

Human Rights Council Resolution 12/6 –“Human Rights of Migrants: Migration and the Human Rights of the Child”

1. Challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration

a) The situation of separated and unaccompanied migrant children

Law No. 23/2007 of 4th July on the entry, permanence, exit and removal of foreigners into and out of national territory (Aliens Act) and **Law No. 147/99 of 1st September** on the promotion of rights and protection of children and youngsters at risk constitute the national legal framework of reference in this theme.

According to Law No. 67/2003, of 23 August, “unaccompanied minors” are defined as citizens of third countries outside the European Union, or stateless individuals, younger than 18 years of age, who enter national territory without being accompanied by an adult, responsible for them under the terms of the law, and while such a person does not effectively take charge of the minor, or minors who are abandoned after entering the national territory¹.

Situations regarding unaccompanied migrant children:

- ⇒ In cases resulting from the refusal of entry, according to the legislation in force²;
- ⇒ In cases of asylum seekers, mainly linked with the existence of armed conflicts, situations of extreme privation or the absence of family or other kind of affective or social support in the country of origin.

In the cases of refusal of entry, the decision making is based upon an evaluation of the existence of risk for the individual in case of return, following the *European Charter of Fundamental Rights*³ and the national legislation pertaining to Asylum⁴.

Situations of unaccompanied minors in Portugal are, in general terms, taken care of in the same way as that of minor nationals in similar circumstances, without prejudice to the possibility of regularising their situation under the terms of the Foreigners’ Law.⁵

It may also be mentioned that according the Portuguese Civil Code, individuals cease to be minors at the age of 18, without prejudice to emancipation by marriage for individuals older than 16 years of age.

Foreigners’ Law stipulates that entry can be refused to foreign minors, in the following situations:

- i) They are not accompanied by an individual duly authorized by the legal representative, or by other individual who takes responsibility for them;

² Law no. 23/2007, dated 4th July, §§ 1 and 2 of Article 31.

³ Available in http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

⁴ Law no. 27/2008, dated 30 June. (http://www.refugiados.net/_novosite/index58.html) and the Aliens and Borders Service (<http://www.sef.pt>).

⁵ Law no. 23/2007, dated 4th July.

- ii) In the absence of any of the requirements for entry in Portuguese territory, entry should be refused to the person to whom the minor is entrusted;
- iii) In cases where the individual exercising parental authority or the person to whom the minor is entrusted is not admitted into the country.

Considering the years 2006 to 2008, only 16 unaccompanied minors applied for asylum in Portugal, and, yearly, the number of applications did not go beyond seven.

In the cases where entry is refused, the return of the minor to his/her country of origin is arranged as soon as possible. Whenever this is not possible, meaning, their non admittance in their country of origin or to a third country willing to host him/her, minors can only be removed when it's guaranteed that they will be suitably hosted and receive the suitable assistance on arrival. The cases where minors are involved are processed with high priority and, when relating to minors waiting for a decision on their case, they are granted all the assistance they need in order to satisfy the needs of food, hygiene, housing and medical assistance.

Law No. 147/99 of 1st September includes a set of measures aiming at the promotion of rights and protection of children and youngsters at risk in order to ensure their well-being and integral development. Under article 3 of this law, the concept of "child and youngster at risk" encompasses the situations where the minor has entered into national territory unaccompanied by whoever holds parental power over him or her and is not under the guardianship of a responsible adult duly authorized by his or her legal representative to take responsibility for the duration of the stay; or has been abandoned upon his / her entry in national territory. These children are in a situation legally described as dangerous, and justifying an institutional intervention for the promotion and protection of their rights.

The Commission for the Protection of Children and Youngsters and Juvenile Courts are competent to determine the placement of a child under institutional care. The law foresees a mandatory hearing and participation of the minor at risk during the process and in particular regarding the decision on the applicable protection and promotion measures.

All placement measures are meant to be temporary, providing the child/youngster with the necessary support and conditions for his/her welfare, while seeking the promotion of a more definitive life project. The State performs the task of institutional care through a system of institutions dedicated to the fields of infancy and youth (Law 2/86, 2nd January), either public or cooperative. In this latter case, the State establishes cooperation agreements with social or private institutions.

As a protective measure, it is compulsory for the court to appoint a guardian for any minor (i) if the parents have died; (ii) if they have been prohibited from exercising parental authority over the child; (iii) if they have been prevented *de facto* for more than six months from exercising parental authority; or (iv) if they are unknown. In these situations, and in the absence of a person combining the qualities to perform the duties of a guardian, the minor is entrusted to the care of an institution, being its director designated his/her guardian.

Under the Aliens Act (Law No. 23/2007), mention should be made of the legal provisions concerning the protection of minors victims of trafficking in human beings in the context of migration in the terms provided by Article 114, as well as the special

residence permit provided to the minors under compulsory guardianship, pursuant to article 122/1/e).

In addition, under the terms of article 8 of Regulation Decree No. 84/2007 of 5th November, foreign minors who reside in Portugal and wish to exit national territory unaccompanied must present a certified authorization signed by one of the parents or by whoever is responsible for him/her.

b) Access to social services (ensuring, inter alia, protection of the right to health, housing, education, water and access to sanitation(including for migrant children in an irregular situation)

The Constitution of the Portuguese Republic (CRP), in Article 15, paragraph 1, extends to foreigners and stateless persons with residence in Portugal the enjoyment of the same rights and the subjection to the same duties as the Portuguese citizens.

The right to health and education as fundamental rights are enshrined respectively in Articles 64 and 73 of the Portuguese Constitution. These provisions have a universal nature and cannot be excluded by any restrictive interpretation, as laid down in paragraph 1 and 2 of Article 16 of the CRP.

The application of stipulations that guarantee equal treatment to foreign citizens is guaranteed, specifically in what concerns social security, fiscal benefits, participating in workers unions, recognition of diplomas, certificates and other professional credentials or documents that grant them access to public goods and services, as well as the application of stipulations that grant them special rights.

Article 83 of the Law No. 23/2007, grants to the residence permit holder, without need to obtain any special authorization on grounds of being a foreigner, the right to: education and instruction; engaging in a subordinated professional activity; engaging in independent professional activity; professional guidance, training, improvement and rehabilitation; health care; access to law and courts.

Decree-Law No 67/2004 of 25th March creates a national register of foreign minors who are illegally in the national territory in face of the legal regime governing the entry, stay, departure and expulsion of foreigners from national territory.

According to its article 3 (3), the High Commissioner for Immigration and Ethnic Minorities is responsible, together with competent services of public administration, to ensure that children registered have access to the exercise of same rights afforded to children in a regular situation in Portuguese territory, namely the access to health care and education.

The Portuguese Health and Education systems are universal. This means that every person/child has the right to access health care and education facilities and services and that foreign citizens have the same access as the generality of their co-citizens to the health system and to its advantages, to medical care and to social security and to social services.

The right to education is established in Decree-Law no. 34/2003 of 25th February: "All children, independently of the situation regarding the law of their host country, have the **right to education** and therefore the right to attend school and make use of all

benefits like any other child. All non-regularised foreign minors whose age is below the minimum officially recognised by law to independently sign an employment contract, and who are economically dependent on their family household, have access to education under the same conditions as national minors in their situation". Also, according to Decree-Law n. 67/2004 of 25th March, public schooling cannot be refused to children due to the irregular situation of their parents. The registry of irregular minors is confidential.

The Ministry of Health Normative Order no. 25 360 of 2001 states that: "All citizens have the **right to health** and the duty to protect it. An immigrant living in national territory who feels ill or needs medical assistance has therefore the right to be assisted in a health centre or hospital (in case of emergency), and these services cannot refuse to assist him/her because of nationality, lack of economic means, irregular situation or any other reason". In 2009 the Ministry of Health issued Circular n. 12/DQS/DMD, dated 07/05/09, which clarifies an orientation followed since 2001, according to which irregular immigrants who are in Portugal for a time period of over 90 days cannot be discriminated against in acceding to public health care, although, in general terms, they might have to bear its real costs. Exceptions, however, are made such as, for instance, in cases where urgent and vital care are needed, or in case of transmissible diseases that endanger or threaten public health. Regular immigrants have the same rights as national citizens on this matter. In case of foreign minors the Portuguese State, regardless of their administrative status, consecrates the right to benefit from health care services and education⁶.

In what concerns **Solidarity and Social Security**, foreign citizens with legal residence in Portugal have the right to benefit from social allowances (such as the Social Income for Insertion – for individuals and families with serious economic needs – or unemployment subsidy) in the same circumstances as that of any Portuguese citizen.

Integration Support Services and Cohesion Policies:

At State level, the **National and Local Immigrant Support Centres**, under the High Commission for Immigration and Intercultural dialogue (ACIDI) represent the main integration service providers, in such different areas as employment, housing, legal and social support, family reunification, health, education, regularisation or visa renewal.

Apart from these centres, State services under different Ministries also target immigrants – though not as distinct beneficiaries – in the area of immigrant integration.

Apart from the National and Local Immigrant Support Centres support, social responses are however most often found through the regular mechanisms of social security and other social institutions (such as the Santa Casa da Misericórdia in Lisbon – a Social Institution of Administrative Public Utility), since these possess the financial and legal means for this kind of assistance.

However, in cases of extreme poverty of irregular immigrants, Portuguese law considers those situations under the profile of humanitarian emergency, comparable to national citizens. In December 2007, a cooperation agreement between the High

⁶ Decree-Law no. 67/2005, dated 25th March.

Commissioner for Immigration and Intercultural Dialogue (ACIDI) and the Social Security Institute was signed for the creation of a **Programme to Support Foreign Patients (PADE)**, whose objective is to provide a solution for temporarily hosting foreign patients from PALOP nations (under bilateral agreements) during their stay in Portugal for treatment and the shelters that host and provide support to immigrant citizens in serious situations of socio-economic difficulties and social exclusion.

Also, the Portuguese Law regarding **children at risk** (Protection of Children and Young People at Risk Law⁷), considers the same criteria of evaluation and provides the same protection to all children in danger that live in Portuguese territory. This law represents a qualitative change and protection of children at risk, claiming that "the epicentre of minors' justice moves from infancy protection to the promotion of children and youth rights".

Also, a social systemic approach has been developed by Social Security through the prioritization of the territories which require specialised intervention as well as children at risk. Enhancing at this level, the **Programme for Inclusion and Development (PROGRIDE)** seeks to promote the development of Projects for territories where the severity of poverty and social exclusion justifies intervention as a priority (Measure 1) for groups particularly affected by exclusion, marginality and persistent poverty (Measure 2), based on the participation of all local actors and combination of several local synergies and implemented through the support of projects which respond to the multidimensional problems of a territory or group.

The **Social Development Local Contracts (CLDS)** also privilege territories identified as more vulnerable and intended to promote social inclusion of citizens on these territories in a multi-sectoral and integrated approach, through actions to be developed in conjunction with employment, training, qualification, family and parental intervention, community and institution empowerment, information and accessibility.

c) Legislative framework and practice in the context of detention and repatriation, including mechanisms to ensure protection from refoulement and to ensure family unity

Under Article 31 (5) of the **Law No. 23/2007** of 4th July on the entry, permanence, exit and removal of foreigners into and out of national territory, the unaccompanied minors who await decision on admission into national territory or on repatriation must be granted all material support and necessary assistance to fulfill their basic needs of food, hygiene, accommodation and medical assistance. Pursuant to paragraph 6 of the same article, the unaccompanied minor can only be repatriated to his/her country of origin or to a third country which is willing to receive him/her provided there is a guarantee that upon arrival he/she will be given adequate fostering and assistance.

According to Article 135 on restrictions to removal, foreign citizens cannot be sent off from the country if have minor children, nationals from a third-country and residents in Portuguese territory over who have effective parenthood and ensure their livelihood and education;

⁷ Law no. 147/99 of 1st September 1999, regulated by Decree-Law 332-B/2000, of December the 30th, and that came into effect in January 2001. Law no. 31/2003 of August the 22nd introduced some amendments. This law also defined alterations in the Civil Code, Adoption Juridical Regime and educational guardianship administration.

Under Article 114 on minors (i) when applying the arrangements related with residence permit, should take in due account the best interests of the child, and the procedures must be appropriate to his/her age and maturity; (ii) the reflection period foreseen may be extended if it is in the best interest of the child; (iii) minors who are victims of trafficking in human beings or subject to an action facilitating illegal immigration have access to the educational system under the same conditions as nationals; (iv) all steps are taken to establish the identity and nationality of the unaccompanied minor as established in nr. 5 of article 99, as well as (v) every effort to locate his/her family as quickly as possible and ensure legal representation including representation in legal proceedings if necessary in accordance to law.

Article 118 grants the family reunion, granting a residence permit to family members of the residence permit holder that live with him/her in the Member State that first granted him/her the status of long-term resident for the first time ever. For the purposes of the stipulations of the number, family members are those mentioned in nr. 1 of article 99, as well as persons mentioned in nr.1 of article 100.

d) Criminalization of irregular migration

Irregular migration is punishable with imprisonment penalties, payment of fines, compensations and other installment to which they are condemned to pay, in result of the offences foreseen in the **Law No. 23/2007**, besides the removal or the expulsion of the foreign citizen due, inter alia, to illegal entering or staying in Portuguese territory, or attacks on national security or public policy; in this case, it can be determined by an administrative authority.

Article 146 foresees the arrest of a foreign citizen in an illegal situation in case of illegal entering or staying in national territory. In such cases, the foreign citizen is arrested by a police authority, when possible, handed over to SEF with the respective writ, and presented within forty eight-hours at the most to the judge of primary criminal jurisdiction under his/her jurisdiction or the district courts in other areas of the country, in order to his/her validation and application of coercion measures.

Article 147 - The foreign citizen detained under the stipulations of nr. 1 of article 146 who, during judicial interrogation claims that he/she wants to leave national territory, may, upon being informed of the consequences of such a decision, provided he is duly documented and following a judicial determination, be handed over to SEF custody in order to be conducted to the border in the shortest possible period of time. In such cases, the citizen shall be forbidden to enter national territory for a period of one year and registered in the Schengen Information System and the national register of non-admissible persons for that same period.

Article 151 - establishes the judicial removal and the removal accessory penalty: the removal accessory penalty can be applied to the foreign citizen who does not live in the country condemned for a malicious crime with an imprisonment penalty of more than 6 months or a fine as an alternative to the imprisonment penalty of more than 6 months, or to a foreign citizen who lives in the country condemned for a malicious crime with an imprisonment penalty of more than 1 year. Once the removal accessory penalty is decreed the executive judge shall order the executive order as soon as two thirds of the imprisonment penalty is served. The executive judge may decide on the anticipation of the execution of the removal accessory penalty, as a substitute for the

granting of parole, as soon as he/she decides on the parole presuppositions as fit and if half the prison penalty has been served.

Article 166 - The decision to send back a foreign citizen to the required State is subject to appeal, to the Ministry of Interior, within 30 days, and with devolutive effect. An appeal with devolutive effect to the Appeal Court can be made upon the verdict stipulating removal.

Article 172 - Money compensation for the costs of the removal execution of third-country nationals follows the approved criteria by the European Union Council.

Article 182 - foresees civil and criminal liability for corporate bodies and equivalent bodies for the crimes foreseen in the Aliens Act.

Article 184 - Association to facilitate illegal immigration - Whoever founds a group, organization or association, whose activity is to practice the association to facilitate illegal immigration, is punishable with a prison penalty from 1 up to 6 years.

Moreover, article 190 enshrines the possibility to apply accessory penalties and coercion measures to crimes foreseen in the present law, as interdiction or suspension of the exercise of public functions, as well as coercion measures foreseen in the Penal Code.

e) Access to the right to identity, including birth registrations

According to articles 96 and following of the **Portuguese Civil Registry Code**, every birth occurred in the Portuguese territory must be declared with the purpose of being registered. This declaration is mandatory, not only for parents and relatives, but also for the people working in the health unit where the child was born, if such declaration is possible to be made there. Birth registration is drawn up immediately after the declaration (article 102 of the Civil Registry Code). If, within 20 days after birth, or until the mother is released from the health unit, the birth is not declared, the administrative and police authorities, as well as any other person, even if deprived of any particular interest, will participate the fact to the Public Prosecutor who must act to overcome that failure (*ex officio* birth registration).

The failure to declare the birth of the child is punishable with a fine from 50€ to 400€ (article 295 of the Civil Registry Code) and any registry worker that fails to comply with the Registry Code, which includes not registering any false facts, is liable for the damages caused – civil responsibility clause (article 194).

Articles 105 and ff. of the Portuguese Civil Registry Code determine the process applicable to the registration of abandoned children. For the purposes of this process, is considered to be an abandoned child every new born of unknown parents who is found abandoned in any place, and every child apparently under 14 or mentally disturbed, whose parents, know or unknown, keep themselves away in an unknown place, forsaking their child. Whoever finds a child in such situation must take her/him to the authorities competent for her/his registration (all Portuguese civil registry units are competent for this registry). When giving the child a name, the civil registrar must take into account the children's opinion. Furthermore, as abovementioned, Law no. 23/2007 determines that, in the particular case of minors who are the victims of

trafficking in human beings, all steps must be taken in order to establish their identity and nationality.

The **Born Citizen Programme** was established in 2002 in order to fulfil one of the fundamental rights of the child: having a name and social protection. Apart from providing the possibility of registering children immediately after birth in Health Centres, (hospital or maternity clinic) and with Social Security, it allowed screening specific situations such as adolescent pregnancy, drug addicted parents, and women without prenatal follow up. The new generation "Born Citizen" is a SIMPLEX 2007 project, conducted and implemented by the public services of the Ministry of Justice, Ministry of Labour and Social Solidarity and Ministry of Health. It was based on using the electronic means of the Civil Registry Office while the initial project used paper forms to communicate.

2. Examples of best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration, with particular regard to:

a) National legislation, policies and practice, including mechanisms to assess and address challenges in the implementation of the international framework for the protection of the rights of children in the context of migration

Besides what has already been stated above, several examples are given ahead, stressing that the rights of migrant children and of their parents, legal tutors and family are taken in consideration not only in the migration, but in the welcoming and integration process.

Among policy measures, there are welcoming measures such as the **National Immigrant Support Centres** and the **Local Immigrant Support Centres** as well as the National Network of Information to the Immigrant, provided by ACIDI IP, directed to all immigrants, foreign minors included.

In 2004, facing the arrival of increasing numbers of non-Portuguese-speaking immigrants in the first years of this century, the Portuguese Government created two One-Stop-Shops, with the official name of **National Immigrant Support Centres (CNAIs)**⁸, in Lisbon and Porto, in order to promote the cooperation between public administration services in order to minimise inaccuracy and time-consuming *modus operandi* in implementing procedures and to increase immigrants' trust in public administration services, narrowing the gap between the two. Through shared responsibility and partnership between various levels of the Portuguese government, the centres involve six branches of five Ministries and offices that provide specific support, namely with regard to legal advice, family reunification, labour market integration, education and health among other issues. Recently, on the 3rd April 2009, the third Centre opened in Faro. Foreign minors' needs, like all immigrants' needs, are accounted within the National Centres' Services, with the registration of irregular minor migrants being done in the Ministry of Education's service.

⁸ The Portuguese CNAI were the role model for the European Project "One-Stop Shop: A New Answer for Immigrant Integration" Project (JLS/2006/INTI/148), coordinated by ACIDI.

The Family Reunion Support department, functioning also in the National Centre for Immigrant Support, provides information and support to all citizens that wish to reunite their family, not only inside but outside the country, children included.

Family Reunion requisites are consecrated in the Immigration Law⁹, allowing, in the case of residence authorisation permit's bearer, the family reunion of spouse; underage or incapable children in charge of the couple or of one of the spouses; underage children adopted by the applicant or his/her spouse; adult children when living in charge of the couple or of one the spouses, single and attending schools in Portugal; the applicant's underage brothers or sisters, since they are tutored by him/her, and other specific situations.

Directed specifically to children, ACIDI created, in 2006, in the National Centre for Immigrant Support, **Children Space**. This space is devoted to the children of the Centre's clients, while the parents are attended by the different services. Under the supervision of an intercultural mediator, children can play with toys, games and see movies, passing, thus, the waiting time, amused.

Portugal is also equipped with a **national Network for Immigrants Information, formed by the CLAI (Local Centres in Support of the Immigrant)**, decentralised spaces of information that give local responses articulated at the level of the needs of reception and of integration of the immigrant communities settled in different regions of Portugal¹⁰. In the beginning the CLAI were devoted to information but, today, they help in a more active way the immigrants, due to their qualified staff who supports the organisation of activities in the benefit of the integration of immigrants.

The Portuguese Government has implemented several programmes and initiatives aiming to ensure the respect for the right of non discrimination and social and school integration of children. One of those programmes is being implemented by ACIDI IP, **Choices Programme** (*Programa Escolhas*). Being a national wide programme, it aims to promote children and youngsters, coming from more vulnerable socioeconomic background, specially immigrant's descendants and ethnic minorities, social promotion towards equal opportunities and social cohesion.

Choices Programme was created in January 2001, and is now in its 4th Phase. In its first phase (January 2001 till December 2003), it was mainly a programme aiming to prevent criminality and to promote the insertion of youngsters living in the most vulnerable neighbourhoods from Lisbon, Porto and Setubal Districts. It then involved 50 projects and 6.712 beneficiaries.

The next phase, Choices 2nd Generation (May 2004 until September 2006), financed 87 projects, involving 412 institutions, 394 technicians and around 43.200 beneficiaries. The main target-group were children and youngsters with ages between 6 and 18 years, coming from unfavourable and problematic backgrounds, involving, also, individuals with 19 to 24 years of age, families and other community members such as educators. It was in its second phase that from the prevention of criminality the

⁹ Law 23/2007.

programme was redirected to inclusion's promotion and to locally planned projects, involving local stakeholders.

From 2007 to 2009 the Programme was renewed, entering its third Phase, aiming at the social inclusion of children and youngsters, between 6 and 24 years of age, coming from more vulnerable socioeconomic backgrounds and at risk of social exclusion. These include immigrants' descendants and ethnic minorities, pursuing equal opportunities and the reinforcement of social cohesion. In this third phase, 121 projects were financed, gathering 780 institutions, 480 technicians and around 81.695 beneficiaries.

Choices Programme is now in its 4th phase (2010-2012), aiming to finance 130 new projects and 10 experimental ones, towards local communities mobilization for the creation of children and youngsters from vulnerable socioeconomic contexts social inclusion projects.

The work done by Choices Programme was internationally acknowledged, receiving international distinctions as a best practice in several occasions: in 2003, the European Union Award on Criminality Prevention and, in 2007, the referral as a good practice in the "Handbook for Integration", published by the European Union. It was also considered a good practice in the first "International Report on Criminality Prevention and Community Safety", produced by the Centre for the Prevention of Crime (ICPC), with headquarters in Canada, shown as a project that should inspire the world as a benchmark policy.

The **fight against discrimination**, not only of children but of immigrants in general, is another of ACIDI's priority. Article 13 of the Constitution of the Portuguese Republic poses the principle of equality and non discrimination, article 5 of the Administrative Procedure Code states the rule that public authorities or public institutions whether they be national or local, are also forbidden to act with citizens under racial discrimination criteria. A complaint to the Ombudsman and judicial actions at courts are also admissible for this kind of violations.

Within the legal framework, ACIDI is competent in the fight against discrimination, with major focus on racial discrimination, addressed by the **Commission for Equality and against Discrimination (CICDR)**. It's an independent Commission, devoted to the fight against racial discrimination, functioning close to ACIDI. Within its activities, and specifically directed to children, is worth mentioning the national contest against racial discrimination: "My School against Racial Discrimination", promoted in 2007 within the Year of Equal Opportunities for All. This contest aimed to award actions developed by students, valuing information or training against discrimination and racism, as well as the promotion of the dialogue and cooperation between different persons and cultures. It involved around 110 schools and 6.000 pupils from 17 of the 18 country districts. The first prize was awarded to 3 classes that had the opportunity to visit UNESCO Head Office, in Paris.

Regarding national legislation, it's worth mentioning the **Nationality Law**¹¹. It widened the criteria for attribution and acquisition of nationality, with the strengthening of the principle of *ius soli*, through the recognition of citizenship to individuals who hold a strong connection to Portugal:

¹¹ Law nr. 2/2006, dated 17th April, in force since 15th December 2006.

- i) Attribution of Portuguese nationality by origin to those born in national territory, having foreign parents, if at least one of those parents was also born in Portugal and had his/her residence here when the child was born;
- ii) Attribution of Portuguese nationality by origin to those born in national territory, having foreign parents who are not serving their countries, if the child declares wanting to be Portuguese, and if at least one of the parents has had his/her residence here for, at least, 5 years;
- iii) Establishment of a general right to naturalization for minors who were born on Portuguese territory, having foreign parents, if, at the time of the request, one of the child's parents has had his/her residence here for, at least, 5 years, or if the child has concluded in Portugal the first level of basic education.

Portuguese law determines that every individual born in national territory, which does not possess any other nationality, is Portuguese by origin – paragraph 1 of article 1 of Law no. 2/2006, and paragraph c) of article 3 of Decree-Law 237-A/2006.

Referral legislation is the one devoted to the fight **against trafficking in human beings**: Decree-Law no. 368/2007, dated 5th November. The victim of trafficking has immediately, once identified as such, a special temporary residence permit, since she/he cooperates in the finding of the facts with criminal authorities. The victim also enjoys the right to free legal support, as well as social and medical support.

Regarding the universal right to education, consecrated in CRP and other legislation, in order to help Portuguese public schools to deal with the increasing students' social, cultural and ethnic diversity, it was created in 1991, within the Ministry of Education, the **Entreculturas Board**. A large range of activities were developed to sensitize schools and other educational stakeholders regarding the issue of intercultural education, as a means to facilitate the integration of immigrants' children and ethnic minorities in schools and ensure better and more equal opportunities. From January 2004 onwards, the *Entreculturas* team was displaced to ACIDI, *Entreculturas* entering a new phase, with the scope of action and responsibilities broadened, beyond Education system, more focused now towards the Portuguese society in the perspective of a host society. It was a sign of recognition that the problems and challenges addressed are far beyond the answers that may be given within the education system.

Although not for the specific context of migration, there are Portuguese public institutions responsible for the enforcement and for monitoring the implementation of the rights of the child.

The **National Commission for the Protection of Children and Youngsters at Risk**, created under both the Ministry of Justice and the Ministry of Labour and Social Solidarity, is responsible for planning, coordinating and monitoring public policy and intervention on the protection of children at risk. Namely, it coordinates and evaluates the intervention at local level of the Commissions for the Protection of Children and Youngsters.

Family and Children's Courts are competent for the enforcement of the rights of children in general.

With possible relevance in matters of children's rights in the context of migration cases of **parental child abduction** might have originated in the situation where a parent

leaves the country illicitly taking the child with him/her and/or refusing to return the child. Another possibility is that the parent who leaves the country is being denied his/her right to contact with the child.

The Directorate-General for Social Reintegration of the Ministry of Justice was designated as the Portuguese Central Authority for both the **1980 Hague Convention on the Civil Aspects of International Child Abduction and for the Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility**, repealing Regulation (EC) No. 1347/2000. The activity of the Portuguese Central Authority aims at ensuring the effective implementation of the proceedings established for the return of the child by those international instruments. In this sense, the Central Authority monitors the mentioned proceedings, provides the parties with administrative support and additional information, and establishes the necessary links with the different authorities involved. In order to speed up the process, the Directorate-General tries to promptly refer applications for the return of a child abducted and brought to Portugal to the competent Family and Minors Court. Once the Court has decided on the case, it usually determines a date for reading its decision, and contacts the Central Authority so that the applicant is present, avoiding any cause for delay after the return order is issued. The Court decision usually also determines the notification of the Central Authority so that the latter may assist in the effective return of the child. Finally, during the proceedings, the Directorate-General for Social Reintegration maintains regular contacts with the Family and Children's Courts, to ensure that the final court warrant foresees all the necessary provisions for an effective return.

b) Joint efforts and strategies available at the bi-lateral, regional and international levels to assess and address challenges in the implementation of the international framework for the protection of the rights of the child in the context of migration

1. In the framework of the **Ibero-American Cooperation**, we must underline two initiatives:

- a) The **Ibero-American Fund for Childhood Development** – which aims to promote the exchange of experiences and good practices on childhood and youth development and might be a contribution on the positive development of each country goals by fitting into their cultural, territorial and organisational specificities. It also aims to support reciprocal cooperation projects between the ibero-american countries which promote the strengthening of their institutional capacities and programs by consolidating the childhood and youth integral protection systems.

Until now, there have already been two application phases to this Fund, and several projects were approved, among them we would like to emphasize the following:

- "Strengthening borders with Bolivia in order to reduce the illicit trafficking in children and adolescents" (Bolivia, Chile, Argentina)
- "Support to the conception process of the childhood and youth integral protection systems in the Rights perspective" (Bolivia, Ecuador, Paraguai, Perú, Chile)
- "20 years after the Convention - Workshops on the strengthening of public policies on childhood and adolescence at the ibero-american region: National Action Plans and Rights Protection Systems" (Argentina, Uruguai)

- b) Another initiative, in this context, is the **Childhood Policies Training Program (2008-2012)**, in which 13 countries take part (Argentina, Brazil, Bolivia, Chile, Colombia, Ecuador, El Salvador, Spain, Paraguay, Peru, Portugal, Uruguay and Venezuela). Portugal joined this Program in 2009, with an annual contribution of \$14,847 USD. The Portuguese Institute of Social Security (ISS) was designated the national partner in the Programme and has the responsibility for its execution in our country and also for the annual payment of the due contributions until the end of the Programme in 2012.

Both initiatives were underlined at the XI Ibero-American Conference of Ministers and High Officials responsible for Childhood and Adolescence (Lisbon, June 2009), namely on its Final Declaration where we can read "...the Ministers) emphasize the implementation of the Ibero-american Fund for the Childhood Development and its results, which had already supported projects in Ibero-american countries to strengthen the integral childhood protection systems and also consider very important the continuity of this initiative".

In the same line, in the Final Declaration of the Ibero-American Heads of State and Government (December, 2009), a special reference was made to this Fund, emphasising that it had already supported 8 specific Projects in 12 Ibero-american countries, all related to the strengthening of childhood and youth integral protection systems. This Final Declaration also mentions the pertinence of the implementation of the Childhood Policies Training Program.

2. Also it should be referred in this framework the **Child on Europe (CoE)**, an institutional network of National Observatories and entities with responsibilities on childhood, designated by the Ministries represented at the intergovernmental group "L'Europe de l'Enfance", in which Portugal is one of its 9 members.

The (CoE) composition is the following:

- 9 member States (Belgium, Cyprus, Denmark, France, Ireland, Italy, Luxembourg, Spain and Portugal);
- 15 associate members (Austria, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia, Sweden, Netherlands and United Kingdom).

The CoE main objectives are:

- Exchange of knowledge and information on legislation, policies, programmes, statistics and research studies about childhood and youth;
- Support to the development of measures and actions to promote the children's rights and their well-being;
- Develop research studies on specific issues related with childhood, namely through a comparative and multi-disciplinary approach;
- Disseminate scientific studies conclusions to the CoE members and to other interested organisations;
- Identify, share and promote good practices identified by the comparison work and also that might be an input to the reflexion on national and European policies;
- Develop and exchange knowledge about indicators and methodology, in order to obtain more data comparability both on the national and European levels.

3. Finally, and in the framework of the **Council of Europe Programme “Building a Europe for and with Children”** Portugal was one of the four volunteered countries that participated in the action Programme “Children and Violence” that reviewed their national policies for protecting children against violence. The overall objective for this analysis is to provide Member States with practical recommendations and guidelines that will help them in setting up the national strategies or adjusting existing ones.

In this regard, some national policies and specific legislation were approved to protect children against violence and abuse:

- i) **Portuguese Criminal Law** was revised in the end 2007 and, since then, it considers the crime of any form of violence, including corporal punishment, in any context, even in the domestic situation, perpetrated by any person or institution against children, people with disability or the elderly people.
- ii) Also in September 2009, it was published legislation to impose the definition of an idoneous **profile of professionals** working with children. Since then, the presentation of criminal records regarding eventual crimes related to sexual abuse or maltreatment is compulsory for the application to a job that presupposes contact with children.
- iii) Moreover, in 2007 **the National Initiative for Child and Adolescence** (INIA) was developed, a strategy for childhood and adolescence that aims at defining, for the period of 2 years (2009-2010) an action plan to defend children’s rights.

c) The work of National Human Rights Institutions and other relevant stakeholders

With relevance in matters relating to the general implementations of the rights of the child, we would point out the work, in Portugal, of the **Institute for Child Support (*Instituto de Apoio à Criança*)**, a NGO which plays an important role in information, awareness-raising, in the promotion of studies, conferences and seminars, and in providing advice, and the recent **Platform for the Rights of the Child (*Plataforma para os Direitos da Criança*)**, established in celebration of the 50th anniversary of the Declaration of the Rights of the Child and the 20th anniversary of the Convention on the Rights of the Child. This platform – born of the initiative of the National Commission for the Protection of Children and Youngsters at Risk –, gathers several different organizations that play a role in this area, such as the National Commission itself, the Institute for Child Support, the Portuguese Association for Victim Support (*Associação Portuguesa de Apoio à Vítima*), the Portuguese Youth Institute (*Instituto Português da Juventude*), and several others.