of admission requires otherwise.

Regarding the right to privacy, placed children cannot be photographed, filmed or interviewed without their consent. Before consenting, children have the right to be clearly informed by an employee of the education centre, about the content, meaning and objectives of the interview. Regardless of whether the child consents, some broadcasting activities are always forbidden, for example, interviews on the facts that led to the placement, and disclosure, by any means, of the identity of the child³³³.

Children in placement centres have the right to be visited. Visits by parents, legal representatives or guardians must always be authorised by the educational centre's director, unless the court has forbidden such visits. The child can also oppose these visits on reasonable grounds. Internal regulations set out the visiting schedule. However, the child has the right to be visited for on at least one day per week for at least two hours³³⁴. Children also have the right to receive private correspondence and to receive telephone calls³³⁵.

Children in placement centres are entitled to private contact with the director of the educational centre, the public prosecutor, the judge, and their defence lawyer³³⁶. They also have the right to be heard before any disciplinary punishment and to be periodically informed about their legal situation and about the development and evaluation of their personal educational project. They must be able to make requests, complaints or appeals.

Healthcare of children in placement centres is also regulated in detail³³⁷.

Children in placement should also respect several obligations³³⁸. They have the duty to respect other persons and property. They have a duty to remain in the centre and cannot

³²⁶ On clothes, see, Article 61 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³²⁷ On personal hygiene, see Article 62 [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³²⁸ On pocket money, see Articles 66 et seq. of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³²⁹ Article 26, n. 3 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³³⁰ Article 58 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³³¹ Article 63 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³³² Article 59 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³³³ Article 176 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³³⁴ Article 39 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³³⁵ Article 43 et seq. of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³³⁶ Article 46 and 47 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³³⁷ Article 56 et seq. of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³³⁸ Article 172 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

leave without authorisation³³⁹. If the child leaves the educational centre and does not return, he or she is considered to have escaped from the centre. In such cases, the court can order the arrest of the child³⁴⁰.

Children also have a duty to comply with regulations, with personal project activities and with the guidance of the centre personnel. They also have the duty to deal politely with others. Furthermore, they have the duty to participate in the activities of the centre, particularly in maintaining the cleanliness and tidiness of materials, equipment and facilities. They must also regularly attend the project activities described in their personal education project.

To ensure an orderly environment, several surveillance and security measures apply³⁴¹. For example, children are subject to inspections of their quarters or of their clothes³⁴². The educational centre may reward well-behaved children³⁴³. They may use enforcement measures, such as physical restraint and precautionary isolation³⁴⁴. These measures may only be used as a last resort to prevent children from committing acts which would present a danger to themselves or others, to prevent damage to the centre, to overcome violent resistance and to prevent escape³⁴⁵.

Finally, the law sets out the disciplinary proceedings, which apply when children do not respect the regulations of the educational centre³⁴⁶. The educational centre can only apply the disciplinary measures foreseen by the Law on Educational Guardianship³⁴⁷. Measures such as corporal punishment, deprivation of food, privation of the right to receive visits of the parents or legal representatives are expressly prohibited³⁴⁸. Disciplinary measures must also respect the child's health and dignity. Collective disciplinary measures are prohibited³⁴⁹.

The placement measure is closely monitored. The public prosecutor visits educational centres and the children placed in them³⁵⁰. The educational centre reports periodically to the court on how the placement measure is being carried out³⁵¹. Moreover, incidents involving the placed child must be reported within 48 hours to the court³⁵². The centre must maintain regular contact with the child's parents, legal representatives or guardians³⁵³. The child, their parents, legal representatives or guardians may make requests or complaints orally or to the social reintegration services or to the director of the educational centre³⁵⁴.

³³⁹ Articles 48 et seq. of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December regulate thoroughly the consequences of non-authorized leave.

³⁴⁰ Article 155 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁴¹ Articles 81 et seq. [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³⁴² Article 170 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁴³ Article 177 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁴⁴ Article 178 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September, and Article 90 and 91 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December. Precautionary isolation cannot last for more than 24 hours, and must be monitored by a doctor or psychologist. The centre must also inform the court of the isolation measure.

³⁴⁵ Article 179 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁴⁶ See Articles 92 et seq. of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³⁴⁷ Article 186 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁴⁸ Article 188 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁴⁹ Article 189 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁵⁰ Article 40 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁵¹ Such reports can suggest the revision of the measure. Article 154 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁵² On the exchange of information between the educational centre and the Court, see Article 50 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³⁵³ Article 51 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³⁵⁴ Article 157 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

Transfers to another educational centre are regulated in detail by the law and must be always be preceded by court authorisation³⁵⁵.

3.1.4 Criminal records

There is no criminal record for children aged up to 12 years old who have committed a crime.

However decisions sentencing children to an educational guardianship measure are registered in the registry of educational guardianship measures³⁵⁶. This registry also contains information on the revocation, revision and termination of such measures³⁵⁷. This registry is aimed at providing information on the measures that are being applied to children. It provides information on the identification of the child, as well as excerpts from the decision³⁵⁸.

The child can access the registers, and can also ask for corrections of the information therein³⁵⁹. Other specified people have access to the registers, such as the child's parents or legal representatives; judges and prosecutors involved in the procedure, the social reintegration services, and finally the entities authorised by the Minister of Justice, for scientific research or statistical purposes³⁶⁰.

The information included in the register is deleted two years from the date of the termination of the educational guardianship measure. Furthermore, it is always deleted when the child reaches 21 years of age³⁶¹.

For children aged over 16 who have been sentenced to a criminal penalty, general rules on criminal records apply³⁶².

³⁵⁵ Article 36 of the [General and Disciplinary Regulation of the Educational Centres](#), Decree-law n. 323-D/2000 of 20 December.

³⁵⁶ The registry on educational guardianship measures is regulated under the [Regulation of the Law on Educational Guardianship](#), Decree-Law 323-E/2000 of 20 December.

³⁵⁷ Article 210 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁵⁸ Article 213 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁵⁹ Article 212 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁶⁰ Article 215 of the [Law on Educational Guardianship](#), Law n.º 169/99 of 14 September.

³⁶¹ Article 220 of the [Law on Educational Guardianship](#), Law n. 169/99 of 14 September.

³⁶² [Law on Criminal Identification](#), Law n. 57/98 of 18 August.

4 Strengths and potential gaps

Children are treated as subjects in criminal proceedings. They are seen as autonomous participants, having autonomous rights. They have the right to be heard, the right to information, to legal assistance and to appeal. Nevertheless, the 2nd Portuguese Report for the UN Committee on the Rights of the Child highlights that cultural conceptions of the value of a child's opinions undermine the importance given to the child's views in judicial procedures. Also the Portuguese Women's Association against Violence points out that children's hearings are not taken seriously. It also claims that hearings should not be dependent on an assessment of the child's maturity made by the different professionals involved.

Portuguese law also takes into account children's special vulnerability. Several legal provisions foresee the need to provide them with adequate psychological and social support. Moreover, there are several guidelines for professionals who deal with children, which aim to ensure a child-friendly environment during proceedings. However, these guidelines are not mandatory. For example, each police force has its own procedures for dealing with children. Thus, one could suggest that procedures, environments and techniques should be mandatory and uniform across professions. Moreover, some of the possibilities provided by the law are not frequently used. For example, there is a possibility that the child's testimony should be recorded and used throughout the whole process. However, this is rarely used in practice, as judges often prefer to hear the child personally, and also because of Portuguese lawyers' procedural strategies.

Finally, procedures are often very lengthy. Some criminal procedures in particular take years to reach a final decision. Lengthy procedures may be quite difficult for the child, especially when they have to give testimony several times.

Both as victims and as offenders, children can be subject to measures, aimed mainly at protecting or educating them. Custody and placement measures are applicable as a last resort. Moreover, the opinion of the child is taken into account in the choice of the measure. That is because measures which have the child's consent can be more effective.

A child in a placement centre has specific additional rights. Thus, the way the child is treated is not at the full discretion of the placement centre.

Nevertheless, children aged over 16 might not receive the protection necessary in the context of juvenile justice proceedings for criminal acts³⁶³. In fact, these young offenders are treated as adults and standard criminal procedure and penalties are applicable to them. The law on child offenders does not provide a satisfactory transition from the educational guardianship procedure to the criminal procedure (although it foresees the application of educational guardianship measures in certain cases). In fact, it only deals with penalties, not providing solutions for the treatment of these young offenders during the procedure. Furthermore, criminal penalties are applied to children over 16 in the same way as they are to adults. No references to educational needs or rights, for example, are made in relation to the execution of criminal penalties by offenders aged over 16.

As a final comment, it should be pointed out that, despite the creation of several institutions with the competence to deal with children involved in criminal justice, there is no centralised body to coordinate and monitor all these institutions. Such a body would be important in standardising procedures, as well as ensuring better control over the respect for the legal rights of children.

³⁶³ Concluding Observations of the Committee on the Rights of the Child: Portugal. 06-11-2001. CRC/C/15/Add.162 (Concluding Observations/Comments), CRC/C/15/Add.162, para. 52.

Conclusions

The current Portuguese legal system was adopted after several recommendations of the United Nations Committee on the Rights of the Child. The current regime recognises children as subjects in any proceedings. They are seen as autonomous participants, having autonomous rights.

A range of provisions exist to guarantee that the child is protected during proceedings and several guidelines address the creation of a child-friendly environment and how to minimise the burden of proceedings. However when a child reaches 16 years of age, the normal criminal rules apply and there are no special protections.

Children are treated as subjects in criminal proceedings. They are seen as autonomous participants, having autonomous rights. Portuguese law also takes into account children's special vulnerability.

Nevertheless, there are still several gaps. Guidelines for professionals dealing with children in criminal judicial proceedings are not mandatory. Also, the length of the procedures may undermine the child's need for protection. Moreover, children aged over 16 are treated as adults and standard criminal procedure, and no special protection is foreseen for them, except regarding penalties.

The statutes set forth in detail the rights of the child victims and offenders. Their right to information, protection of private and family life, the right to be heard and to participate in the proceedings, the right to legal counsel, legal assistance and representation, and remedies or compensation for violation of rights and failure to act are all guaranteed. However, little attention is given to children participating in criminal proceedings as witnesses. No specific rules provide for special treatment of child witnesses, except for when they are victims as well, or for when the discipline for protecting especially vulnerable witnesses is applicable.

Annex – Legislation reviewed during the writing of this report

- Law n. ° 113/2009 of 17 September 2009
- Law on the Protection of the Victims of Domestic Violence_of 16 September 2009 (last amendment dated 19 March 2013)
- Law on the payment of compensation to the victims of violent crimes or domestic violence of 14 September 2009
- Regime for the Protection of Witnesses in Criminal Proceedings of 14 July 2009, (last amendment dated 03 September 2010)
- [Order n. 31292/2008](#) of 5 December 2008
- Law on conditions and procedures for granting asylum, subsidiary protection or refugee status of 30 June 2008
- Judicial Costs Regulation of 26 February 2008 (last amendment dated 31 December 2012)
- Law on Family Foster care of 17 January 2008
- Law on Civil Responsibility of the State and other Public Entities of 31 December 2007
- Law on Judiciary Support of 29 July 2004, (last amendment dated 28 August 2007)
- Mediation Regime in Criminal Proceedings of 12 June 2007
- Decreto Legislativo Regional n. 2/2004/A, of 23 January 2004
- General Regulation of Prisons of 11 April 2001
- Resolution of the Council of Ministers No. 4 / 2001 of 9 January 2001
- General and Disciplinary Regulation of the Educational Centers of 20 December 2000
- Law on the Educational guardianship_of 14 September 1999
- Law on the Promotion and Protection of Children and Juvenile in Danger_of 1 September 1999 (last amendment dated 22 August 2003)
- Journalist's Statute of 1 January 1999 (last amendment dated 20 December 2007)
- Law on the Criminal Identification of 18 August 1998
- Decree-Law n. 98/98 of 18 April 1998,
- Decree-Law 3-A/96 of 26 January 1996
- Criminal Code_of 15 March 1995 (last amendment dated 23 August 2013)
- Criminal Procedure Code of 17 February 1987 (last amendment dated 19 April 2013)
- Law on the regime applicable to juvenile delinquents_of 23 September 1982
- Decree-Law n. 156/78, of 30 June 1978
- Constitution of the Portuguese Republic of 2 April 1976 (last amendment dated 12 August 2005)