



ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Portugal



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Introduction

The aim of this report is to examine current national policies on juvenile justice and alternatives to detention for young offenders in Portugal. It is carried out within the framework of the involvement of the IJJO as a partner in the project ‘Alternatives to Custody for Young Offenders - Developing Intensive and Remand Fostering Programmes’, coordinated by the British Association for Adoption and Fostering (BAAF) and financed by the European Commission, DG Justice, through its Daphne Programme (Grant Agreement JUST/2011/DAP/AG/3054).

In preparing this report, data were gathered through desk-based research, and informal contacts were made with key stakeholders from State agencies and from the judiciary as well as from NGOs. Previously, the author answered a questionnaire online about good/innovative practices concerning young offenders sent to foster families as an alternative to penal measures and sanctions in the country (November 2013).

Besides the introduction and the conclusion, the present report consists of three sections plus references and appendices, which allow statistical information to be included.

- Section I: The Portuguese Juvenile Justice System. Section I provides a brief overview of the legal framework and main characteristics of the juvenile justice system in Portugal.
- Section II: Restorative Approach within Juvenile Justice. Section II includes a general comment on the restorative approach within the Portuguese juvenile justice system, mainly focused on the discussion of the strengths and limitations in the use of mediation.
- Section III: Foster Care. Section III contains specific information about foster care and its legal basis in the country. Some constraints identified in the implementation of fostering programmes in general, as well as in the cases where it could be applied to juvenile offenders, are presented.

The author wishes to express her appreciation to the stakeholders who have provided official data, and willingly shared their knowledge on this matter.¹

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A. The Portuguese Juvenile Justice System

The Portuguese juvenile justice system differs from most other EU countries, giving less importance to the offence than to the need for the offender to be educated on the fundamental community values that have been violated by the illicit act. It can be regarded as **a third perspective falling in between a welfare model and a punitive or penal one.**² The set of educational measures applied by the courts to youths aims at socializing and educating offenders about the values protected by the penal law, in a process called ‘education in the law’.

The shaping of the Children and Youth Justice in recent years

Whilst major social changes in the country have occurred, for decades **the Portuguese juvenile justice system has remained deeply rooted in a welfare model**, which can be traced back to the country’s first specific laws on the protection of children. The first Portuguese legislation concerning children in conflict with the law was published in 1911, a year after the republican regime was established in the country by replacing the monarchy, and it is commonly known as The Childhood Protection Act (*Lei de Protecção à Infância*, LPI, Decree-Law of 27th of May 1911). Children under the age of 16 years who had committed offences were removed from the scope of criminal law and become subject to a specialized jurisdiction. Since then, **Portugal has a special law regarding juvenile justice** and there are **separate justice systems for young people and adults**. The **minimum age of criminal responsibility, which is also of criminal majority, has been maintained at 16 years although the age of civil majority is 18 years.**

In the 19th century, in the Penal Codes of 1837, 1852 and 1886 several special rules were defined concerning the application of sanctions to delinquent minors, but only later, in the first quarter of the 20th century, was a specialized jurisdiction established for children at risk, including offenders. The process of removing children under the age of 18 from adult prisons started earlier, in 1871, with the creation of the Correctional and Detention Home of Lisbon (*Casa de Correção e Detenção de Lisboa*), the first custodial facility for male juvenile offenders in the country.

As stressed by Agra and Castro (2002), since 1911, **the Portuguese juvenile justice system has been characterized by three periods of evolution.** The first one, extending from 1911 until the 1962 reform, constituted a period of paternalist-repressive

² According to the Council of Europe’s Recommendation Rec(2003)20, in this report, the term ‘juvenile justice’ is used in a broad sense. It refers to “all legal provisions and practices (including social and other measures) relevant for treating children in conflict with the law” (Doak, 2009, p. 19).

logic based on a degeneration-dangerousness model for minors under the age of 16 years, and it emphasized individual protection. At the core of the judicial intervention was the need for the rehabilitation and treatment of children, both victims and offenders in the same terms, initially based on bioanthropologic theories as was common at the time. Specific proceedings regarding offenders were established; however, as in other countries, the law had at its basis the need for a protective intervention.

The second period, which began in 1962 with the establishment of a new legal framework, the Organizational Guardianship of Minors (*Organização Tutelar de Menores*, OTM, Decree-Law n.º 44.288/62, of 20th of April), was protective of children and followed the welfare model; thus, it was not a complete break from the previous legal framework. The law provided the family and youth courts with a set of protection, assistance and educational measures to be imposed either separately or cumulatively and which covered measures from admonition to the deprivation of liberty (Fonseca, 2005). The social and political changes that occurred with the Revolution in April 1974 led to the introduction of some alterations of the law in 1978 (Decree-Law n.º 314/78, of 27th of October), but the juvenile justice system remained firmly rooted in the welfare model. According to Rodrigues and Fonseca (2010), the reason for this lies in the fact that the country did not reach political and governmental stability at the time, and the State's priority was consolidating democracy and the rights of citizens after a period of 48 years of dictatorship.

The system did not undergo significant changes until the end of the 20th century and the beginning of the 21st century. The process of ratifying the Convention on the Rights of the Child (CRC) by Portugal in 1990 supported the need for its implementation,³ which has led to a broader evaluation and deep critical reflection on the efficacy and constraints of the Portuguese welfare model. Culminating a long process of debate and work started in 1996 by the Commission for the Reform of the Enforcement System of Penalties (*Comissão de Reforma do Sistema de Execução de Penas e Medidas*) and other measures,⁴ the system was evaluated as inadequate and ineffective, quite inoperable in relation to the problems it was supposed to address. The frequent and indeterminate use of liberty-depriving measures was common, and the custodial institutions continued to be overcrowded until the late 1990s. Conjectural and structural reasons, associated with insufficiencies, especially the lack of resources, and other faults relating to the conception and enforcement of the model were clearly identified by the Commission and different stakeholders (Rodrigues & Fonseca, 2010).

Since 1999, the Portuguese juvenile justice system has made significant changes, and international standards have been integrated into the legal

3 The Convention on the Rights of the Child was signed by Portugal on the 26th of January of 1990, approved for ratification by the Resolution N^o 20/90 of the Assembly of the Portuguese Republic and published in the Official Gazette of Portugal (*Diário da República*), Series I, n.º 211, 12th of September of 1990.

4 This Commission was constituted under Order No. 20/96 of January, of the Ministry of Justice, and was chaired by Professor Anabela Rodrigues, currently the Director of the Faculty of Law of the University of Coimbra.

framework.⁵ Current legal frameworks integrate the tools and procedures for exercising formal social control, framed by the definition of criteria and socially accepted norms consecrated by law, embodying the guarantee to protect human rights established, and the **State can only intervene in indispensable cases** (Moura, 2000). All situations that constitute a violation of its implementation are a potential risk for individuals at various levels, demanding that actions must be taken in order to promote respect for individual rights (Leandro, 1995).

Therefore, the third period has been characterized by the deep modifications to the juvenile justice system carried out with **the approval, in 1999, of two new laws: the Promotion and Protection Law for Children and Young in Danger (*Lei de Promoção e Protecção de Crianças e Jovens em Perigo*, LPCJ, Law n.º 149/99, of 1st September), and the Educational Guardianship Law (*Lei Tutelar Educativa*, LTE, Law n.º 166/99, of 14th September)**. Both laws came into force on the 1st of January 2001. The essential idea was to distinguish the situation of children in danger,⁶ that legitimizes a State's intervention of protection (LPCJP), from the needs and situation of the children, between 12 and 16 years old, who commit an offence qualified by the penal law as crime and, as a result, justify another kind of intervention, an educational one (LTE) (Gersão, 1998, 2000; Moura, 2000; Guerra, 2004; Bolieiro & Guerra, 2009, Abreu et al., 2010). Following the suggestion of the CRC Committee, **status offences are no longer sufficient to initiate a juvenile proceeding involving a young person, and only alleged criminal offences are eligible to start a judicial process within the LTE.**

The two laws approved in 1999 represent a great change in the traditional justice practice in the country, and became the fundamental pillars of the Children and Youth Justice Reform. However, they only came into force on the 1st of January 2001, after a controversial and intense mediated youth criminal occurrence involving a famous actress in the summer of 2000 in the Lisbon Metropolitan Area. The influence of the media over policy makers' decision-making processes regarding the law became clear in this process (Carvalho, 2013a).

The new social representation of childhood and youth

Childhood and youth are no longer understood as mere biological or homogeneous

5 According to the Constitution of the Portuguese Republic (Article 8) 'the rules and principles of general or customary international law are an integral part of Portuguese law' (§1) and the 'rules provided for in international conventions that have been duly ratified or approved, shall apply in national law, following their official publication' (§2).

6 The LPCJP (Art. 3º) considers that children are in danger when: "a) are abandoned or left to themselves; b) suffers physical or psychological abuse or is a victim of sexual abuse; c) do not receive the care or affection appropriate to their age and personal circumstances; d) is involved in activities excessive or inappropriate to their age, dignity and personal well-being or prejudicial to their fully development; e) is subject or exposed, directly or indirectly, to behavior which seriously affect their safety or emotional balance; f) assume behavior or indulges in activities or consumption that seriously affect their health, safety, training, education or development without the parents, legal representative or who has custody preclude them properly to remove this situation."

realities; instead, they are considered social categories that aggregate a plurality and diversity of conditions and ways of life, some of which are socially diametrically opposed (Almeida, 2009). Analysing the social condition of childhood and youth in the Portuguese society implies, first of all, taking into account the fact that compared to other European countries, Portugal entered late into modernity (Viegas & Costa, 1998). The establishment of democracy with the April Revolution in 1974 was the turning point. However, concerning the juvenile justice system, the laws and practices have only started to reflect in their content and language the new social representation of childhood and youth with the Children and Youth Justice Reform, in the late years of the 20th century.

The terms ‘child’ and ‘youth’ arise in the two new approved legal diplomas, LPCJP and LTE, representing a new approach in the field of Law. Previously, the term ‘minor’ was repeatedly used in the legislation and in the justice system, indiscriminately applicable to individuals aged up to 18 years, a level at which the individual reaches the age of civil majority in Portugal.

The concept of child defined by Article 1 of the Convention on the Rights of the Child, ratified by the Portuguese State (1990) – “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” – is integrated into the national legislation. Aiming at its enforcement in the Portuguese system of promotion and protection of children and youth in danger, the LPCJP states “a child (*criança*) or young person (*jovem*) is a person under 18 years or a person under 21 who requests the continued intervention started before the age of 18 years” (Article 5). The LPCJP extended the concept of ‘young people’ to the age of 21, in case a young person under the age of 18 years with a protection measure asks to keep the same legal status after that age. This occurs when a young person has not yet defined his personal projects in order to live on his own and desires to carry on with a protection measure until 21 years old.

The terms ‘young person’ and ‘youth’ (*jovem*) are present in the LTE legal text, even though there are some articles where the term ‘minor’ (*menor*) is still being used. The terms ‘juvenile’ or ‘young offender’ could only be used in a restricted way in relation to the current Portuguese youth offending sentencing framework, the LTE: these refer to a person between 12 and 16 years old who commits an offence qualified by the penal law as crime and, as a result, can be subject to educational measures. As noted by Neves (2008), this option is not a way to ontologize a youth’s behaviour, focussing instead on the formal social reaction.

Although following the CRC, in practical terms in Portuguese the term ‘child’ is more used when referring to a pre-adolescent boy or girl and ‘young people’ or ‘youth’ are generally used to name adolescents under the age of 18. This explains the use of the expression ‘childhood and youth’ (*infância e juventude*) in normal language and in legal texts, including the Constitution of the Portuguese Republic, which has two specific articles on childhood (Article 69) and youth (Article 70).

Another important achievement in recent years relates to the increasing use in the legal documents, social and judicial practices and in research of the expression ‘Children and Youth Law’ (*Direito das Crianças e dos Jovens*) instead of the former term ‘Minors Law’ (*Direito de Menores*). This last one was widely spread when the welfare model of juvenile justice was prevailing. Compared with the previous model (OTM), this point reflects a new intention by the legislator, who thus integrates the principles arising from the current social representation of childhood in Western societies, which is being incorporated in the Portuguese society. However, the idea of ‘minority’ still persists in some sectors of the Portuguese population when discussing childhood and the condition of children in the country (Gersão, 1998, 2000; Rodrigues, 1999; Fonseca, 2005; Bolieiro & Guerra, 2009; Carvalho, 2010, 2013c), which constitutes an obstacle to the full realization of the Rights of the Child.

The current juvenile justice framework

Currently, the Portuguese justice system combines three different kinds of intervention regarding children and youth offending, taking into account three age ranges: 1) children below the age of 12 years, 2) juveniles between 12 and 16 years, and 3) young adults between 16 and 21 years of age. The first two categories fall within the scope of juvenile justice, whereas young adults are subjected to the adult criminal justice system. (Rodrigues & Fonseca, 2010).

Since 1911, Portugal has had a juvenile justice system and special laws regarding children and youth offenders. There has never been a juvenile criminal law in the country, and as a result, the minimum age of criminal responsibility (MACR) is 16 years old, which is also the minimum age for criminal majority. Portugal has a strict model, which does not allow for exceptions in the enforcement of criminal laws and does not foresee the prosecution of juveniles for certain offences only. Below the age of 16, it is not possible to sentence children and youth in criminal or penal terms.

Concerning children and youth under the age 16 who commit acts qualified by the penal law as crimes, the two new laws approved in 1999 must be taken into consideration. The Portuguese Children and Youth Justice is currently based on an approach that distinguishes between situations involving children in danger, who require a protective intervention coordinated within the national system for the promotion and protection of children and youth in danger,⁷ and juveniles who commit an offence qualified by the penal law as a crime, who are subjected to a specific educational intervention carried out within the juvenile justice system and managed by services from the Ministry of Justice. Depending on the nature of the offences committed by a young person who is 12 years of age or older, on his or her social and educational needs, and on other specific criteria, both differentiated interventions could be applied to the same individual since, as in many cases, both needs are often related (Rodrigues & Fonseca, 2010).

7 Danger situations are defined by Article 3 of the LPCJP. See footnote 5.

The Young Adult's Special Penal Regime (16-21 years old)

Despite following the concept of child defined by the CRC considering the age of 18 years to reach civil majority in Portugal, youths who commit offences at the age of 16 fall under the general penal law and are regarded and judged as adults (Article 19 of the Portuguese Penal Code). As a result of the Penal Code Reform of 1982, a Young Adult's Special Penal Regime (*Regime Penal Especial para Jovens Adultos*, Decree-Law n.º 401/82, of 23th of September) is applied to those aged from 16 to 21 years, but in fact, until 18 years, from a civil point of view, they are still considered minors. At the age of 16 and 17 they can be sent to prison and be placed together with adults in the same facilities.⁸ Concerning this ambiguity it is clear the CRC is not being carried out yet in full (Muncie, 2008; Bolieiro & Guerra, 2009; Fonseca, 2010; Rodrigues & Fonseca 2010; Kilkelly, 2011, Carvalho, 2012a).

The Young Adult's Special Penal Regime makes possible some specific mitigating regulations and alternatives to this age group. The application of the so-called corrective measures (*medidas de correção*) as an alternative to a prison sentence for certain cases is foreseen by the law. These measures are: admonition, imposition of obligations, fine and detention in a detention centre, though these facilities have never been built, which means there has not been the possibility of imposing this last measure. The law promotes reduced sentences and, more recently, in 2007, house arrest (including electronic monitoring) was added as a measure eligible for application to young adult offenders (Dunkel & Pruin, 2012).

Youth offending (12-16 years old)

A person between 12 and 16 years old who commits an offence qualified by the penal law as a crime can be subject to educational measures, as defined by the Educational Guardianship Law (LTE). **In this age range a transfer of the juvenile to adult's courts is totally inadmissible, whatever the nature of the offences committed, and the family and youth court can only impose educational measures.**

The LTE provides a diversified set of educational measures (Article 4). From the least to the most impactful to the young person's life, they are as follows (Table 1): admonition, restriction of the right to drive or obtain a driver's permit for motorcycles, reparation to the victim, economic compensation or work for the benefit of the community, imposition of rules of conduct, imposition of obligations, attendance of training programs, educational supervision, and placement in custody at educational centres.⁹

Educational measures can be executed until the age of 21 (Article 5). Electronic tagging is not applied to juveniles; this measure can only be imposed in the penal system for those

8 According to the official judicial statistic, based on the seven last years, 16 to 18 year olds on average represent less than 1% of the prison's population (by the end of December 2007 were 0.9% of the total prison's population (n=101), 0.6% in 2011, and 0,5% in 2012).

9 In this report, the term 'custody' is used in a broad sense to refer the Portuguese measures of deprivation of liberty applied to juveniles as defined by the LTE.

who are at the age of 16, and fall under the general penal law. The criteria on which an educational measure is determined by the youth court rely not only on young offenders' needs, which are evaluated before the sentence by social and psychological or psychiatric assessments, but also on the seriousness of the committed offences in comparison to what is defined in the penal code.

Table 1 Educational measures provided by the Educational Guardianship Law (Article 4 LTE)

MEASURE		DURATION
Admonition (Article 9)	An educational measure consisting of a lenient warning that, alone or cumulatively with others, may be imposed by a youth court on a juvenile subject to its jurisdiction. It consists on a formal reproach or warning given by the court at a public hearing to a young person found guilty of minor facts qualified by the penal law as crimes.	---
Restriction of the right to drive or obtain a driver's permit for mopeds (Article 10)	The young person's right to drive or to obtain a driver's permit for mopeds is subject to restriction.	Applicable for a period ranging between one month and one year.
Reparation to the victim (Article 11)	Presenting apologies or undertaking any activities related to the inflicted damage which may benefit the victim.	---
Economic compensation or work for the benefit of the community (Article 12)	The young person must make a payment of a specified amount or perform a specific activity that benefits a public or private non-profit organization. Activities could be carried out on weekends and bank holidays. Financial compensation could also be paid in instalments, as long this option does not distort the meaning and content of the measure. Before establishing the amount of the payment, the judge must take into consideration the young person's ability to pay.	Maximum duration of 60 hours and cannot exceed a total period of three months.
Imposition of rules of conduct (Article 13)	The imposed rules cannot put abusive or unreasonable constraints to the young person's liberty to make decisions or lead his/her life. The rules should be of preventive nature, and are meant to adjust the young person's behaviour to the rules and values essential to life as a member of society.	Maximum duration of two years.
Imposition of obligations (Article 14)	This measure seeks to address juveniles whose educational needs could be satisfied by attending programmes and activities of educational, formative or therapeutic nature, and that are organized and accessible for the population in general. This measure means the young person is obliged to attend controlled activities and programmes, which can include training, school, counselling sessions in psycho-pedagogical institution, activities in clubs or youth associations or undergo medical, psychiatric, psychological treatment or equivalent at a public or private institution, as an outpatient or as hospitalised patient, to treat alcoholism, drug addiction, contagious or sexually transmitted diseases or mental illness. The judge should always seek the young person's agreement for the treatment programmes and over the age of 14 the consent is compulsory.	Maximum duration of two years.
Attendance of training programs (Article 15)	The legislator intended the intense participation of the young person in certain formative training programmes specifically adapted for juvenile offenders. The imposition of the obligation of attendance would, therefore, restrict the young person's liberty. In exceptionally situations, this measure can include an obligation to the young person to live with a competent person or institution that provides accommodation, in all cases, in open facilities.	Until six months, in exceptionally cases it can be longer.
Educational supervision (Article 16)	This measure consists of the adjudication to an individualised educational project (PEP) that covers the areas of intervention defined by the youth court and involves a combination of measures and educational actions. The content of the measure is wide ranging and it can impose rules of conduct or obligations as well as attending formative, training or school programmes. The PEP is executed by the services of the Ministry of Justice (currently, the Directorate General of Reintegration and Prison's Services), which have the task to supervise, guide, follow and support the young person throughout its implementation. In case of repeated non-compliance of the PEP, the measure can be extinguished and the young person may be sentenced up to four weeks ends in custody in an educational centre.	From the minimum of three months to the maximum of two years.
Placement in custody (Articles 17 and 145)	Liberty depriving educational measures could be enforced in five ways: pre-trial detention (Article 146), custodial measure to perform psychological assessment in forensic context (Article 147), for compliance of detention following the young person have been caught in 'flagrant offense' (Articles 51 and 146), detention measure, detention in custody at the week-ends (Article 148). See below "Custodial institutions", pg. 15.	From three months to two years, exceptionally three years in the closed regime.

Source: LTE (1999); Rodrigues & Fonseca (2010).

It is possible for young adults who are 16 to 21 years of age to be under juvenile justice supervision if, under the age of 18, they had judicial proceedings for having committed acts qualified by the penal law as crimes when they were between 12 and 16 years old. Moreover, a series of rules and specific legal procedures resulting from the joint application of educational and penal orders for the same young person must be considered. The LTE foresees the possibility for a youth court to intervene and enforce an educational measure for a young person under the age of 18 for an offence committed before he/she reached 16, as long as he/she is serving a prison preventive detention (*prisão preventiva*) (Article 27).

Children in conflict with law (under the age of 12)

Under the current juvenile justice system in Portugal, for children below 12 years of age who have committed an offence qualified by the penal law as crime, the Promotion and Protection Law for Children and Youth in Danger (LPCJP) is applied and can only be implemented in terms of protection measures. This means they receive the same treatment as any other children who are in danger because Portuguese legislators considered that below this age, children's psycho-biological development requires a specific intervention that is not compatible with the principles and goals defined in the LTE. As Rodrigues and Fonseca (2010, p. 1034) noted, "the commission of an offence qualified by the penal law as crime by a minor aged below 12 years, to the extent that is related to situations of social need, may indicate that the State should intervene. The intervention in this case should be solely of a protective nature, carried out within the framework of LPCJP".

The intervention for the promotion and protection of the child's rights expressed in the LPCJP is applied to all the children in danger, between 0 and 18 years old, and in some cases it can be extended until the age of 21.¹⁰ The protection measures applied by the local Children and Youth's Protection Commissions or by the family and youth courts aim to remove children from the danger they are facing,¹¹ giving them conditions that protect and promote their safety, health, education, well-being and full development, and trying to assure the physical and psychological recovery of those who were victims of any form of exploitation or abuse. The protection measures are divided into two categories (Article 35). In the first category are the family-based protection measures enforced in

¹⁰ See page 5.

¹¹ The Children and Youth's Protection Commissions are non-judicial official institutions (Epifânio, 1993), with autonomy, located in every municipality, and are composed by representatives of local entities, such as the administration State services, social services, education and health services, police authorities, youth associations, and others. The Commission intervention's depends on the consent of the parents, legal guardian or *de facto* guardian, and is also required the non-opposition of the child aged 12 years or older. These Commissions can apply measures for the protection of children and youth (except placement for future adoption), but only when having an agreement in the terms mentioned above. If there is no agreement regarding the implementation of the protection measures proposed by the Commission, or if the required consents are withdrawn, this entity has to report the case to the Public Prosecution services. The Public Prosecutor monitors and assesses the activity of the Children and Youth's Protection Commissions, and has the legal duty to represent children, by bringing to court the cases for the protection of their rights. In care and protection cases, the court can take protective measures by a care and protection agreement or by a judicial order, after a trial (judicial debate, as it is called by the law) (Bolieiro, 2010).

the children's living environment: parental support; family support (given to another child's relative); entrustment to a third person (non relative); entrustment to a person selected for adoption; and youth's support towards autonomy. The second category refers to the placements' measures, which imply the removal of the child or of the young person from his/her life context: foster care, institutional care, and entrustment to a residential institution aiming at future adoption.

The protection measures can also be applied to young people older than 12 and below the age of 16, who have committed offences qualified by the penal law as crime and whose needs for protection in face of the situation of danger affecting them overlap the goal of 'education in the law' (*educação para o direito*) foreseen in the LTE (Rodrigues & Fonseca (2010)).¹² Rules and procedures of interconnection between the protective and educational interventions (Article 81 of the LPCJP and Article 43º of the LTE), support the enforcement of promotion and protection measures instead of, or in association with, an educational measure.

Youth offending: juvenile justice proceedings

The Portuguese juvenile justice system does not have a retributive or punitive purpose; it is focused on addressing the offending behaviour in a manner appropriate to the young person's development. At the core of the LTE is the respect for the young person's personality, ideological, cultural and religious freedom, within all the rights conferred upon him/her by the Constitution of the Portuguese Republic. **The State can only intervene in indispensable cases.** Juvenile offenders' rehabilitation is based on their needs to be educated on the fundamental values for living in society, with the objective being that they assume a constructive role in society.

The set of educational measures established by the LTE aims at the offender's socialization, "based on the core principle of education in the law" (Rodrigues & Fonseca, 2010, p. 1035). **The concept of 'education in the law' has been understood as the process that makes the young person learn, adhere to and respect the fundamental values of society, which are expressed in the legal-criminal values protected by the penal code** (Figueiredo, 2001). The meaning of socialization is fully explicit in the LTE and the 'education in the law' principle "does not represent moral correction, but is rather – in respect for the freedom of conscience that pertains to all citizens – to educate the minor to pursue a social life that complies with essential legal norms" (Rodrigues & Fonseca, 2010, p.1035). **The proof of the facts of a criminal offence is indispensable to the lawsuit, but merely by itself it is insufficient; also required is the evaluation of the young offender's need for 'education in the law'.** Only by the corroboration of the above assumptions could the youth court decide to apply an educational measure (Articles 2 and 3).

¹² 'Education in the law' corresponds to the Portuguese term 'educação para o direito' accordingly to the translation defined by the national legislators in Rodrigues and Fonseca (2010).

The fundamental principles foreseen by the CRC (Article 37) are the basis of the LTE core principles. The Children and Youth Justice Reform introduced the **principle of the juvenile offenders' responsibility**, but it has remained focused on the application of educational measures and has not signified a rising punitive trend. The Portuguese juvenile justice explicitly follows the ideal of education while at the same time emphasising prevention of re-offending. **The juvenile offender is considered responsible for his actions, but not in a penal way.** The system could be described in what Bailleau and Fraene (2009: 6) considered a “tendency towards bifurcation – a soft approach in most cases and tougher actions against a limited number of adolescents undergoing a custodianship order”.

The **key juvenile justice system principles established by the LTE are:** preference for non-institutional measures over institutional measures; specific duration of educational measures; proportionality (according to the gravity of the offence and the identified educational needs); jurisdictional control over the execution of the order; legality (in terms of the ‘vagueness doctrine’ - the legislator provided a closed catalogue of educational measures and other modalities, types or measures distinct from those stipulated in the law cannot be applied); need; suitability; and subsidiary.

The youth court may – after a specific procedure that is different from a penal one but follows some similar rules to a criminal procedure for adults – apply compulsory educational measures, but no penal sanctions. Due process guarantees were introduced by the Children and Youth Justice Reform and when a young person has committed an act qualified by the penal law as a criminal offence jointly with an adult, he/she is tried in a youth court accordingly based on his/her age.

A juvenile process is organized in two stages: the investigation, led by the public prosecution services (*Ministério Público*, MP), and the jurisdictional stage, led by the judge. This two-stage organization promotes the emergence of a youngster as “the procedural ‘subject’, bestowed with individual rights and guarantees” (Rodrigues and Fonseca (2010, p. 1044).

The MP assumes a central investigative role and the conduction of interrogations (Article 75) acting in accordance with the legal principle of speedy procedure (Article 44). The judicial authorities may request information from **the auxiliary body of the judiciary administration concerning the enforcement of juvenile justice measures, which is currently the Directorate General of Reintegration and Prison's Services (DGRSP)**. The DGRSP staff is in charge of providing a young person's social report and when there is the option for the imposition of a custodial measure in an educational centre in the open or semi-open regime, this report must include a psychological assessment, and in the cases of a closed regime, the young person's psychological assessment in a forensic context is mandatory. If the offence is qualified as a crime punishable with a prison sentence of up to three years, and the MP did not conclude there is the need for education in the law, the case can be closed. In the light of the evidence of the facts, an essential pre-condition for verifying the educational needs, if the MP considers it necessary to enforce an educational measure, the jurisdictional stage will follow the investigation. A similar situation occurs in all the

cases where the offence is qualified as a crime punishable with a prison sentence of more than three years, even when the MP does not consider it necessary to apply such an order. **After the MP requests to open the jurisdictional stage (Article 86), the judge may dismiss the process in those cases where he/she evaluates the MP's proposal of educational measures as unnecessary.**

The imposition of preliminary measures or of the dismissal of the case requires a prior hearing with the parents. **The Portuguese legislation emphasizes the involvement of parents or the legal guardians at each stage of the juvenile proceedings, court trial and even during the enforcement of the judicial measures.** The young person could also be assisted by an expert in psychiatry or in psychology whenever required for the purpose of assessing the need to apply any educational measure.

The trial audience in the jurisdictional stage can take one of three forms. It could be an informal and short session intended to obtain the young person's agreement concerning the order proposed by the MP in which the judge also agrees or a similar type of session in search for the consensus of the MP regarding an order proposed by the judge. A formal and more complex session with a preliminary audience could be carried out, in which the contradictory procedure of proof is guaranteed prior to the judge's decision. Whenever the MP requests the application of liberty-depriving measures, a formal audience is required.

A formal juvenile audience is public, but the law allows the judge to limit or even exclude the publicity concerning it based on certain limited grounds, such as when is considered that the presence of the public might psychologically affect the young person. **The court's final decision must always be read at public sittings. Each juvenile judicial file is confidential until the court order scheduling a trial; even afterwards, the publicity of the case must respect the young person's personality and privacy, concealing, as much as possible, his/her identity** (Article 41). According to the law, the judge can order that the media must refrain from narrating or reproducing certain acts or documents of the case file, or disclosing the juvenile offender's identity (Bolieiro, 2010).

The educational measures are ordered by a specialized judge, and for the application of a liberty-depriving measure a panel of three judges is required, composed of one professional and two social specialized judges (lay judges) (Article 30). In all of the cases, the procedural initiative rests with the public prosecution services.

A young person can avoid a trial in specific cases. Based on the principle of opportunity, if the offence committed by a young person corresponds to a crime punishable with a prison sentence of less than five years, the process may be suspended by the public prosecutor, and instead, a juvenile offender's conduct plan can be executed (Article 84). It is a way of promoting a consensual solution in the cases of minor offences involving both the young person and his/her parents or the legal guardians. **The suspension of the process can take a maximum of one year.** In developing and implementing the plan, the young person, his/her parents or the legal representatives or legal guardians may seek the assistance of mediation services. **The conduct plan may require the**

young person to engage in one or more restorative actions (Castela et al, 2005).

Rules and procedures of interconnection between the protective and educational interventions support the enforcement of promotion and protection measure instead of an educational measure for specific cases.

In the case of minor offences, and when the young person is in a dangerous situation, diversion could be used and protection measures can be applied by the local Children and Youth's Protection Commissions (Article 81 of the LPCJP and Article 43^o of the LTE).

A major improvement brought up by the Children and Youth Justice Reform regarding youth offending has been the introduction of the young person **defence lawyer, whose participation is required in all the judicial proceedings** (Article 46). The mandatory constitution of assistance by a defence lawyer finds its rationale in the need to ensure the effective protection of the child's rights. The young person has the right to constitute or to request the nomination of a defence lawyer, and this right could be exercised by him/her or by the parents or legal guardians. If he/she or the parents or legal guardians cannot afford it, the judge decides to appoint one that will act free of charge.

The right to assistance by a defence lawyer must give legal expression to the young person's point of view. From his/her first contact with the police, the young person must be assisted by a defence lawyer whose action is extended to all the proceedings and stages of the process in which he/she is participating. It is compulsory for a young person to be assisted by a defence lawyer in the first interrogation when detained, and also in any hearing during the investigation stage and on the trial. When arrested, he/she could communicate in private with the defence lawyer. **The police can only take the responsibility of identifying the juvenile and presenting him/her for interrogation led by the public prosecutor.**

A young person suspected of having committed an act qualified by the penal law as a crime cannot remain more than three hours in a police station for purposes of identification. When present at the young person's first interrogation, the parents, legal representative or legal guardians must refrain from any interference.

At any time of the proceeding, the young person has the right to contact the judge, the public prosecutor and his/her defence lawyer in private. The assistance of the defence lawyer is also required in the cases of revision of the pre-trial detention measure and in the preliminary hearings. The defence lawyer must guarantee assistance to the young person in every stage of custody by analysing the need to apply a liberty-depriving measure, and if the terms of its application respect the CRC.

The needs of those placed in custody, not restricted to the intervention of a defence lawyer and all the necessary individual assistance – social, educational, vocational, psychological, medical and physical - during placement in the institution, is fully considered by the Portuguese legislation. **In the view of his/her age, sex and personality, the young person might require other specific or more relevant assistance while being subject to liberty-depriving measures.**

Authorities responsible for the reactions to youth offending

The Constitution of the Portuguese Republic establishes, under Article 209, the organization of the Portuguese courts (DGPJ, 2013). In this article, a fundamental distinction is drawn between, on one hand, the civil jurisdiction and, on the other hand, the administrative one.¹³ In terms of civil jurisdiction, the national territory is divided into judicial districts, judicial circles and county courts. The judicial courts divide themselves into three degrees or instances: the courts of first instance, which are, in general, the county courts; the courts of second instance, which are the Courts of Appeal; and lastly, the Supreme Court of Justice. The Courts of Appeal have jurisdiction within their own judicial district or part of it, while the first instance courts are competent in their own jurisdiction (DGPJ, 2013).

The civil jurisdiction first instance courts are divided in accordance with three categories: general jurisdiction, specialized jurisdiction and specific jurisdiction. The courts of general, specialized or specific jurisdiction may be divided into benches. In the county courts, the benches may have general, specialized or specific jurisdiction. The reasoning behind this is that not only the ‘special’ courts may divide themselves into different benches with the same jurisdiction, but the ‘general’ courts may also divide themselves into benches with different jurisdiction, in accordance with the matter and the form of procedure (DGPJ, 2013).

The specialized jurisdiction courts hear specific matters, irrespective of the form of procedure. **The LTE intervention is the responsibility of the specialized family and youth courts** (*Tribunais de Família e Menores*). The first children courts (*Tutorias da Infância*) in the country were created in 1911 by the Childhood Protection Act. Since then, there have been youth specialized courts as well as specialized youth prosecutors. These courts are competent to decide on measures to be applied for children who are, in general, in a dangerous situation,¹⁴ either in view of mistreatment or abandonment or by having committed an act qualified by the penal law as crime. Before the judicial network Reform that came into effect in the 1st of September 2014 (Decreto Law n.º 49/2014), in the few regions where they did not exist, the county courts (*Tribunais de Comarca*), of general competence, exist as youth courts (Rodrigues & Fonseca, 2010).¹⁵

In the past two and half decades there has been a significant growth in the number of family and youth specialized courts. At the same time, there has been a broadening in the territorial area of the specialized juvenile jurisdiction. This process of specialization has occurred especially in the coastal and more urban areas of the country; the interior,

13 More information available at the Directorate-General for Justice Policy of the Ministry of Justice website <http://www.dgpj.mj.pt/sections/english-version/strategic-planning/annexes/the-portuguese-judicial/the-portuguese-judicial/>

14 The family and youth courts can only intervene to determine protection measures to children and youth in danger when the parents or legal guardians are in disagreement with the measures proposed by the Children and Youth Commissions’.

15 Concerning the youth offending according to Articles 28 and 29 of the LTE.

with less population, has a justice more based on general jurisdiction courts. One has observed a high concentration of family and youth specialized courts in the Lisbon and Oporto Metropolitan areas, which corresponds to the demographic trends (Pedroso et al., 2010). In January 2014, there were close to 20 of these courts, with increasingly more judges and prosecutors with specialized training. More recently the number of these courts has been rising, now totalling 23, one in each county capital. As a result of the judicial network Reform (September 2014), the whole country is now covered with family and youth specialized jurisdiction.

Currently, **the auxiliary body of the judiciary administration concerning the enforcement of juvenile justice measures is the Directorate General of Reintegration and Prison's Services (DGRSP).**¹⁶ From the end of October 2010 to September 2012, the Director-General of Prison Services assumed the function of Director-General of Social Reintegration (DGRS), simultaneously managing these two Ministry of Justice departments. **From 1925 to 2012 there was an independent State juvenile justice service, something that no longer exists due to the recent merge of the former DGRS and the Prison's Service into the new DGRSP,** which has the task of managing the implementation of public policies of crime prevention and the social reintegration of young and adult offenders as well as managing the prison services.

The DGRSP ensures the enforcement of the non-institutional educational measures for young offenders in the community, and it is responsible for enforcing the liberty-depriving educational measures through the management of the educational centres. The DGRSP staff, in local teams or in custodial institutions, is responsible for assisting the youth courts and the public prosecution services concerning the juvenile proceedings. This state justice department provides technical and specialized counselling to the youth courts, psychosocial support to young people and adults involved in lawsuits, in conjunction with the competent public entities and individuals, and promotes the connection between justice administration and community agencies.

In Portugal there are no specialized police units regarding juvenile justice. Since 1992, there has been a specialized police program named Safe School Program (*Programa Escola Segura*), which is focused on violence in and around schools, including youth offending.¹⁷ This program is a joint initiative of the Ministry of Internal Affairs, which corresponds to Ministry of Home Affairs in other EU countries, and the Ministry of Education and Science, covering state and private schools, violence within and outside the physical grounds of the school, from primary school to university.

As highlighted in national and international documents, the existence of **independent**

¹⁶ Decree-Law no. 215/2012, of 28th September.

¹⁷ More information available at: <http://www.psp.pt/Pages/programasespeciais/escolasegura.aspx>

mechanisms and structures responsible for the inspection, the supervision and the evaluation of the juvenile justice system is crucial for the promotion of a child-friendly justice. The Portuguese law (LTE), in its Article 209, establishes the **constitution of an independent Commission for the Supervision of the Educational Centres** (“*Comissão de Fiscalização dos Centros Educativos, CESC*”). Not only are educational centres supervised and monitored by the court judges, by the public prosecutors, and through the visits carried out by families or other entities related to this field, the law also states that the deprivation of liberty of a young person and the centre’s activities should be followed and evaluated by an independent commission. The CESC includes two representatives of the Portuguese Assembly of Republic (Parliament), one representative of the Government, one representative of the Superior Council for the Judiciary (“*Conselho Superior da Magistratura*”), one representative of the Superior Council of Public Prosecution (“*Conselho Superior do Ministério Público*”), and two representatives of non-governmental children’s organizations. This independent commission may request information about the centres and visit them, at any time its members consider it necessary, in accordance to the law, which grants them free access. Two major reports have been produced and made publically available by the CESC in recent years (January 2011 and June 2012).

Another independent structure with an important work of evaluation and consultation in the field of the Portuguese justice system, since 1996, is the Permanent Observatory on Portuguese Justice (*Observatório Permanente da Justiça Portuguesa, OPJ*), at the Centre for Social Studies, of the University of Coimbra.¹⁸ The Observatory aims at accompanying and analyzing the performance of the Portuguese courts, as well as related institutions such as police forces, prisons, alternative dispute resolution mechanisms, forensic services, and social reintegration services. The OPJ evaluates the reforms introduced in the judiciary, suggests reforms, and contributes to comparative studies, with mixed international teams or co-coordinated teams, within and outside Europe. A main objective of its studies is to inform the public debates on justice policies in Portugal, and help its transformation into policies aiming to be more democratic and more attentive to citizens’ rights.

Regarding the evaluation of the Portuguese juvenile justice system, since 2001 two major reports have been produced by the OPJ: the first one, in 2004,¹⁹ and the last one in 2010,²⁰ in which some of the main conclusions and recommendations presented in this report are based.

18 Webpage: <http://opj.ces.uc.pt/>. The Observatory has the scientific coordination of Prof. Boaventura de Sousa Santos.

19 Santos *et al.* (2004).

20 Santos *et al.* (2010).

Custodial institutions

The Portuguese state custodial facilities for juvenile offenders, called **educational centres (*Centros Educativos*)**, are managed by the DGRSP, which constitutes an auxiliary body of the judiciary administration for juvenile justice. The educational centres are distinguished according to the type of regime carried out and are organized into residential units (Article 4) with secure accommodations provided for 10, 12 or 14 juvenile offenders. A custodial measure can be executed in one of the three regimes defined by the LTE, which are based on the extent of their deprivation of the youth's liberty.

Table 2 Educational centre's regimes (Article 17 LTE)

REGIME	CONDITIONS	DURATION
Open	The young person lives and is educated in the education centre, but may be allowed to spend weekends and holidays with the family or going out unaccompanied. He/she may also attend school, education or training, employment, sports and leisure activities outside the centre, as defined in the Personal Educational Project approved by the youth court. An open residential unit accommodates the maximum of 14 juveniles.	From three months to two years
Semi-open	Applicable to those who juveniles have committed an offence against people that corresponds to a prison sentence in excess of three years or two or more offences punished by a prison sentence in excess of three years. An young person is educated and attend educational, training, employment, sports and leisure activities inside the centre, but may be allowed to attend them outside, and may be allowed to enjoy holidays with family as defined the Personal Educational Project approved by the youth court. A semi-open residential unit accommodates the maximum of 12 juveniles.	
Closed	Applicable to a young person at the age of 14 or older, who has committed an offence corresponding to a prison sentence of more than eight years or when the committed offences correspond to crimes against people, punished with prison sentences of more than five years. A psychological assessment in forensic context is required before the judicial decision is taken. Young people live, are educated and attend all the activities inside the centre, and going outside is strictly limited to attend judicial duties or due to health needs or other equally ponderous and exceptional reasons, and always under surveillance. A closed residential unit accommodates the maximum of 10 juveniles.	From six months to two years (and exceptionally three years in the most serious cases)

Source: LTE (1999); General and Disciplinary Regulation of the Educational Centres (2000).

The criteria on which the measure is determined by the court rely not only on young offenders' needs, which are evaluated before the sentence by social, psychological or psychological assessment in a forensic context, but also on the seriousness of the committed offences in comparison to what is defined in the penal code.

Liberty-depriving educational measures within the LTE could be enforced in five ways: pre-trial detention (*medida cautelar de guarda*), custodial measure to carry out the young offender's psychological assessment in a forensic context (*perícia sobre a personalidade*), detention, if the young person has been caught in 'flagrant offense' (*detenção*), custodial measure (*medida de internamento*), or detention in custody at the

week-ends (*internamento em fins de semana*). **In accordance with international standards, detention, in any of its modalities, must be only used as last resort.** Thus, fulfilling the principles of legality and proportionality, the requirements and assumptions underlying the application of this measure are restricted, and in the case of the closed regime “are extremely restricted, which is perfectly understandable” (Rodrigues & Fonseca, 2010, p. 1060).

The minimum length for a custodial measure is three months in the open and semi-open regimes, and six months in the closed regime; the maximum length is up to two years in all the three regimes, and, exceptionally, three years in the closed regime for the most serious cases. Below the age of 14 a young person cannot be placed in the closed regime, just in the open or semi-open regime. Depending on the juvenile offenders’ progress in detention, a change to a less restrictive regime can be proposed to the court and the custodial measure applied can be reviewed according to the law and changed, but never to a more restrictive regime.

The current law does not envisage a specific therapeutically custodial measure. According to the LTE, it is supposed that the young person is able to understand the meaning of the measures and of the educational intervention. In these terms, it is supposed that the law is not applied to those who suffer serious mental health problems (Article 49) which prevent them from understanding the judicial process. As Bolieiro (2010) states in the *Portuguese Report of the MHYO Project*, in the Portuguese juvenile justice system, a juvenile offender who faces a custodial measure and has mental health issues that have to be therapeutically addressed, will receive psychiatric and/or psychological treatment during detention. **Although the current legal framework foresees the creation of specialized centres or residential units that should provide therapeutic programmes specifically designed for those with personality disorders or serious addictive behaviours, such units and programmes have not been fully implemented.** It is important to note that the placement of a young person in specialized centres or units and their enrolment in such therapeutic programs depends on the court’s approval.

The intervention in the educational centres should be structured around activities and programs concerning different areas (e.g. education, training, social and cultural activities, sports, health and other activities depending on individuals’ specific needs) as well as focusing on daily routines to increase personal and social skills (Neves, 2007; Storino, 2012). To fulfil the objectives of the judicial intervention, each educational centre establish partnerships with various institutions and agencies in the community (schools, health centres and hospitals, recreational, sports, and cultural associations, NGO, religious and local authorities, and others services). Rules and procedures are defined within a legal regulation framework that provides a foundation for the system’s organization, the General and Disciplinary Regulation of the Educational Centres (“*Regulamento Geral e Disciplinar dos Centros Educativos*”, approved by Decree Law n.º 323-D/2000, of 20th December). **For each young offender, there is a range of court-approved mandatory activities according to the individualised**

Personal Educational Project (*Projeto Educativo Pessoal*, PEP).

The LTE intervention is based on the principle of maintaining all the civil, political, social, economic, and cultural rights and guarantees that are legally granted to youths in the country and that are compatible with the deprivation of liberty. Among the guarantees and rights legally conferred upon the young person placed in custody are: the right to be informed in a personal and appropriate manner; the right that the centre will act in the best interests of the young person's life, physical integrity and health; the right to preserve one's dignity; the right to preserve one's privacy; the right to contact, in private, the judge, the public prosecutor and the defence lawyer; the right to attend school; the right to maintain authorized contact with the outside world, by different means (letter, phone, visits); the right to be heard prior to the imposition of any disciplinary measure and the freedom of religion (Rodrigues & Fonseca, 2010).

An important issue concerning the young offenders' path to personal and social well-being is their preparation prior to release from an educational centre and the following monitoring process (Bailleu & Fraene, 2009). **Unlike other EU legal frameworks, in Portugal, the LTE does not establish any procedure or specific mechanism for monitoring a young person after a liberty-depriving measure,** which means local and community entities should be involved in the reintegration process prior to the release of the young offender from custody. Thus far, the last evaluation reports of official entities on the Portuguese juvenile justice system show there is not enough coordination among the different services (Santos et al., 2010; CESC, 2012). Up to a point, this happens due to the lack of sufficient and adequate responses at a national level for youth at these ages. Rehabilitation is not a process that can be completed when a young person is released from an educational centre; as a learning process, it continues over time, and the greatest challenges arise when the young person returns to the community (Carvalho, 2012b).

Pre-trial detention

In Portugal, **the pre-trial detention measure consists of detention in an Educational Centre in the closed or semi-open regime and must be used as a last resort, only applicable to youth if other precautionary measures provided by the LTE are insufficient or inadequate.** This judicial order is regulated by child-specific provisions according to international standards and can only be imposed by a judge as a precautionary measure on youths who have committed an offence qualified by the penal law as a crime between 12 and 16 years old, as long as they have not yet reached 18 years old. In addition, not all offences are eligible to the enforcement of this measure: it can only be applied when the offence committed corresponds to a maximum prison sentence of more than five years, or when two or more committed offences are classified as crimes against people punishable by a maximum prison sentence in excess of three years.

If the young person is over 14 years old, he/she can be placed in the closed regime; if he/she is below 14 years old the pre-trial detention order must be carried out in the semi-open regime. The Portuguese legislation stipulates a maximum duration of this measure: **it can take up to three months and can be extended for another three months, in any of the above mentioned regimes, in especially complex cases and where the reasons on which it is based are duly stated** (Rodrigues & Fonseca, 2010).

In the decision-making process, the pre-trial detention may only be imposed on a young person when there is strong evidence of the offence or offences and there is the probability of the application of a LTE measure corresponding to the need of ‘education in the law’, and when there is the probability the young person will abscond or commit further offences. **To impose a pre-trial detention measure, these three pre-conditions must be cumulatively fulfilled and when they are no longer applicable the measure has to be extinguished.**

As Rodrigues and Fonseca (2010) pointed out, **the pre-trial detention of juveniles in Portugal has at its core the principle of the ‘vagueness doctrine’ (only those orders stipulated by law may be applied) and the principles of need, suitability, proportionality and subsidiary.** Proceedings involving pre-trial detention in an educational centre, when carried out during judicial vacation, are given priority status. Only the public prosecution magistrate, who is in charge of the investigation stage, can request the enforcement of the pre-trial detention measure and the young person has the right of defence. Whenever possible, a prior hearing with the defence lawyer and parents, legal representatives or guardians should occur.

Trends in the enforcement of educational measures

In Portugal, between 1993 and 2012, most of the police-registered suspects under 16 years of age (Appendix A) were males acting in a group, and committed mostly minor offences against property (Carvalho, 2013c). **Only a small proportion of these police occurrences end up in the Portuguese courts** (Agra & Castro, 2007). Among those, **between 2001 and 2008, on average, only 14.0% of the LTE cases in the investigation stage (pre-trial), led by public prosecution services, were referred to the jurisdictional stage, led by a judge** (Castro, 2011). Therefore, not surprisingly, Bailleau and Fraene (2009, p. 6) concluded that **“this percentage proves the trifling nature of the facts recorded: only acts punishable by a maximum of three years of imprisonment could be closed; it also highlights the respect for the principles of opportunity and minimal intervention by the judicial authorities”**.

The temporary suspension of the process (Article 84) represented a value of less than 1% of the total of cases, each year. One also notes an undetermined number of lawsuit closures as a result of the withdrawal of the formal complaint by the victims, which can take place in the cases of ‘particular crimes’.

However, the knowledge of the Portuguese juvenile system is seriously affected by the lack of essential data concerning the sentencing process (Muncie, 2008; Carvalho, 2012a, 2012b), which means it is difficult to have a complete and reliable portrait of the social and judicial reality of youth offending in the country.

When analysing the available official data about law enforcement in the past decade, **it is possible to identify a global trend towards an increasing diversification of educational measures (LTE) as an alternative to liberty-depriving measures.** Among the set of non-institutional educational measures provided by the LTE,²¹ the most important feature is the increase, over the years (Appendix B), of the **work for the benefit of the community and of the imposition of obligations.**²² The enforcement of **educational supervision** has suffered more variations, despite always having a strong presence in this population during the years under analysis. These three educational measures have corresponded to a total of 72.3% (n= 2.696) of the educational interventions managed by the DGRSP in 2012 (n= 3.728) as liberty-depriving interventions represented 18.2%.

The other non-institutional educational measures have a reduced statistical expression: attendance of training programs (35 in 2012); imposition of rules of conduct (25 in 2012); reparation to the victim (10 in 2011; 5 in 2012), and economic compensation for the benefit of the community (15 in 2012).

In the first years after the Children and Youth Justice Reform, Portugal has undertaken in-depth changes of the custodial facilities (Bailleau & Fraene, 2009), improving not only the conditions of the institutions, but also assuring the reinforcement and reorganization of its staff, corresponding to principles and guidelines foreseen in international norms. **However, this situation has changed.** The reform has led to a first reduction of the number of educational centres, from 14 in 2000 to 8 in 2007, and afterwards to 6 in 2008. **This process has been associated with political options aiming at staffing cuts and, as a result, the closure of the facilities led to the overcrowding of the custodial institutions in 2008.** The total capacity of the educational centres decreased from 328 places in 2005 to 261 places on the 31st of December 2007. In 2007 three educational centres were closed, two in November and one in December.

In 2010, two new educational centres were opened based on a public-private partnership between the Ministry of Justice and an NGO of Spanish origin. In accordance with the LTE, this sort of partnership can only be implemented in the open and semi-open regimes.

²¹ On average, the 16-17 years age group has been the age group most represented over the years. By September 2010, the 17 years age-group represented 27.1% of the total, the 16 years age group was 26.0%. Regarding the sex distribution, 85.3% were male and 14.5% female. Around 38.6% committed crimes against property, and 24.1% against people. It is relevant that 8.7% of this population was of foreign nationality (DGRS, 2010).

²² Admonition represented around 63% of the total of educational measures applied in 2001, 41% of the total of 2002, 30% in 2003, 24% in 2004, and 22% in 2005. The figures related to the 2006-2012 are not available.

The law does not foresee the possibility of implementing it in a closed regime institution, which, as a last resort measure, can only be managed by the State services. More recently, in 2013, one of these centres was closed (Funchal, Madeira). In the summer of 2014 the second centre based on this partnership was closed (Vila do Conde). **The custodial institutions were already overcrowded at the time and the situation has become worse since then.**

In January 2014, **there were 7 educational centres,²³ comprising 3 open units, 14 semi-open units, and 4 closed units.** Two of the centres had residential units specific for boys and others for girls.²⁴ The centre's facilities had the capacity to accommodate a total of 233 juveniles, of which 207 were male and 26 were female. **On the 31st of August 2013, admitted to the educational centres managed by the DGRSP of the Ministry of Justice were a total of 275 juveniles of which 250 (91%) were male.** Of this total, nine were on unauthorized absence (3.27%). On that date, the overcrowding of the educational centres stood at around +15.5%. The semi-open regime predominated (68%) (DGRSP, 2013). In addition, there were another 42 juveniles who had imposed the detention measure of placement in custody at the weekends.

Throughout the last three years, **this negative situation has been publicly pointed out several times by the independent Commission for the Supervision of the Educational Centres (CESC, 2012), as well as by other stakeholders, mainly judges and public prosecutors, who have also stressed that the principles of opportunity and legality have not been fully attended to because the serious delays are registered not only in the young person evaluation, but also in enforcement of the educational measures.**

Since 2001, on average, the semi-open regime has represented 63%-75% of the total of institutional educational measures enforced each year (Appendix D).²⁵ The differences between the open and the closed regimes have not been relevant up to the present, with the exception of the years 2004 and 2006, when the number of juveniles placed on the 31st of December in the open units surpassed the number of those placed at the closed ones (Appendix D). Overall, since 2001, the closed regime has corresponded to a slight superior number of cases than the open regime, but in both regimes, the variations in these thirteen years are not significant. The registered

23 The educational centres (EC) were: EC Santo António, in Oporto, and EC Santa Clara, in Vila do Conde, both located in the Oporto Metropolitan Area, in the North of the country; EC Navarro Paiva and EC Bela Vista, both in the capital, Lisbon, and EC Padre António de Oliveira, in Oeiras, these last three in the Lisbon Metropolitan Area; EC Olivais, in Coimbra, and EC Mondego, both in the centre region of the Portugal. The educational centre extinguished in 2013 was located near Funchal, in the Madeira Autonomic Region, and the one closed in the summer of 2014 was located in Vila do Conde, in the North of the country.

24 Currently (October 2014), after the closure of the EC of Vila do Conde there are six educational centres that include one open, 10 semi-open and 4 closed units for boys, in a total of 15 units, and 2 units for girls that include all the regimes.

25 63.5% of the total of institutional measures implemented in 2008; 75.0% in 2001 and 2003; in the recent years, it represented 70.9% in 2007, 63.7% in 2009, and 68.5% in 2010.

statistics stay around the same values, year after year. In sum, **in the last decade a constant regime's proportionality can be identified.**

Throughout the years, since 2001, **most of the juveniles placed at educational centres committed offences against property** (70.0% of the total in March 2011; 47% in September 2013), **followed by a significant percentage of those who have committed acts against people** (24.0% in March 2011; 42% in September 2013) (DGRSP, 2013). The strong increase in the statistical representation of crimes against people in this population in the last year requires special attention and further research.

In global terms, **this population has low educational levels.** As far as foreigners are concerned, over the years **there has been an over-representation of foreign nationalities** (14% in September 2013). In addition, there has been a significant part of those with Portuguese nationality who have African origin, mostly from the former Portuguese colonies (DGRSP, 2013).

Given the geographical origin of the young offenders and the educational centres' location, many of them may be sent away from their communities and places of residence. In some cases, this decision taken by the DGRSP is based on security and disciplinary reasons. On the other hand, in few cases this option is taken in the best interests of the juvenile due to the contours of his/her lawsuit. Bailleau and Fraene (2009) considered that **this management policy brought up some difficulties regarding the effectiveness of some measures, such as those involving girls** who were concentrated in one educational centre, located in Lisbon, up to 2010. Up to the summer of 2014 there was another centre where girls could be placed in the north of the country, in Vila do Conde, but since then that facility has been closed. This absence of differentiation of regimes "sometimes led to all girls being subject to more restrictive conditions" (Bailleu & Fraene, 2009). This is a situation that has not been only seen in girl's centres, but also in boy's centres, most notably every time the system is overcrowded.

B. Restorative approach within juvenile justice

A restorative approach within the juvenile justice system is defined by the Educational Guardianship Law (*Lei Tutelar Educativa* - LTE, Law n.º 166/99, of 14th of September), but in practical terms, there are several problems identified in its conceptualization and implementation.²⁶ As Castela et al. (2005) pointed out that **some of the educational measures are directly focused on restoration, such is the case of reparation to the victim (presenting apologies or undertaking any activities related to the inflicted damage that may benefit the victim), and economic compensation or work for the benefit of the community (undertaking activities for non-profit organisations, whether public or private entities).**

In relation to mediation within juvenile justice in Portugal, several issues must be raised for discussion. In a recent article based on the analysis of the data collected by the researchers who are part of the *Crimprev Network*, Bailleau and Fraene (2009) pointed out that the **mediation provided by the LTE in Portugal has little to do with restorative justice, once it serves mainly as instrument to determine an educational measure**, which in their opinion could eventually serve as compensation.

According to the LTE, **mediation is intended to be offender-focused and is provided in the contexts of diversion — for the purposes of preparation and implementation of the plan of conduct in order to suspend the procedure — and preliminary hearings** (DGRS, 2007, 2010). It has been developed within a specific type of intervention, the educational intervention. Based on the principle of opportunity, if the offence committed by a young person corresponds to a crime punishable with a prison sentence of less than five years, the process may be suspended by the public prosecutor, and instead, a juvenile offender's conduct plan can be executed. **The suspension of the process can take up to a maximum of one year.** In developing and implementing the plan, the young person, his/her parents or the legal representatives or legal guardians may seek the assistance of mediation services. The conduct plan may require the young person to engage in one or more restorative actions (Castela et al, 2005).

Mediation arises in the context of co-activity and could involve not only the juvenile and the victim, but also the judge, the public prosecution services, the young person's defence lawyer and other community agencies. It is a way of promoting a consensual solution involving both the young person and the parents or

²⁶ According to Article 2 of ECOSOC Resolution 2002/12, a restorative process means 'any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator'.

legal guardians in the case of minor offences. The aim is to provide support to the juvenile in drawing up the plan of conduct and its implementation at the investigation stage, developing his/her responsibility and involvement in conciliation and/or promoting of repair actions to the victim. However,

“if during the preliminary hearing no agreement could be reached on the educational measure to be applied (and it is not considered necessary to impose an institutional measure) between the young offender, the public prosecutor and the victim, the judge may, in the jurisdictional phase (whose purpose is to confirm the facts, to assess the need to apply a guardianship measure and, in that case, to determine which measure should be applied and make the appropriate order), refer the case to a mediation service in order to reach an agreement” (Castela et al., 2005; p.14).

Following the enforcement of the LTE in January of 2001, a **Mediation Program** (*Programa de Mediação*) was developed by the Institute of Social Reinsertion,²⁷ which was evaluated in 2004 and improved, yielding a new proposal, the **Mediation and Reparation Program** (*Programa de Mediação e Reparação*, PMR) for juvenile offenders, which gave priority, whenever possible, to mediation.

This program was based on international standards, including the recommendation N^o. Rec(99)19 on mediation in criminal matters, adopted by the Council of Europe on 15th September. **The aim of DGRS was to provide assistance within the juvenile jurisdiction in a less stigmatizing, in a quicker and more effective way.** The PMR was based on the increasing importance of raising juvenile offenders’ awareness and accountability for the damage that their conduct caused to their victims and to society by promoting the same respect for others’ rights and for basic societal rules, both essential aspects of their social reintegration and the prevention of recidivism (Castela et al., 2005). To achieve these goals, **the program provided the following actions: offender-victim mediation, support for developing the plan of conduct and support for implementing the plan of conduct.**

The PMR established guidelines for each of these interventions. **The mediators were staff members of the Institute for Social Reinsertion/Directorate-General of Social Reintegration, with licentiate degrees in the field of social sciences and have undergone a basic training programme.** They cooperate with trainers of the Justice Department of the Autonomous Government of Catalonia²⁸ as well as with the Portuguese Association for Victim Support (*Associação Portuguesa para o Apoio à Vítima*, APAV) to achieve a more victim-sensitive approach (Castela et al., 2005). **The costs of the program were assured by the State (Ministry of Justice)**, once it

²⁷ From 2001 and 2007, the auxiliary body of the judiciary administration for the juvenile jurisdiction was the Institute for Social Reinsertion (*Instituto de Reinserção Social*) extinguished in 2007, and replaced by the Directorate-General of Social Reintegration (DGRS).

²⁸ ‘Responsible for the implementation of mediation in the region of Catalonia, as well as for its further development in a legislative context, which inspired the Portuguese one’ (Castela et al., 2005, p.14).

was carried out within the framework of the judicial intervention (LTE).

The PMR had a pilot experience of one year starting in 2004, and the evaluation of the experimental application occurred in 2006, pointing to the need for a reshuffle of the program's interventions. This process of reform was framed by the VALERE project (30th of December 2007 to 30th of December 2010) (DGRS, 2007). However, **this activity was delayed because policy makers decided that the juvenile justice mediation would herein (2010) be assured by the Office for the Alternative Dispute Resolution (*Gabinete para a Resolução Alternativa de Litígios*, GRAL), which is responsible for the mediation in the penal, family and labour areas in the country.** For this purpose, a Cooperation Protocol was signed on June 2010 between the Directorate-General of Social Reintegration and the Office for the Alternative Dispute Resolution, for the creation of the Juvenile Mediation System. Therefore, it was possible to develop the work in this area during the second semester of 2010 (DGRS, 2010).

Following the evaluation of the work carried out, several actions were defined:²⁹ **the proposal of the regulation of the Juvenile Mediation System, to be presented to the Minister of Justice, for future approval and official publication; the Proposal of a Procedures Guide, to be presented to the Juvenile Mediation System's professionals (mediators); the proposal of the training curriculum for the mediators; the proposal of a Pilot-Project for the implementation of the Juvenile Mediation System** (DGRSP, 2010)

However, the protocol between DGRS and GRAL had suffered serious constraints with new political decisions taken in 2011 regarding the reorganization of the GRAL and its inclusion in the new Directorate General of Justice Policy. Since then, there has been an impact on the programmed activities and the proposals presented in 2010 are still in standby without being totally enforced. Currently (January 2014), **the DGRSP only provides mediation by request of the court to suspend the juvenile process, to support obtaining a consensus for applying a non-institutional educational measure or within the enforcement of the reparation to the victim educational measure.** The assistance in this context could serve the reintegration of the juveniles concerned by avoiding more judicial stigmatization, but it has very reduced statistical expression due to these constraints.

Besides the effects of the political changes on the Portuguese judicial system as a whole, it is also necessary to consider the consequences of the financial and economic crisis affecting the country in recent years. The combination of both situations have led to significant staffing cuts and closure of facilities in the justice local services, which are in charge of the enforcement of the non-institutional educational

29 The actions were presented at the International Seminar on Juvenile Justice: practical evaluation and intervention qualification - VALERE Program held in Lisbon, 29th-30th November 2010. More information available at: <http://www.irsocial.mj.pt/web/rs/valere> .

measures in the community. Meanwhile, other community agencies and NGOs that could be involved in the juvenile proceedings have suffered serious financial and staff cuts and are struggling to keep on working on the field. Moreover, **in contrast to what happens in other EU countries, the victims' availability to participate in the mediation process with juveniles has had a significantly reduced statistical expression in Portuguese society.**

According to the official data (Castela et al, 2005; Marques & Lazaro, 2006), in 2002, mediation programmes provided within the LTE corresponded to 5% of the total activities undertaken by the Institute for Social Reinsertion in relation to the juvenile jurisdiction, covering 183 juveniles mainly accused of larceny, destruction of property, offences against physical integrity, robbery or driving without a license. **Most of the juveniles involved in mediation had an initial cooperative attitude, but only 28% of the victims agreed to participate in the mediation process.** Around 80% of the mediation cases were carried out at the investigation stage of the juvenile proceeding, 17% within the mediation intervention in the initial stage of the inquiry, and 3% of cases in which the intervention took place during the jurisdictional stage.

In 2004, the PMR dealt with 192 cases and 171 cases were processed from January till September 2005 (Castela et al., 2005). “Male, 16 years old, 4th grade of education, student, no systematised extra-curricular activities, integrated in the family of origin, poor social-economic background and first-time offenders” (Castela et al., 2005, p.14) were the main features of the juvenile’s profile subjected to mediation in these years. On the other hand, the identifiable individual victims tended to be students aged between 10 and 22 years old, whilst the collective victims were mainly commercial or educational establishments, as well as city or town municipalities (Castela et al., 2005).

The official data available on this matter have been more limited in recent years. There is no full statistical information available to the public about the suspension of the process and the use of mediation in juvenile jurisdiction, and the available information is not totally reliable and does not allow comparisons between years because data have been presented through the years on the basis of different criteria (Appendix C). Neither the indicators from the DGPJ or from the DGRSP cover all the indispensable information on these two issues, a trend aggravated by the political decisions made in the past that have not been enforced.

Therefore, not surprisingly, in its last report on the evaluation of the LTE’s implementation, the Permanent Observatory on Portuguese Justice (*Observatório Permanente da Justiça Portuguesa - OPJ*), from the Centre for Social Studies of the University of Coimbra, defends that **it is essential to encourage the resurgence of mediation in the juvenile jurisdiction** (Santos et al., 2010). The OPJ considers that, despite the convergence with international principles and recommendations on restorative justice, the LTE included the mediation only as a means to suspend the process or as a legal instrument to reach a consensus regarding the decision of the preliminary audience. Therefore, not surprisingly, its statistical expression is quite insignificant. Moreover,

in a similar manner to what occurs in other judicial areas, there are different opinions about the nature of the restorative justice model to be adopted in the country. **Some interveners propose the creation of restorative mechanisms outside the judicial system, but most seem to regard this kind of legal instrument mainly or only through judicial proceedings under the competent judicial authority** (Santos et al., 2010).

In sum, restorative justice within juvenile justice in Portugal is referred to as a legal instrument that has not been adequately and effectively implemented, and more debate and evaluation about its implementation is required in the country.

C. Foster care within the juvenile justice system

In Portugal, foster care is not foreseen by the Educational Guardianship Law (*Lei Tutelar Educativa*, LTE, Law n.º 166/99, of 14th of September), which is applied to youth, between 12 and 16 years of age, who have committed an offence qualified by the penal law as a crime. Under the current model of the Portuguese Children and Youth Justice, **foster care can only be imposed as a promotion and protection measure to children and youth at danger within the framework of the Promotion and Protection Law for Children and Youth in Danger** (*Lei de Promoção e Protecção de Crianças e Jovens em Perigo*, LPCJP, Law n.º 149/99, of 1st of September).

In normative and practical terms, these differentiated responses can be applied to the same young person after the age of 12 if both needs, protective (LPCJP) and educational (LTE), are related. **Rules and procedures of interconnection between the protective and educational interventions, governed by their respective procedural, with their own specificities, could support the enforcement of promotion and protection measure instead of or in association with an educational measure. This means there is the legal possibility of foster care to be applied to a juvenile offender within the specialized juvenile jurisdiction.** However, the scarcity of Portuguese academic and scientific production focused on foster care, aggravated by the lack of official statistics concerning the sentencing process, makes it difficult to understand how this measure has been imposed, in practice, on juvenile offenders and whether it has ever been applied in such cases.

As Delgado, Carvalho & Pinto (in press; pp.134-135) recently pointed out in research focused on the characterization of the foster care measures enforced in the Oporto district in recent years, **“in Portugal, a foster care that is capable, specialized, customized to the developmental needs of foster children and to the objectives, requirements and needs of the careers and biological families has not yet been built”**. Overall, not only has the number of children and youth at danger who are placed in foster care strongly decreased in recent years (from the total of 918 in 2008 to the total of 419 in 2012 and 374 in 2013); there are also major limitations regarding the few studies available (Delgado, 2010a, 2013). These studies have neither allowed the actors involved, including families and children, to be characterized in depth, nor have they gone much further in the discussion of the advantages, obstacles and disadvantages the foster care faces in Portuguese society (Delgado, 2010b).

Regardless of the political discourse and the changes in the legislation advocating the deinstitutionalization of children and youth at danger in recent years, the Portuguese care system is still strongly marked by long-

term placements in welfare residential institutions,³⁰ and over the past decade this trend has increased. The official available data show that around 94 to 95% of the children and youth's placements in the national care system in the last three years have been in some kind of residential institution. Concerning foster care, Delgado, Carvalho and Pinto's (in press; pp.132) research findings point out that the existing legal framework perpetuates the transience of fostering, by enforcing the return to the biological family, which does not happen, in practice, in most cases.

Foster care regulations

Article 46 of the LPCJP states: **“the foster care consists of assigning the trust of the child or the young person to an individual or a family, entitled for this purpose, aiming at his integration into a family context and the appropriate care provision for his needs, well-being and the education necessary for his full development”**.

The Portuguese foster care legislation has been subject to significant changes, and a new enforcement of this regime has recently been established. According to the current legal framework that regulates the implementation of this measure (Decree-Law n.º 11/2008, of 17th January), **foster care must only take place in families without any family relationships and kinship to the children or young person previously selected by the social agency responsible for the fostering process**. This legal diploma distinguishes between fostering in a family and fostering in a professional foster care, with the last one applied to children with special needs and disabilities who require particular training and specific practical expertise.

Currently, **foster care is defined as a transitory protection measure, and its application relies on the predictability of the return of the child to his/her own family**. Children's permanence in foster care depends on individual and social factors and circumstances related to each case, and also on the ability of the social agencies and of the State to decide and to address an adequate planning that allow the foster family to be carefully selected to match the child or young person. As Delgado, Carvalho and Pinto (in press, pp.113–114) highlighted, “this conception of foster care emphasizes the importance of the capacity building of the biological family for exercising the parental role, the strengthening of the relations among the family, the foster carers and the foster child, and reinforces the idea that fostering is a transitory space-time of provision of care until the moment when the biological family retrieves the conditions for caring and protecting «his» child.”

Among the selection requirements applied to individuals and families,

³⁰ The welfare residential institutions for children and youth at danger must only work in an open regime, as defined by the LPCJP (Art.º 53º). The national care system does not foresee the existence of closed welfare institutions; there are no welfare closed institutions that can be used as an alternative to custody or to pre-trial detention of juvenile offenders in the justice educational centres.

there is the obligation for them to exercise foster care as a primary or secondary professional activity. This activity confers the right to receive a benefit from social services agencies, and the monthly amount paid is 100%, plus extra in the case of children or young person with disabilities and special needs. According to the current legal framework, **individuals and families can apply for foster care if they fulfil the following requirements: between 25 and 65 years of age; have completed the level of compulsory education; have not been convicted of crimes against life, physical integrity, personal liberty, freedom and sexual self-determination; and possess appropriate health, hygiene and housing.** It is expected that the foster family has motivation, time available and educational capacity to deal with the foster child and show respect for the child and for his/her biological family, history and culture. Foster families must be available to establish a relationship with the biological children or young person's family.³¹

Initial training is not foreseen to be applied within the carers' selection process (Articles 17 to 19, Decree-Law n.º 11/2008, of 17th January). The initial and advanced training are established as a competence that social services must provide to the carers, and they have the obligation to take part in training programmes. Nevertheless, the law does not specify the type of training they should attend, and in what conditions it has to be carried out. **The law also stipulates a period of preparation for the family prior to the placement of the children that should be carried out under the closed supervision of the social agency selected for the fostering process.** There are very few experiences of NGOs involved in the support/supervision of foster carers, children and youth in Portugal.

Generally, birth families continue to have the support of local social services, and from the Children and Youth's Protection Commissions or from the technical specialized teams from the social services that provided support to the courts.

³¹ The most recognized fostering programme is carried out by the NGO *Mundos de Vida* (web page at <http://www.mundosdevida.pt/>). This programme starts with the selection interviews of the candidates, both social and psychological, followed by home visits and a training program consisting of eight modules. This NGO supports the alternative family care in eleven counties of the North of Portugal (V. N. of Famalicão, Guimarães, Vizela, Barcelos, Braga, Santo Tirso, Trofa, Maia, Póvoa de Varzim and Vila do Conde). Initial and advanced training as well as counselling and technical support (for the family and to the children or young person) and telephone support 24 hours a day for emergencies are provided by 'Mundos de Vida' to the selected families. Meetings and other contacts with other alternative care families are frequently carried out. In addition, financial support is provided by the state social services.

Conclusion

Since 1999, the Portuguese juvenile justice system has made significant changes, and international standards have been integrated into the legal framework. As Rodrigues and Fonseca (2010, p.1075) pointed out “the [Portuguese] juvenile justice legislation is generally well perceived and accepted, particularly by magistrates and other professionals who are involved in the justice system”. The same evaluation trend was registered by the Permanent Observatory on Portuguese Justice (OPJ) in its last report on the juvenile justice system, published in 2010. The first decade of the Educational Guardianship Law (LTE) enforcement has been evaluated by the system operators as mainly positive. Based on the limited available data, it is not possible to infer the need for a structural reform process; what is most needed is to determine the conditions required for the full and effective implementation of the new children and youth justice laws (Santos et al., 2004, 2010; Bolieiro, 2010; Carvalho, 2010, 2013c; Fonseca, 2010; Rodrigues & Fonseca, 2010; CESC, 2012).

This conclusion has gained new and dramatic contours in the last years. **Portugal has been deeply affected by the global financial crisis and entered a long period of great recession, which has led to the continuous enforcement of severe austerity measures that have been directly reflected in the implementation of a ‘child rights perspective’ in all the policies related to childhood and youth.** As in Ireland and Greece, the country was forced to accept loan packages with the troika of the European Commission, European Central Bank and International Monetary Fund, conditional on delivering huge cuts in social expenditure (Moore, 2013).

Youth justice in a context of economic crisis

In this framework, previous social and economic vulnerabilities have been exacerbated in Portugal. The picture portrayed by the Greek ECJJ expert in the ECJJ recent publication (Moore, 2013, p.20) outlined important features of the Greek economic situation that are also particularly felt in Portugal. **The logic of budgetary cutbacks became central in the State’s administration of public policies and the political measures taken regarding youth justice originate from the need to reduce expenses, regardless of the nature and specific interventional demands.** An example of this kind of option is the recent merge of the former Directorate General of Social Reintegration (DGRS) and the Prison’s Service into the new Directorate General of Reintegration and Prison’s Services (DGRSP), which is currently the auxiliary body of the judiciary administration concerning the enforcement of juvenile justice measures. **From 1925 to 2012 there was an independent state juvenile justice service, something that no longer exists.** Juvenile justice services are now integrated into a state entity that is also in charge of managing the prisons, which could be regarded as quite contradictory when taking into consideration the non-penal nature of the country’s

youth justice system.

The main effect of the severe austerity measures on the Portuguese youth justice services has been the reduction in services provided by state authorities as well as by the local administration and municipalities and non-governmental organizations (NGO) (Moore, 2013). Staffing cuts and closure of facilities have been implemented in the central and local justice services in the last 5-6 years. All over the country the services have been reduced to a minimum, and many of the previous social, educational, employment, health, economic and judicial responses have simply collapsed. This means that **essential services provided to respond to the needs of the communities in general and of the youth justice in particular have been seriously affected.**

Moreover, the entire population has suffered the effects of a set of severe austerity measures, such as the followings: taxes and prices of essential goods and services (health, education, justice) have increased; wages are continuously being cut, especially among civil servants and pensioners; social benefits have been cut in all areas, including those related to children;³² unemployment rates are higher than ever (16.2% in 2013), affecting all age groups;³³ civil servants' career progression has been frozen since 2011.³⁴

It is important to note that compared to other European countries, social inequalities have been a distinctive image of the country for many decades, associated with high levels of poverty and social exclusion, most particularly in childhood and among the elderly, another group of increased risk. In 2012, a quarter of the population (2.5 million people) lived in poverty or was at risk of poverty (25.3%),³⁵ and this data has not been updated to reflect the effects of the recession and austerity measures in 2013 (EUROSTAT, 2013). Overall, child poverty rates in Portugal (27.8%) are among the highest in the EU.

But the 'real figures' of poverty and social exclusion go much further than the ones exclusively provided by statistics (EAPN, 2013). **The economic gap among families of different social origins is greater than ever, and children and youths are particularly vulnerable groups.** Portugal is the EU country, with the exception of Latvia and Lithuania, with the greatest inequality in the distribution of family income, and this trend has been aggravated in the last years. This means that the poor are becoming poorer and increasingly prevalent in number among the total population; and the most rich are becoming even richer. **This could be reflected in the access to justice services based on a principle of equity because not only have some judicial services become more expensive, but courts and judiciary services were reduced according to the new Government-approved proposal for the reorganization of the judicial network in the country that came into effect in**

32 Between 2009 and 2012, more than half a million children and young people have lost their right to child benefits (Lopes, 2013).

33 Between 2007 and 2012, Portugal has lost 11.4 per cent of the employed population.

34 A similar situation was registered in 2005, 2006 and 2007.

35 Individuals and families who do not reach the minimum national wage (485 euros/month).

the 1st of September 2014. This means that access to justice might involve the need for more expenses for some groups of the Portuguese population in the regions where services have been cut back.

Increasing violence, delinquency and crime in the Portuguese society?

Every year, a significant number of children are referred to the Children and Youth's Protection Commission and Family and Youth Courts because they are in a dangerous situation, mainly victims of neglect or some type of violence.³⁶ In 2012, **for the first time in more than a decade since the Children and Youth Justice Reform, the situation most represented in the new cases referred to the Commissions and the courts was 'children's exposure to models of deviant and/or violent behaviour'** (27%) and not 'negligence' (25%). Included in this category are domestic violence and the abusive consumption of alcohol, drugs and other licit or illicit substances by their parents or legal guardians. This is a significant shift that points to a social framework that cannot be indifferent to the effects of the economic crisis facing the country (Carvalho, 2013b).

Despite the fact that Portugal is a country with one of the lowest crime rates in the EU, when considering the rates of incarceration, it shows one of the highest (Gomes, 2013). Currently (January 2014), the adult prison population is around 14,324 inmates and the prisons are overcrowded (+16%). Could this mean that registered crime in Portuguese society is showing a trend of becoming more violent? Or instead, are the alternative responses of communities to the deprivation of liberty not available? Regrettably, there is not enough research or official data that could provide a proper answer to these questions.

In the face of the principles and guidelines of the CRC, mostly in what concerns Article 37^o **the Portuguese State has been regularly notified by national and international entities about the dangers of accommodating 16- and 17-year-old youth in cells with adults.** The improvements made in the prisons in the past decade are insufficient, so the international standards regarding this matter have not been not fully implemented. One of the most important constraints identified in this field is that the Children and Youth Justice Reform, started in the 1990s, has not been completed; once, it was supposed to have also contemplated the change of the Young Adult's Special Penal Regime, but this did not happen. The prevailing distinction between the civil majority considered at the age of 18 years, and the penal majority, achieved at the age of 16 years, is the strength of the violation of the principles and guidelines proposed in international documents ratified by the Portuguese State. Therefore, not surprisingly,

36 From 2006 to 2012, more than 30,000 children per year (new cases) have been referred to the local Commissions on Children and Youth's Protection. More information available at: <http://www.cnpcjr.pt/left.asp?14.04>

in its last report (2010), **the OPJ recommended changing the age of the criminal majority from 16 to 18 years, in order to attend to international standards and avoid the existence of youth aged 16 to 17 years old, who are currently ‘swallowed’ by the prison’s system** (Santos *et al.*, 2010: 333).

Concerning juvenile offenders, **one of the biggest constraints in the discussion of the Portuguese juvenile justice system is also the lack of data on the sentencing process and other essential matters, such as the enforcement of diversion mechanisms or the mediation process.** Therefore, the portrait presented in these pages is incomplete, and it is not possible to undertake a real evaluation of all the educational measures foreseen by the law. As in other countries, some basic data are not being collected and others are not publicly available (Muncie, 2008; Carvalho, 2012a; Moore, 2013). Moreover, it is difficult to present a deeper analysis on the long-term comparison trends over the years because some of the criteria for which data are being collected have changed. These constraints are reflected in the research field, and there are also **rising financial cuts that limit the opportunities to investigate the juvenile system more deeply.**

Official data on the use of liberty-depriving measures are more accessible than those related to the enforcement of educational measures in communities. **Currently, prisons and educational centres are overcrowded. It is difficult to say there is an excessive use of custodial measures because there is a lack of information about the sentencing process and statistics do not show a significant increase in the enforcement of liberty-depriving measures since 2001.** Political decisions taken by the current and former governments have led to the closure of custodial facilities (from 14 in 2000 to 6 in 2014) and might be at the origin of this situation. So, it is necessary to understand if a ‘child’s rights perspective’ is really fully implemented when the basic quality of accommodation is at stake. The lack of research focused on cost-benefits analysis could also be regarded as a limitation of the juvenile system, and much more should be done regarding the enforcement of alternatives to custody.

The need to improve juvenile justice practices requires a political strategy focused on evidence-based research that, if it exists, tends to not be publicly discussed in the country. Juvenile justice issues continue to be regarded by many of the policy makers and groups of the Portuguese population as a ‘minor’ subject, even more ‘minor’ in a time of economic crisis and rising social gaps. Furthermore, individual and collective rights have been politically devaluated and affected, as it has been revealed by the consecutive negative decisions of the Constitutional Court in matters of general government policy (e.g. wages, pensions, working conditions, taxes) in recent years. In the last three years, important government proposals were not approved by this court on the basis that they affect individual and collective rights established by the Constitution of the Portuguese Republic.

Youth offending and (alternatives to) deprivation of liberty

Overall, **the available statistics on the sentencing practice in Portuguese juvenile justice since the Children and Youth Justice Reform was instituted show a global trend towards an increase diversification of educational measures as an alternative to liberty-depriving measures.** However, **diversion and mediation are legal instruments far from an adequate and effective implementation;** more debate about their implementation is required, including a discussion about the possibility of having mediation programs outside the judicial system, an idea that seems distant from the horizon of most of the stakeholders heard by the OPJ in its last report (Santos et al., 2010).

Notwithstanding some local programs that have been producing positive outcomes, **the enforcement of non-institutional educational measures still presents a significant number of challenges and basic needs.** The involvement of more service and providers in general, including NGOs, and increased proactive cooperation between services and professionals, following a teamwork format, are two of the most important needs. **Probably the most important obstacle to having a more effective juvenile jurisdiction, which is not restricted to the juvenile justice system but could be regarded as tendency in many other areas of the Portuguese society, is the lack of a community culture intervention** (Bolheiro, 2010; Carvalho, 2010), currently exacerbated by the economic crisis. Resources have been cut down and the availability of NGOs and of private entities to be more involved in the enforcement of measures is becoming increasingly more difficult.

Nevertheless, **in some counties, there are very positive practices, expressing full coordination among entities, professional and the young ones and their families, which should have more public visibility,** in order to promote and encourage a broader implementation of this kind of initiative.

As concluded by the OPJ and CESC in recent reports, it appears that **another problem of the Portuguese juvenile justice system is most notably focused on the frontier situation, before and after the enforcement of educational measures.** Beyond financial constraints, the insufficient coordination among different levels of interventions and systems (health, social and protection services, education, justice, employment), in order to boost the quality of the existing (and limited) responses, is felt in a broader way and particularly amongst those cases where mental health issues and/or the need of juxtaposed protection measures are present in the same case.

Similar conclusions can be made regarding the need to monitor a young offender's reintegration after being released from the educational centre (CESC, 2012). This trend is accentuated due to the rates of youth unemployment. Aftercare programs and other interventions must be designed and available to help the (re)integration of juvenile offenders into their community, and it is recommend that at least the last third of the detention measure applied could be replaced by a non-institutional educational measure

(Santos et al., 2010). **Research shows how frequently juvenile offenders tend to be released without adequate support to enter the adult world.**

There are few specific resources available for juvenile offenders' resettlement and after care in Portugal. In some cases, a young person's after care means that a protection measure within the framework of the LPCJP needs to be implemented. This tends to happen in those cases where serious indicators that the young person's social and family situation is still one of high risk and he/she needs a protective measure to support his/her return to the community. Unlike the former legal model (OTM), under the LTE there are no residential centres or specific placements in the juvenile system for juveniles who do not have familiar support, so they could end up placed in care institutions if less than 18 years of age at the time of his/her release from educational centres.

Foster care

The debate on foster care is insufficient in Portuguese society, and further evaluation of the measures carried out in the country is required (Martins, 2005; Delgado, 2013). The scarcity of Portuguese academic and scientific production focused on foster care, aggravated by the lack of official statistics concerning the sentencing process, make it challenging to understand how this measure has been imposed, in practice, on juvenile offenders as well as whether it has ever been applied in such cases.

The major obstacle rests on the fact that foster care has never been a priority for the Portuguese State. Portuguese policy makers, whatever the political party in the Government, do not seem to have shown a real interest in the implementation of this measure and have never tried to promote a deeper knowledge about its strengths and limitations. The reasons for this trend are not fully understood; some are related to the political options made in the past decades, since the 1980s, that have taken to an increasing investment in the care institutions,³⁷ many of them with religious backgrounds and many years of work in the field, to the detriment of foster care. Other reasons could be social and historical factors associated with a long history of 48 years of dictatorship that have influenced the evolution of the notion of family in the country.

Currently, **Portugal gives less support to families than most of the EU countries** (Lopes, 2013).³⁸ Many individuals and families are living in a sort of 'survival mode' deeply affected by the effects of the political measures undertaken in the last years,

³⁷ Residential care is still being a significant measure applied to children and youth at danger, even being defined by the law as a last resort measure (Delgado, 2012b).

³⁸ 1.5% of GDP in government spending for economic support to families when the average of the EU countries is 2.3 (Lopes, 2013).

which included serious cuts to child benefits.³⁹ This way, just considering the financial terms, raising a child in Portugal has become a ‘risky’ and expensive experience for many families, which, up to a point, might be reflected in the country’s brutal decrease in the birth rate recently.

Social cleavages are more visible and its effects are aggravated by the sociodemographic trends. The demographic development in the last years has been characterized by three significant trends: increasing longevity, decreasing birth rates – one of the most accentuated in world –,⁴⁰ and an increasing percentage of emigration, even higher than those registered during the years of dictatorship in the 1950-60s. More than 121.000 people have left the country in 2012 and a similar number did the same in 2013.⁴¹ This means that emigration (mainly to European countries, Angola, Mozambique, Brazil or the Middle East) is seen as a ‘solution’ for many groups of the Portuguese population, especially among the young adults. But this time, not only young people go living and work abroad; also many of the elderly are going out seeking to get employment or business opportunities in order to provide financial support to their own families.

Perhaps, these constraints might explain part of the reduced adhesion of families to foster care: besides not having the better conditions, social policies do not encourage fostering programmes. Therefore, unlike other EU countries, foster care has very little statistical expression, and it has hardly been discussed as an effective alternative to custody in juvenile institutions. Once there are no legal disposals (LTE) available to the courts to promote fostering programmes to youth waiting for their trial or for those already sentenced in the juvenile justice system, some fundamental questions must be raised in further research.

- What obstacles foster care face in the Portuguese society.
- How foster care could they be implemented within the Portuguese juvenile justice.
- What advantages fostering programmes will bring to the Portuguese juvenile justice system.
- What models of fostering programmes would fulfil the needs of the Portuguese juvenile justice system regarding the nature and extent of juvenile delinquency in the country.
- What are the relations cost-benefits of foster care in comparison with the placement

39 In 2009 had 1.846.904 beneficiaries; in 2012 were 1.300.550 beneficiaries.

40 According to the official data, Portugal is currently (January 2014) the sixth most aged country in the world and, in forty years, moved from country with the highest birth rate in Europe for the lowest. In comparison to 2012, the birth rate in 2013 has decreased around 7% and the number of births (n= 82.500) is inferior to the number of individuals who emigrated.

41 In 2010, around 23.000 individuals emigrated.

of youth in custody at educational centres.

There are, indeed, a lot of questions to raise and discuss in the Portuguese society about the possibility of including and promoting fostering programmes as an alternative educational measure to detention.

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