



**PROVEDOR DE JUSTIÇA**

Gabinete da Provedora

**ALTERNATIVE REPORT OF THE  
PORTUGUESE OMBUDSMAN**

**on the Implementation of the Convention on the  
Rights of the Child**

**in the Process of Review of the Fifth and Sixth Periodic Report of  
Portugal**

**NHRI REPORT**



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## Introduction

### **A. General measures of implementation (Arts. 4, 42 and 44.6);**

The Portuguese Ombudsman welcomes the fifth and six periodic report of Portugal under article 44 of the Convention on the Rights of the Child.

During the reporting period, the Portuguese State has clearly made an effort to recover from the economic crisis that had a strong impact on children in the previous years.

The Ombudsman also welcomes the new laws enacted in 2015, amending the system on promotion and protection of children, on educational guardianship, on adoption and on civil tutelary procedure.

Finally, the Ombudsman applauds the creation of a National Strategy for the Rights of the Child and urges the State to make it available to the Committee, to the general public and to implement it.

#### *Allocation of resources*

As the State's Report points out, during the reporting period several budgetary cuts took place as a result of the sovereign debt crisis, resulting, from 2014 to 2017, in a decrease of more than €20.000.000 of the amounts directed to programmes for children.

The measures concerned, amongst others, were adopted following the Memorandum of Understanding (MoU), of May 17<sup>th</sup> 2011, involving the Portuguese Republic, the European Commission, the European Central Bank and the International Monetary Fund, under the auspices of Council Regulation (EU) No 407/2010, of 11 May 2010, that initially established the European Financial Stabilization Mechanism.

The MoU made the international financial assistance – essential to maintain the state's payments and responsibilities – dependent of strict conditionalities, that not only determined general fiscal and budgetary objectives, but also the adoption of specific policies, namely in the areas of the national health service, educational system, labour market and public sector's pensions and wages. Consequently, these measures had a direct impact on the enjoyment of social and economical rights.

The Ombudsman considers that the next years, measures must be taken in order to support programmes especially aimed at promotion of the rights of the child, especially those who were more affected during the economic and financial crisis – children with higher risks of poverty – and protection of children from violence.

*The Ombudsman proposes that the Committee recommend the following to Portugal:*

*To study the possibility of strengthening allocation of resources to programmes directed to the promotion of rights of the children who were mostly affected by the economic and financial crisis.*

### ***Data Collection***

Reliable and available data are indispensable, not only to ensure that the decision making process is evidence based, but also to better monitor the effects of public policies regarding the promotion and protection of children rights.

Bearing in mind paragraph 18 of the Concluding Observations made by the Committee at the end of III-IV reporting cycle, there are still difficulties in retrieving comparable statistical data that fully enable deep, comprehensive and cross-sectional analysis on the various aspects of children's lives.

The Portuguese Ombudsman acknowledges the sectorial efforts to create data collection systems to enable a better understanding of policy impacts and other phenomena that influence the enjoyment of children's rights. Still, either through the lack of sufficient disaggregated data – namely by sex, age, socioeconomic background and migration status –, either because various sectors use different statistical indicators or different categories (ex. age groups) it is sometimes difficult to have a full and wide-ranging picture of the reality. In fact it is not uncommon to come across with dissimilar age groups used by Social Security, Education, Health services and Justice.

***Recalling the Concluding Observations made by the Committee, the Portuguese Ombudsman suggests recommending Portugal to strengthen its efforts to develop its data collection systems that enable a more comprehensive and integrated analysis of the progress regarding the realization of children's rights.***

### ***Independent Monitoring***

The Office of the Ombudsman includes the Children, Senior Citizens and Disabled Persons Unit (N-CID), comprised of a multidisciplinary team, and especially dedicated to address issues related to the persons that are perceived as vulnerable. It develops informal proceedings before the competent entities and the participation in the procedural investigation of complaints. It also manages three specialized helplines, namely the Children's Line, where it provides personalized assistance.

During the period from 2014 until August 2018, the hotline received 2.783 calls, of which 67 calls were made by children directly. In the same period 500 calls were placed to public departments that can solve the problems posed by the complainants. Main issues raised were related to *parental responsibility issues* (719); *education and school related problems*; *physical ill treatment* (278); *neglect* (243); *Commissions for Children and Youth and Other Services* (230); *exposure to deviant behaviours and risk behaviours* (115); *exposure to domestic violence* (63); *health care* (59); *bullying* (46); *social allowances* (34); *abandonment* (22); *sexual abuse* (15); *other issues* (court decisions, delays, adoption, legal information, information on the ombudsman's services and children's line - 325).

Examples of Good Practices developed by the Ombudsman's N-CID:



*A young girl, suffering from schizophrenia contacted the Children's Line, complaining about the way she was treated by her foster family. She was left alone for long periods, was not allowed to talk to friends or neighbours and could not use the phone or the computer nor have access to pocket money. The case was reported to the Social Security Service, which immediately assessed the situation. She was placed in another family and an intervention plan aimed at her protection was decided.*

*A relative of a 6-year-old child contacted the Children's Line to report that the child was living with her mother and mother's new partner, who was very aggressive. The mother did not report the situation to the relevant authorities, due to fears of reprisals. The Children's Line reported the case to Social Security service and got in touch with the child's mother. The mother and the daughter were then taken to a shelter home.*

*The Ombudsman's webpage contains a child friendly section<sup>1</sup>, which provides accessible, simple and child friendly instructions on the complaint procedure as well as an explanation on the content of child rights, enabling children to file a complaint directly to the Ombudsman.*

The Unit has a coordinator – who also coordinates another unit in the Ombudsman's office - and only 3 other persons. This staff is clearly insufficient to develop the functioning of three specialized helplines and also raise awareness among the general public, primarily among children, about the mandate of the Ombudsman, about the right of the child to file a complaint directly with the Ombudsman, about the scope of the child rights including the communications procedure to the UN Committee on the Rights of the Child.

Accordingly, adequate human, but also adequate financial and technical resources are needed in order to achieve all the NHRI's competences regarding promotion of children's rights.

The Portuguese Ombudsman acknowledges the efforts made by Portugal in order to develop coordination and monitoring mechanisms that further enhance the promotion and protection of the rights of the child. In fact, recent legislative measures were approved to reform the National Commission for the Promotion of rights and the Protection of Children and Youth that open new paths of policy coordination between the public and private sectors. This creates new possibilities and opportunities to improve, within the executive branch, the internal monitoring of the State's obligations towards the CRC.

Notwithstanding, monitoring of the implementation of international human rights instruments should also be ensured by an independent institution with a constitutional and legal public mandate. The Ombudsman, as a National Human Rights Institution - with the guarantees of independence and in full compliance with the Paris Principles - already has, through this international recognition and in accordance with Article 1 (2) of its Statute, the powers to ensure the independent monitoring of international human rights treaties and conventions.

Throughout the years, this task that has been carried out by the Ombudsman, either through the N-CID or by other promotion activities, such as conferences or programmes involving school (for example, the Programme DEMOS, aimed at raising awareness to the Ombudsman's activity in the Autonomous Regions of Madeira and Azores, which encompassed visits to schools and a drawing contest for the celebrations of the 70<sup>th</sup> anniversary of the UDHR).

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<sup>1</sup> <http://criancas.provedor-jus.pt/index.php>

However, to reinforce the national instruments of independent monitoring of the CRC, it is important to strengthen the Ombudsman's resources and structure as a way to further develop its intervention and monitoring capacity.

***The Ombudsman proposes that the Committee recommend the following to Portugal:***

***To put in place legislative and other measures to provide appropriate material, human and technical resources to the Office of the Ombudsman - Children, Senior Citizens and Disabled Persons Unit, in order to enable raising awareness among the general public, primarily among the children, persons working with and for children about the mandate of the Ombudsman and the scope of the child rights guaranteed by the UN Convention on the Rights of the Child, including the information about the ratification of the Optional Protocol to the UN CRC by Portugal that enables communication procedure.***

### ***Dissemination and Awareness-Raising***

The Ombudsman considers that education for human rights, tolerance and democratic basic norms is a State responsibility, which shall cooperate with the parents on the education of future responsible citizens.

It welcomes the efforts taken by the Portuguese State, over the last years, to increase education for citizenship, with special focus to the creation of a “National Strategy on Citizenship Education”, in 2017, encompassing, in particular, the new curricular subject “Citizenship and Development” from the 5<sup>th</sup> to 9<sup>th</sup> grade.

However, the Ombudsman is very concerned on how serious is this subject being considered by the educational system and how teachers are being selected and trained to deal with such an important topic. Several children were directly asked by the Ombudsman staff on what did they do during these classes and the majority of them did not feel like it was an important or serious subject like the others: “*we do nothing in the classroom, just talk*” (sic.)<sup>2</sup> “*we don't learn anything, we just talk about our class, and organise elections for the student's association*”(sic.)<sup>3</sup>. Other answers raised some concerns regarding teacher's training: e.g.: “*my colleagues said that of course girls were weaker than boys and the teacher did not say anything*” (sic.)<sup>4</sup>.

The Ombudsman considers that this new subject may only pursue its objectives if it is seen as an *autonomous subject* with its *own mandatory and structured content and objectives* (encompassing human rights, rights of the child, tolerance, antidiscrimination, gender equality, respect for the diversity, sustainable development, respect for social norms, democratic participation rights and other important topics for the development of future responsible citizens), aimed not only at raising awareness but also at passing knowledge, avoiding its perception as a merely rhetoric topic.

In the awareness raising on the human rights issues schools could cooperate with relevant actors in the field, including the Ombudsman, the Academia, NGOs, civil society and other members of the educational and local community.

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<sup>2</sup> Miguel, 12, from a public school in Portimão.

<sup>3</sup> Eva, 13, student in Oeiras.

<sup>4</sup> Pedro, 13, from a public school in Braga.



*The Ombudsman proposes that the Committee recommend the following to Portugal:*

*To continue making the subject “Citizenship and Development” a mandatory topic in all schools of the second cycle.*

*To pay special attention to the content in schoolbooks and curricula in primary and secondary education in order to promote tolerance, antidiscrimination, gender equality and respect for the diversity.*

*To establish a list of adequate conditions that teachers shall fulfil in order to be admitted to teach on this subject, namely mandatory specific training on the topics addressed and on how to address them in a gender-sensitive manner and with universal respect for all cultures and peoples.*

*To create a mandatory and structured content and objectives for this subject, that must be pursued in all educational establishments.*

### *Training*

The Ombudsman welcomes all efforts on the improvement of training on children’s rights. However, it considers that more efforts should be made in order to provide mandatory training to professionals who deal with children in contexts of special vulnerability.

That is the case of judges and public prosecutors who are assigned to Family and Children Courts. In fact, although Family and Children Law is a subject taught in the Center for Judicial Studies, which trains future magistrates, when a judge is assigned to a Family and Children Court, normally has already spent many years – sometimes more than ten years – in other courts, dealing with many different issues as property law, commercial law or contracts. That is because Family and Children Courts, as specialized Courts, are only accessible, in general, to judges and prosecutors already advanced in their careers. Thus, the Ombudsman considers that, due to the very specific nature of the topics, a new specialized and mandatory training shall take place before judges that take office in a Family and Children Court.

The same can be said regarding jurisdictions that, in principle, are not mainly aimed at dealing with children law, but may play an important role on safeguarding children rights occasionally. That is the case of criminal judges and prosecutors, as they may trial crimes against children or where children may play an important role as part of the process. The same can be said regarding judges and prosecutors of the administrative courts, where children law is not even part of the initial training. However, since these courts are competent to deal with cases on immigration, asylum and nationality, among other cases that may touch upon children rights (v.g., students’ disciplinary measures), they must at least engage in some type of complementary but mandatory training on children rights.



All the above-mentioned judicial professionals shall be trained not only, and substantially, on the content of children rights, but also on techniques aimed at developing a “child-friendly justice” environment, with a special focus on child hearings.

Besides judicial professions, other professionals who also deal with particular vulnerable children must be, in the Ombudsman’s opinion, mandatorily and periodically trained. That is the case of police forces, social workers, immigration and asylum officers, and personnel who deal with children on a daily basis in shelters, residential foster care centers, educational tutelary centers, detention centers, etc.

***The Ombudsman proposes that the Committee recommends the following to Portugal:***

***To continue investing in the training of professionals who deal with children, with special focus on judges and prosecutors assigned to Family and Children Courts and other professionals – judicial and non-judicial - who work with children in especially vulnerable situations.***

## **B. General principles (Arts. 2, 3, 6 and 12);**

### ***Best Interest of the Child (Art. 3)***

The Ombudsman recognises that the “Best Interest of the Child” is stressed as a primary concern and a structuring principle in several laws and acts, as enumerated in the States’ report.

However, Article 3 of the Convention requires that “*in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*”. Thus, the best principle must be taken into account in all judicial and administrative procedures, when a child is involved.

The Ombudsman is concerned that this might not be the case in other judicial and administrative proceedings where the governing law does not expressly mention the principle of “best interest of the child”. That is the case, for example, of the Portuguese Immigration Law, where there is only reference to protection of the best interest of the child who was victim of trafficking of human beings<sup>5</sup>.

Since the Convention is directly applicable in the domestic legal order, there is no need to expressly repeat that principle generally. On the other side, where only some acts expressly mention the “best interest” principle, administrative and judicial authorities may interpret that, in other contexts, such principle is not mandatory. Although their acts and decisions may be annulled due to lack of taking the “best interest” in consideration, this solution may postpone the protection to second decisions.

Finally, the Ombudsman has been witnessing a narrow interpretation of Article 3, to according to which the superior interest of the child must be only taken into account

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<sup>5</sup> Law no. 23/2007 of 4th July, as last amended by Law no. 26/2018, of 5 July.

in cases where children are the *primary subjects* of the decision/action, leaving aside situations where decisions do not concern children primarily, but that *may affect children* nonetheless.

***The Ombudsman proposes that the Committee recommend the following to Portugal:***

***To assure, namely by general cross-cutting and multi-sectorial laws or by training that, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child is always a primary consideration, both when children are directly concerned and when children are affected by the State's actions.***

#### ***Right to Participation (Art. 12)***

The Ombudsman welcomes the creation of child-friendly procedures to improve child-participation in judicial proceedings, namely through the approval of Law no. 141/2015, of 08<sup>th</sup> September, on tutelary civil procedures.

However, more efforts on promoting an effective “child friendly justice”, as recommended by the Council of Europe<sup>6</sup> must be extended to all other judicial procedures where children may participate, namely other civil procedures, criminal procedures or administrative procedures, for example as those concerning immigration and asylum law.

The right to information, participation, protection of privacy, autonomous lawyer, support services and child-friendly hearings and non-intimidating environment must be guaranteed in all administrative and judicial proceedings where children are participating.

***The Ombudsman proposes that the Committee recommend the following to Portugal:***

***To extend “children-friendly justice” rules to all administrative and judicial proceedings.***

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<sup>6</sup> Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (Adopted by the Committee of Ministers on 17 November 2010).

## **C. Civil rights and freedoms (Arts. 7, 8, 13-17 and 37a);**

### ***Right to acquire a nationality (Art.7)***

The Ombudsman welcomes the amendments to the Nationality Act that took place in July 2018<sup>7</sup>, which had a clear inclusive purpose, and have provided a new form of *ex lege* acquisition at birth and lowered the requirements for naturalization.

The Nationality law foresees a general clause aimed at preventing statelessness, according which, those who were born on Portuguese territory and who do not have any other citizenship are considered Portuguese citizens. National authorities adopt a concept of statelessness exclusively based on mere *legal citizenship*. However, Refugee Children or other international protection holders who are born in Portuguese territory to foreign citizens, and even where their country of origin recognizes the *ius sanguinis* principle, may face severe difficulties in registering their nationality in consular services. This may happen where consulates of the country of origin are not adequately functioning, due to general destabilization or even war conflicts. That is currently being the case of children born in Portugal to Syrian parents<sup>8</sup>. Despite being faced with several difficulties to register the Syrian nationality, Portuguese competent authorities still refuse to consider them as stateless persons and, thus, do not apply to them the general clause for statelessness prevention.

In this context, the Ombudsman also recalls that forced migrants have a more urgent need to acquire the citizenship of the host country, since they cannot benefit from the protection of their home country.

***The Ombudsman proposes that the Committee recommend the following to Portugal:***

***To consider applying the clause foreseen in the Nationality Law aimed at statelessness prevention to children born in the territory to holders of international protection who cannot register their birth in the authorities of their parent's country of origin.***

### ***Protection from material harmful to a child's well-being (art.17)***

The Ombudsman is concerned with the protection of the child from information and material that may be injurious to their well-being. Children have an increasingly early, easy – and often unsupervised – access to the internet, namely through cell phones.

Following several complaints, the Ombudsman has initiated an inquiry regarding services that are often inadvertently acquired through WAP billing, a mechanism that allows consumers to purchase content on WAP (Wireless Application Protocol) sites

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<sup>7</sup> Organic Law 2/2018 of 6th July.

<sup>8</sup> Portuguese Ombudsman, *Statelessness: A Minorities Issue* - Questionnaire to the Special Rapporteur on Minority Issues, May 2018.



that is charged directly to their mobile phone bill, without the need for registration. The Ombudsman considered the situation especially worrying because any child could easily, and unintentionally, subscribe these services.

The Portuguese regulatory authority for communications (ANACOM) informed the Assembly of the Republic that it is preparing a proposal to amend an amendment to the Electronic Communications Law with a view to strengthening the protection of consumers' rights, but the amendment has not yet been adopted. Meanwhile, on 1th of May 2018, the Telecommunication Operators adopted Code of Conduct for the WAP billing services.

Besides protection from unsubscribed services, the Ombudsman is also concerned with the exposure of children to harmful content, as these cases show that they have easy access to the internet. In 2017, several cases were report where, due to online games or challenges (e.g., the “*Blue Whale*” challenge that motivated players to violent behaviour, namely towards themselves, and has also victimized youngsters in Portugal) children or youngsters have committed violent acts or were subjected to violent content.

Thus, action shall also be made in order to protect children from accessing to harmful content, such as violence, pornography or unwanted subscriptions of online services or goods acquisition.

***The Ombudsman proposes that the Committee recommends the following to Portugal:***

***To provide for amendments to electronic communications legal framework in order to guarantee protection of children using electronic devices in accordance with the Portuguese regulatory authority for communications (ANACOM) recommendation***

***To strengthen efforts to protect children from harmful internet content, namely by developing large-scale awareness-raising activities among children, parents, legal guardians and schools on the dangers stemming from an unsupervised access from children to internet and on tools that enable parenting control***

### ***Right to Personal Freedom (art. 37, a)***

The Portuguese Asylum Law was amended in 2014, and has created new cases where asylum seekers can be detained, namely in cases where the asylum request is made at the border<sup>9</sup>. According to the 2017 Asylum Database report<sup>10</sup>, asylum seekers who request asylum at border posts have been systematically subjected to detention measures at airport temporary accommodation centers. This report documents that there is no initial assessment of the vulnerability of the applicants, allowing families with children or pregnant women to be detained in temporary detention centers located in the airport for a maximum of 60 days.

<sup>9</sup> Article 35-A, no. 3, a) of the Law no. 27/2008, of 30th July, as amended by Law no. 26/2014, of 5 may.

<sup>10</sup> Asylum Information Database, *Country Report: Portugal*, 2018, p. 17

Also families with children whose entry is refused may be detained, according to the Immigration Law, for the same period of time, in the airports' detention centers<sup>11</sup>. Migrant children may also be detained when they are found irregularly staying with their family members in the Portuguese territory<sup>12</sup>.

According to a Governmental decision issued in September 2018, the maximum detention period for children in temporary detention centers located at the airports decreased to seven days. Also, contacted by the Ombudsman, the Ministry of Internal Affairs recognized the difficulties of the airports' detention centers, and committed to initiate in 2019 the construction of a new temporary detention center located in Sintra, near Lisbon, and equipped with appropriate conditions for families and children. The Ombudsman welcomes these decisions, but points out some shortcomings that still persist and endangered the right to the personal freedom of the child.

Asylum and Immigration law require that detention measures that may last for more than 48 hours must be authorised by a judge, but does not mention expressly the judicial guarantees that have to be respected. These guarantees would encompass a mandatory judicial and adversary hearing, legal representation and the need to take into account the best interest of the involved children. Also, according to the Committee's latest comments on child detention on migration, no mention is made to the last resort nature of detention when children are concerned. The Ombudsman considers that, although all these guarantees result from the Constitution and the CRC, Portuguese Immigration and Asylum Law should, nonetheless, reinforce them expressly.

***The Ombudsman proposes that the Committee recommends the following to Portugal:***

***To expressly amend the Immigration and Asylum Law requiring that detention in migratory procedures can be only applicable as a measure of last resort;***

***To expressly amend the Immigration and Asylum Law requiring that all detention measures may only be maintain for more than 48 hours after a judicial authorisation mandatorily preceded by a judicial hearing of the detainee, who must necessarily be represented by a lawyer;***

**E. Violence against children (Arts. 19, 24, para. 3, 28, para. 2, 34, 37 (a) and 39)**

#### ***Abuse and neglect (Art. 19, no.1) – Domestic Violence***

The Ombudsman welcomes all efforts and measures taken in order to raise awareness, to prevent and to protect children from abuse and neglect. However, it is still concerned with the extremely high numbers of domestic violence cases reported in the last years. According to the Annual Security Report, 22.773 and 22.599 crimes of

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<sup>11</sup> Article 38, no. 4 of the Immigration Law (cit.).

<sup>12</sup> Article 146 of the Immigration Law (cit.).

domestic violence were reported in 2016 and 2017, respectively<sup>13</sup>. These numbers contrast with the much lower numbers provided by Annex I of the State report for the year of 2016.

The Ministry of Justice website presents data on convictions for domestic violence against Spouse /Similar, Domestic Violence against Minors and “others Domestic Violence”. In the reporting period, the following numbers of convictions were published in the Ministry of Justice website:

	2014	2015	2016
Domestic Violence (Spouse / similar)	1.275	1.432	1.528
Domestic Violence against Children	33	39	47
Others Domestic Violence	343	388	409

The Ombudsman insists on the need to have more accurate data, namely on the victim’s gender and age. Data on the specific type of domestic violence would also be welcomed. Dating violence, for example, is counted coupled with violence against spouse, but affects teenagers with special acuteness. Thus, it would be very important to understand the reality of the phenomenon, in order to continue acting towards its prevention.

Government’s official data also do not present specific numbers on children exposed to domestic violence in their household. However, according to annual reports of the National Commission for the Promotion of rights and the Protection of Children and Youth, in 2015 there were 7.793 children exposed to domestic violence. This number was of 8.695 in 2016 and 8.781 in 2017.

Although all the mentioned deficiencies regarding the treatment of data, the Ombudsman is extremely concerned with the high levels of this very serious criminality, which has a profoundly negative impact on a child’s development.

***The Ombudsman proposes that the Committee recommends to Portugal:***

***To improve data on domestic violence in order to better understand its impact on children***

***To maintain fighting against domestic violence as one of its priorities in criminal policy strategy;***

***To persist with activities and actions aimed at preventing domestic violence***

<sup>13</sup> *The Annual Security Report 2017 of the Portuguese Government*, p. 14. Available at: <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=9f0d7743-7d45-40f3-8cf2-e448600f3af6>

***Abuse and neglect (Art. 19, no.1) – Shelters for Victims of Domestic Violence***

In cases where victims' protection does not recommend that they shall continue to reside in their house, numbers of available shelters seem to be short when comparing the high levels of criminality. According to the State's report there are 39 shelters for women and children with a total of 679 vacancies. There is only one shelter for men victims of domestic violence, with 10 vacancies. Nevertheless, according to the Annual Security Report, 6.793 men have reported to have been victims of domestic violence<sup>14</sup>.

The Ombudsman is concerned that these vacancies may not be sufficient to accommodate victims of domestic violence, namely when children accompany their parents.

***The Ombudsman proposes that the Committee recommends to Portugal:  
To increase the number of vacancies available in shelter homes.***

***Abuse and neglect (Art. 19, no.1) – Sexual Abuse***

The Ombudsman is seriously concerned with the very high number of convictions for sexual abuse of children (which amounted, in the years 2014 and 2015, to 131 and 111 cases, respectively) and dependent children (which amounted, in the years 2014 and 2015, to 275 and 360 cases, respectively).

However, the State's report does not mention specific actions aimed at fighting against this phenomenon during the reporting period. Also, it has not presented any data regarding the years of 2016 and 2017.

***The Ombudsman proposes that the Committee asks Portugal which concrete measures have been taking in order to prevent and fight against sexual abuse of children.***

***The Ombudsman proposes that the Committee recommends to Portugal:***

***To maintain fighting against sexual abuse of children as one of its priorities in criminal policy strategy;***

***To persist with activities and actions aimed at preventing sexual abuse of children, namely through awareness raising activities, developed by sensitive trained professionals, aimed at empowering children to have autonomy over their bodies and to denounce cases of sexual abuse.***

***Abuse and neglect (Art. 19, no.2) – Administrative Procedures***

The Ombudsman requested to the Parliament the amendment of Article 2, Paragraph 2 of Law 103/2015, of August 24, in order to replace the duty of the civil

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<sup>14</sup> P. 34.



servants or other collaborators who are performing activities involving regular contacts with children to annually present the certificate of criminal record by the adoption of other legal solutions, that in a more economic and efficient way could guarantee that entities responsible for promoting activities involving regular contact with children have adequate conditions to regularly assess the suitability of workers and volunteers for the exercise of their functions.

The Recommendation was submitted to the Parliament on June 22, 2016. However, no legislative amendments were approved yet.

***The Ombudsman proposes that the Committee recommend the following to Portugal:***

***To adopt amendments to the relevant legislation to simplify the administrative procedure related to the duty of the civil servants or other collaborators who are performing activities involving regular contacts with children to annually present the certificate of criminal record, introducing an ex officio scheme allowing responsible entities responsible to regularly assess the suitability of workers and volunteers for the exercise of their functions.***

### ***Bullfighting***

The Portuguese Ombudsman recognizes the progress that the Decree-Law No. 23/2014, February 14th, signifies towards the compliance with the Committee's concluding observations. This Decree-Law amended the previous legislation and raised the minimum age (from 6 to 12 years old) to attend bullfighting shows.

Regarding children performers, Law No. 31/2015, April 23rd, did raise the minimum age to 16 years old. However this minimum age limit - established in the paragraph 3 of article 3 – is only applied to professional performers. To amateur performers the age minimum remains at 12, according to paragraph 3, article 2, of the Law No. 105/2009, September 14th. This participation requires the approval from the local Commissions for the Protection of Children and Young Persons.

Furthermore the Portuguese Ombudsman is concerned that there are no official data on children training in bullfighting schools.

**F. Family environment and alternative care (Arts. 5, 18.1, 18.2, 9, 10, 27.4, 20, 21, 11, 19, 39 and 25);**

***Right to maintain personal relations and direct contact with both parents on a regular basis (Art. 9)***

The Ombudsman has been receiving several pledges from parents who claim that, following a divorce or separation, they are being prevented to contact with their

children due to opposition of the other parent or even subtraction of the children. Although the Ombudsman does not have competence to deal with these issues in its complaint management competences, in its quality of NHRI, it is very concerned with the number of children that may be unduly prevented, by action of a parent or any other family member, to maintain contacts with the other parent.

These cases are dealt with by the Family Children Courts, regarding disrespect of parental responsibilities arrangements, and may also amount to crime of subtraction of children, punished under Article 249 of the Criminal Code. The number of convictions for subtraction of children amounted, in the years 2014 and 2015, to 31 and 22 cases, respectively.

However, no data on number of convictions in the years of 2016 and 2017 were provided. Also, the Ombudsman would like to understand the number of procedures on Family and Children Courts for disrespect of parental responsibilities' arrangements.

***The Ombudsman proposes that the Committee asks Portugal for data on cases of disrespect of parental responsibilities' arrangements and updates on data about convictions for subtraction of minors***

***The Ombudsman proposes that the Committee recommends to Portugal:***

***To provide more urgency to civil and criminal procedures that deal with children who are being prevented to contact with one of the parents due to opposition of the other parent or other family member.***

***Right to maintain personal relations and direct contact with both parents on a regular basis (Art. 9)***

The Ombudsman applauds the enhanced protection for children who may be victims of domestic violence (even where perpetrated against one of the parents, and not directly towards the child), introduced by Law 24/2017 of May, repealing the shared exercise of parental responsibilities *deemed contrary to the best interest of the child* when a coercive measure of prohibition of contacts between parents is decreed or when the safety of domestic violence is at risk.

However, the Ombudsman has been receiving several complaints from defendants in domestic violence criminal procedures who claim to be prohibited to have any contact with their children after the beginning of a criminal procedure for domestic violence and during the whole procedure.

According to the law, repeal of the shared exercise of parental responsibilities is seen as an *exceptional restriction*, only to be applied where it can be *deemed contrary to the best interest of the child*.

Bearing in mind that these criminal procedures can last up to 3 or even 4 years, and, that during that procedure, the principle of presumption of innocence is applicable, the right of the child to maintain regular contact with both parents may be seriously jeopardized.

*The Ombudsman proposes that the Committee recommends to Portugal:*

*To provide more urgency to criminal procedures of domestic violence where the coercive measures of shared exercise of parental responsibilities or prohibition of contacts between a defendant parent and children were decided;*

*To foresee periodic review of the coercive measures of suspension of shared exercise of parental responsibilities or the prohibition of contacts between a defendant parent and children.*

***Appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities (Art. 18, 2) – Balance between work and family life***

The Ombudsman welcomes all measures mentioned in the State's report with the objective of supporting families. However, the State's report does not mention which specific measures have been taken in order to promote conciliation of work and family life.

According to an inquiry made by the European Foundation for the Improvement of Living and Working Conditions in 2016, Portugal is one of the countries where workers claim difficulty in reconciling work with family life. According to the survey, there was a big decrease regarding satisfaction on work-family life balance from 2011 to 2016<sup>15</sup>. The problem affects mainly women (33% of women workers) than men (only 11%).

According with OECD's data regarding the year of 2017, Portugal is the 4<sup>th</sup> country in the European Union where the number of working hours is higher (being Greece, Poland and Latvia on the top 3)<sup>16</sup>. However, these numbers may not reflect number of hours where workers are required to be professionally available (by phone, email or by finishing tasks during weekends and rest hours). In recent years, practices of disrespect for working hours and rest have been repeatedly reported by the media<sup>17</sup>.

The Ombudsman has also been receiving complaints regarding lack of enjoyment of the protection of family life of the employees, predominantly in public administration services (civil and military) and government services. Namely, several complaints submitted by the employees in public administration bodies are related to the rejection of the request for approval of flexible working schedule arrangements.

The Ombudsman has also received several complaints for discrimination – in access to work and on careers progress - due to parenting.

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<sup>15</sup> *European Quality of Life Survey*, 2016, p. 42. Available at <https://www.eurofound.europa.eu/surveys/european-quality-of-life-surveys/european-quality-of-life-survey-2016>.

<sup>16</sup> Data available in <https://data.oecd.org/emp/hours-worked.htm>.

<sup>17</sup> See for example, Raquel Albuquerque, “Um dilema português: muita hora de trabalho, pouca produtividade, presentismo e a família é que paga”, *Expresso*, 14 october 2018. Available at: [https://expresso.sapo.pt/sociedade/2018-10-14-Um-dilema-portugues-muita-hora-de-trabalho-pouca-productividade-presentismo-e-a-familia-e-que-paga?fbclid=IwAR1CDI5tgm3oxmaRt36xVxO-PDcEliV\\_x3O0RhPz0j3EZit52-ByEEKBEuE#gs.TznejkY](https://expresso.sapo.pt/sociedade/2018-10-14-Um-dilema-portugues-muita-hora-de-trabalho-pouca-productividade-presentismo-e-a-familia-e-que-paga?fbclid=IwAR1CDI5tgm3oxmaRt36xVxO-PDcEliV_x3O0RhPz0j3EZit52-ByEEKBEuE#gs.TznejkY)

All of the mentioned problems, such as excess of working hours, disrespect for working schedule and rest hours, disrespect for parenting rights and discrimination on the grounds of parenting affects the enjoyment of the children rights to have adequate support of their working parents.

*The Ombudsman proposes that the Committee asks Portugal for information on specific measures aimed at promoting reconciliation between work and family life;*

*The Ombudsman proposes that the Committee recommends to Portugal:*

*To increase supervision and inspections on respect of working and rest hours by the employers in all sectors.*

*To perform measures to enable that those employees with parental responsibilities can effectively have flexible working schedule arrangements in order to be able to balance between their professional and private life and perform their parental obligations in the best interest of the child.*

*Appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities (Art. 18, 2) - Breastfeeding*

The Ombudsman has dealt with complaints regarding teachers to whom schools did not authorize the right to waiver from work for breastfeeding, or adopted practices that did not result in an effective waiver from working hours, providing, instead, other types of compensation (e.g. monetary compensation corresponding to the time they would be entitled to for that purpose).

The Ombudsman recalled that the breastfeeding mothers have right to an effective and real reduction of working hours which, regardless of whether the work is provided full-time or part-time, can never be less than the period of time deemed necessary to breastfeeding or feeding by bottle (at least, 30 minutes). The worker has the right to paid time for breastfeeding or feeding by bottle.

The Ministry of Education agreed with the suggestion of the Ombudsman to adequately implement the law in order to effectively enable mothers who are contracted as teachers to breastfeed their children or feed by bottle.

*The Ombudsman proposes that the Committee recommend the following to Portugal:*

*To put in place measures to enable that working mothers effectively enjoy the right to breastfeed and/or feed by bottle their children.*

*Appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities (Art. 18, 2) – Family assistance to stepchildren*

*(An Example of Good Practice)*

The Ombudsman has received a complaint from a teacher to whom a request for internal mobility for disease or family assistance to her stepdaughter, permanently disabled and integrated into her nuclear family was not authorized<sup>18</sup>, on the grounds that the family situation was not framed by the disease mobility procedure regulated in Order No. 4773/2015, as the stepdaughter was not "direct descendant".

The Ombudsman, based on the principle of equality, called for the review of the application for mobility for disease or family assistance. This suggestion was welcomed by Secretary of State for Education.

The Ombudsman welcomes the authority's decision and encourages the State to study the possibility to enlarge the concept of family in other legal arrangements concerning the workers' right to provide assistance to family members, in order to encompass stepchildren, in cases where parents cannot provide support to their children.

***Children deprived of a family environment (art. 20)***

When a child is considered at danger<sup>19</sup>, the Portuguese promotion and protection system establishes that one of seven possible protection measures can be applied<sup>20</sup> – by a court or a local committee, in this last case with parental consent. Four of those measures are executed in the family environment (nuclear or enlarged), maintaining children in their circle of social, affective and emotional references. According with the annual reports of the National Commission for the Promotion of rights and the Protection of Children and Youth, since the year 2000, the large part (roughly around 90%) of the promotion and protection measures applied by the local Commissions for the Protection of Children and Young Persons, are measures that maintain the child in their family environment (family environment measures).

Two of the possible protection measures are only applied when the child doesn't have a secure family background that adequately promotes and protect their rights. These protection measures are designated by placement measures and can be divided in two types: placement in an institution (foster homes) or placement in a foster family (provided by the State, without a prior connection with the child). In the same annual reports provided by the National Commission, it is possible to verify that annually the placement measures only represent around 10 % of the total of protection measures applied by the local Commissions, which is positive, considering that maintaining the child in his/hers family environment is one of the fundamental intervention principles.

It is important to mention that there is no disaggregated data easily available regarding the promotion and protection measures applied by the courts.

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<sup>18</sup> Article 68 of the Teaching Career Statute, amended by Decree-Law No. 41/2012 of 21 February and Order No. 4773/2015.

<sup>19</sup> Under article 3 of Law for the Protection of Children and Young Persons in Danger (Law No. 147/99, September 1<sup>st</sup>).

<sup>20</sup> One of the measures is adoption, that will not be mentioned in this part of the report

However, when we only consider the placement measures (institutions and foster families) the percentage of children placed in institutions is largely superior to those placed in foster families. For example, in 2017, only 83 children were placed in foster families, whereas 2888 were placed in institutions, this data reflects the reality of the measures applied by the local Commissions, but, despite the lack of data, is mirrored in the court decisions.

With this context, in 2016 (last available data from the CASA report) there were 8.175 children living in institutions, which is a very high number. This report also shows that 33,1% of children living in institutions have been there for at least 4 years and 21,8% between 2 and 3 years.

Considering that a family environment – even if it is not the child’s nuclear or enlarged family – provides a better setting for him or her to fully develop their capacities and to closely establish a relationship that corresponds to their psychosocial needs, it is vital to decrease the number of children in institutions.

The Portuguese Ombudsman considers that important steps were made by Portugal with the approval of the Law No. 142/2015, September 8th, which establishes that children, under the age of 6 years old, should primarily be placed in foster families and not in institutions. There are also good practices and projects developed by the NGO “Mundos de Vida” and from “Santa Casa da Misericórdia de Lisboa” (public entity) that provide selection, training and supervision to foster families. However, this situation only covers a small part of the country.

To illustrate some of the activities of the Portuguese Ombudsman regarding the promotion and protection of children’s rights in foster care homes, it is important to mention that, in 2014, the Ombudsman visited six residential care homes in the Autonomous Region of Madeira and produced a special report. The Portuguese Ombudsman is aware that some of the issues found are solved or being addressed – lack of family doctors and educational plans, children’s legal status unclear, unlawful limitation of contacts with the family – however, it is important to remain vigilant considering the special needs of children deprived of a family environment.

***The Ombudsman proposes that the Committee recommend the following to Portugal:***

***To fully develop the alternatives to institutional placement, as established in the Law No. 142/2015, September 8th***

### ***Adoption (art. 21)***

The Ombudsman welcomes the revision of the Adoption regime by Law 143/2015.

However, the Ombudsman has been receiving several complaints related to the length of the procedures for the adoption of the children. The Ombudsman had initiated a number of proceedings and concluded that in cases when social security representatives had suspended the adoption procedure because one or both spouses

were not fulfilling the prescribed criteria, they were not informing them about the outcome of the procedure and the reasons for the suspension of the procedure on time.

The Ombudsman discussed this matter with the Director of the Social Security Institute, emphasizing the problem with the length of the adoption procedures without providing any information to the candidates and recommended that social security has to clarify its rules and procedures for the adoption of children. Based on the Ombudsman's Recommendations social security has improved the adoption procedure and a Manual for the Adoption has been adopted.

The Ombudsman welcomes the evolutions made by the Government to improve the adoption procedures, making them more transparent and based on the best interest of the child.

However, is still concerned on the lengthy of procedures, in cases where adoption is considered the best solution for the child. The Ombudsman recognises that time may work against the possibility of a child to be adopted or make integration in a new family environment a more difficult process. Thus, after concluding that adoption is in the best interest of the child, procedures must be especially fast.

***The Ombudsman proposes that the Committee recommend the following to Portugal:***

***To continue to develop good practices on adoption procedures and works towards a more rapid enforcement solution, when adoption is the adequate solution for the best interest of the child.***

**G. Disability, basic health and welfare (Arts. 6.2, 23, 24, 26, 18.3, 27.1, 27.2 and 27.3);**

***Children with disabilities - Education (Art. 23)***

The Ombudsman welcomes the inclusive education policy followed by the Government, as well as all initiatives described in the State report, aimed at preparing the transition of pupils with disabilities from school to a full and active adult life.

However, the Ombudsman has been receiving several complaints relating to school integration of children with special educational needs. These complaints encompass concerns about lack or insufficient support, including human resources and therapies, conditions of facilities as well as adaptation of the evaluation process and, occasionally, discrimination in access to leisure activities. The State recognises these shortages in its report.

A reported case in 2017 refers to disciplinary proceedings taken against a pupil with special educational needs, whose hearing occurred in a situation of serious emotional instability and without regard to the particular circumstances involved in the child's particular condition. As a result and for the future, the Ombudsman

recommended the school concerned to include in such a hearing a psychologist or special education teacher, delaying the diligence if necessary.

***The Ombudsman proposes that the Committee recommend the following to Portugal:***

***To provide adequate number of specialized and operational staff and continue the education and training of all the professionals working with and for children with the special needs in the educational institutions;***

***To continue its efforts for providing all schools with adequate equipment for enabling a full inclusion of children with disabilities.***

### ***Children with disabilities – Social Allowance (Art. 23)***

*(An example of Good Practice)*

A number of complaints were received by Ombudsman concerning family allowance for children with disabilities, concerning wrong interpretations and / or wrong applications of the law in the cases of annual proof of permanent disability, rejection of requests with proof of legally prescribed disability, starting date of the payment of disability benefits, etc.

The Ombudsman directed a call to ISS, IP (the general social security system) in order to correct these problems. The Ombudsman also called for a new legal framework for the protection of eventualities resulting from disability. As a result of the Ombudsman's action, all concrete cases have been solved, the practice has improved and the Government has recently implemented a new and unique social allowance (social inclusion allowance<sup>21</sup>) for persons with disabilities that will gradually be applied to children.

***The Ombudsman proposes that the Committee recommend the following to Portugal:***

***To urgently apply the legislation on the social inclusion allowance to all children with disabilities.***

### ***Children with disabilities – Special Education Allowance (Art. 23)***

*(An Example of Good Practice)*

The State' report mentions that in the past there were several complaints regarding families with children with disabilities to whom a special education allowance was refused. In fact, the Ombudsman also received a number of complaints. The Ombudsman identified that several factors that lead to the malfunctioning of the allowance, such as lack of coordination between schools and social security system were

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<sup>21</sup> Decree-Law no. 126-A/2017 of 6th October.

caused, in most of the cases, by the absence of adequate certification of the child's disability.

The Ombudsman enacted a recommendation to the relevant authorities for overcoming these difficulties. Based on the recommendation, the legislation was amended in 2016<sup>22</sup>. These amendments updated some concepts, clarified who is entitled to receive special education allowance, which requirements are needed for medical certification of the disability, its effects, and the support/devices that children and youth with disabilities must have access to.

The Ombudsman welcomes this effort and encourages the State to continue efforts for coordination among the educational and medical authorities to enable an effective application of the allowance.

### ***Health (Art. 24) – impact of austerity measures***

During the financial austerity period, the Government made several budgetary cuts in the health system. The State's report mentions that available data do not substantiate the negative impact of austerity on children's access to the National Health Service. On the contrary, available data, namely on Table 18, show a continuous increase of available beds in paediatric care from 2014 to 2017.

However, the Ombudsman is concerned with studies that report the negative impact of austerity measures in access to healthcare, due to the closure of hospitals and other National Health Service - NHS units and the reduction of free transportation of non-urgent patients. These measures have made it more difficult to access healthcare, especially for the more isolated populations<sup>23</sup>.

In respect to the availability and quality of healthcare services, it is important to mention the particular case of the paediatric unit of *Hospital de São João* in Oporto. This unit has been functioning in provisional facilities since 2008. In 2018, thanks to the initiative of parents and families of children who receive care in that hospital, several severe deficiencies in its physical conditions were exposed, which hinder gravely the wellbeing of children. There were reports of water infiltrations, exposure to the elements (cold, humidity, heat) and children being treated in the hallways – even children with serious health problems like cancer.

According to those reports the staff in the paediatric unit, despite all the difficulties, has been supportive and providing the best care possible to those children.

Recently, there were firm political commitments to solve this matter. However, the extensive bureaucratic procedures conducted to the construction of a new building have not started yet and there is still no time-line to definitely resolve this issue.

### ***The Ombudsman proposes that the Committee recommends to Portugal:***

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<sup>22</sup> Implementing Decree no. 3/2016 of 23 August.

<sup>23</sup> "Country Report on Portugal - The impact of the crisis on fundamental rights across Member States of the EU -", European Union, Brussels, 2015. available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510020/IPOL\\_STU\(2015\)510020\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/510020/IPOL_STU(2015)510020_EN.pdf).

<sup>23</sup> Available at <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20171120-1?inheritRedirect=true> p. 8 and 28 *et seq.*

*To urgently provide solutions that tackle the problems that affect children who receive paediatric care in Oporto's Hospital de São João.*

*The Ombudsman proposes that the Committee ask Portugal for clarifications on whether the reported efforts on health care improvement have adequately responded to the effects of austerity measures on access to more isolated children to hospitals and other NHS care units.*

### ***Health (Art. 24) – NHS Fees***

One of the austerity measures decided in 2012 was the creation of fees for the National Health Service's (NHS) users<sup>24</sup>. Following several complaints on the payment of these fees, the Ombudsman addressed a Recommendation to the Ministry of Health, envisaging the amendment of fees exemption, on the basis of a fairer distribution of rights and duties in this context, taking especially into account the composition of each household, and providing a better definition of the relevant income<sup>25</sup>.

One of these proposals was accepted in 2015, resulting in the exclusion from the relevant income some social benefits, such as family expenses, expenses in the field of disability and dependency within the family protection subsystem and cash benefits under the social action subsystem<sup>26</sup>.

In 2015, the number of complaints to the Ombudsman related to the exemption from NHS's users fees remained very high, however 20% less than in 2014.

In 2017, despite the decrease of complaints in this context, but in view of the insufficiency of the results of the Government's, measures, the Ombudsman made a new Recommendation<sup>27</sup>, recalling, amongst other aspects, the defense of income capitation rules that attend to the real size of the household, complying with the demand of more fairness in the fees exemption rules.

***The Ombudsman shares with the Committee concerns that may justify a recommendation:***

***To envisage the amendment of the fees exemption rules for National Health Service (NHS) users, on the basis of a fairer distribution of rights and duties in this realm, with a special focus on the families with children.***

### ***Health (Art. 24) – Access to general practitioner (GP)***

Law no. 79/2015 of 9 July aims at guaranteeing that a general-practitioner doctor (GP - the so-called "family doctor") is assigned to each child.

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<sup>24</sup> Decree-law no. 113/2011, of 29 November

<sup>25</sup> Recommendation 11-B/2012.

<sup>26</sup> Decree no. 289-B/2015, of 17 September.

<sup>27</sup> Recommendation no. 1/B/2017

Despite this guarantee, the persistence of situations of children without an assigned GP was observed by the Ombudsman, mainly affecting children born before 2016, who did not benefit from the so-called Project “Born User”, as every child who has been born since 2016 automatically entered the national Health Register<sup>28</sup>. According to published data updated as March 2018 136.857 children do not have an assigned GP<sup>29</sup>.

***The Ombudsman proposes that the Committee recommend the following to Portugal:***

***To make an assessment of the number of children who are covered by the national primary health care centers that still do not have general practitioner assigned and to implement adequate measures accordingly to enable consistency in the health care provision for every child.***

### ***Health (Art. 24) – Mental Health***

The Portuguese Ombudsman regards as a positive measure the inclusion of mental health as a priority area of the national health program, with specific provisions and goals, namely in primary and integrated care, established to provide better treatment to children with mental health problems. This commitment is enshrined, not only in legislation, but also in several documents such as the Health Care Priority Programs and 2020 Goals.

It is important to acknowledge the efforts made, throughout the years, by the Coordination of the National Mental Health Program, whom despite of their difficulties always outlined in a transparent way the strengths and weaknesses of the system in providing quality mental healthcare services for children.

Notwithstanding these efforts, it is still clear that there are areas where there is a structural lack of resources to cope with the particular mental healthcare needs of children.

One of these areas is the insufficient number of child and adolescent psychiatrists in the national healthcare service to ensure a regular and close monitoring of the patients. In fact, according with recent data and information provided by the coordinator of the National Mental Health Program, only in the south (Alentejo and Algarve) there is a need for 88 more child and adolescent psychiatrists, in order to provide adequate care to children living in those parts of the country.

Another area where the difficulties are felt is the shortage of hospital beds in pediatric psychiatry departments when urgent hospitalization of children with severe mental health problems is required.

It is important to mention that these problems affect, not only children in general, but particularly, in a more acute way, children that don't have a secure family

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<sup>28</sup> Order no. 6744/2016, of 23 May, and Order no. 10440/2016 of 19 August.

<sup>29</sup> Data provided by to the Parliament, and published by several newspapers in March 2018. See, for example, Público, “Mais de 136 mil crianças e jovens sem médico de família atribuído”, 10 may 2018, available in <https://www.publico.pt/2018/05/10/sociedade/noticia/quase-mil-bebes-sem-medico-de-familia-atribuido-1829492>.



background environment, which is the case of children that are placed in foster care homes. These children that benefit from a promotion and protection measure due to inadequate parental care that puts them at risk have often – because of their personal history – severe mental health issues that require close medical follow-up.

***The Portuguese Ombudsman suggests recommending Portugal to improve the human and structural resources in order to provide adequate mental health services to children.***

### ***Health (Art. 24) – Drug and Substance Abuse***

The Ombudsman welcomes all programmes that the State has been developing for reduction of addictive behaviours. According to a study organised by the National Health Service<sup>30</sup>, consumption behaviours have slightly decreased from 2011 to 2015, and according to the update study for the period of 2017, it is reported that some consumption habits have started to take place later in life<sup>31</sup>. During that year, the average age for initiating consumption was 16 years old for tobacco and for alcohol and 17 years old for cannabis.

However, the Ombudsman is still concerned with the high numbers of drug and substance abuse that still persist among Portuguese children and youngsters. According to 2015 data provided by the first mentioned study, 71% of the Portuguese adolescents, aged between 13 and 18 years old have admitted the consumption of alcohol. Binge drinking (a consumption of five or more alcoholic drinks in a single episode) has been admitted by 4% to 36% adolescents in the month prior to the study. Spirit drinks are the most consumed by adolescents, closely followed by beer and, 85% of youngsters consider that is very easy to get alcoholic drinks in stores, bars or discos, albeit the law prohibits sale and consumption to minors.

The same study showed that 19% of adolescents have admitted having experimented drug consumption, being cannabis the most relevant substance. 3% of children aged 13 have already admitted to have experimented drugs. Among adolescents aged 18, the number increases to 35%.

As regards tobacco, 40% of the Portuguese adolescents have admitted to have smoked cigarettes.

The study also reveals a significant progression of substance abuse along the adolescents' growth. From 13 to 18 years old, namely from 31% to 91% per cent in the alcohol consumption, from 12% to 59% in tobacco and from 3% to 35% on drugs.

***The Ombudsman proposes that the Committee recommend the following to Portugal:***

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<sup>30</sup> SICADE, Intervention Service on Addictive Behavior and Addiction, study available in [http://www.sicad.pt/PT/EstatisticaInvestigacao/EstudosConcluidos/Paginas/detalhe.aspx?itemId=170&lista=SI CAD\\_ESTUDOS&bkUrl=/BK/EstatisticaInvestigacao/EstudosConcluidos](http://www.sicad.pt/PT/EstatisticaInvestigacao/EstudosConcluidos/Paginas/detalhe.aspx?itemId=170&lista=SI CAD_ESTUDOS&bkUrl=/BK/EstatisticaInvestigacao/EstudosConcluidos).

<sup>31</sup> SICADE, Intervention Service on Addictive Behavior and Addiction, study available in [http://www.sicad.pt/BK/EstatisticaInvestigacao/EstudosConcluidos/Lists/SICAD\\_ESTUDOS/Attachments/181/IV%20INPG%202016\\_17\\_PT.pdf](http://www.sicad.pt/BK/EstatisticaInvestigacao/EstudosConcluidos/Lists/SICAD_ESTUDOS/Attachments/181/IV%20INPG%202016_17_PT.pdf)

*To increase its efforts on supervision and inspection of sale of alcohol, tobacco and drugs to children.*

***Health (Art. 24) – Quality of School food***

The Portuguese Ombudsman is aware of recent news that reported problems regarding the quality of meals served at schools provided by contracted companies. The Portuguese Ombudsman is also aware that these situations are not the general rule, but exceptional cases. Still, in the school year of 2017/2018 there were 854 complaints addressed to the Schools Directorate-General regarding school meals (data provided by the Ministry of Education). From this universe of complaints, 426 regarded the quantity or the quality of food.

*The Ombudsman proposes that the Committee recommend the following to Portugal:*

*To maintain the efforts of inspection and control of school meals.*

***Welfare (Art. 27) – Right to an adequate standard of living***

According to 2016 data 29 % of the population under the age of 18 was at risk of poverty (prior to the transfer of social benefits). The percentage was reduced to 20, 7%, after the transfer of social benefits – still, above the rate of risk of poverty in general.

Despite the efforts made through the years, child poverty – and poverty in general – remains as one of the main and most difficult challenges faced by Portugal. Inequality and poverty, not only hinder the full enjoyment of human rights, but also prevent the personal development and wellbeing.

Poverty affects disproportionately children – especially those living with a single parent or in large families – which is aggravated by the fact that their vulnerability exposes them to particular risks of deprivation and hardship.

The Ombudsman welcomes the measures mentioned in the State's report aimed at fighting against child poverty, but it is still deeply concerned with the long-term effects of this phenomena.

*The Ombudsman proposes that the Committee recommend the following to Portugal:*

*To study, monitor and address on the persistent effects of poverty in children wellbeing and development.*

*To provide more details on the adoption of measures aimed at recovering and fighting the persistent effects that austerity measures may still have on children.*

### ***Welfare (Art. 27) – Parental allowances***

In the area of access to social benefits, the Ombudsman received several complaints concerning the rejection of applications for parental allowances in the situations of compulsory parental leave, in cases where parents did not have, at the time of the birth, completed six months, followed or interpolated, of social security contributions.

Workers are legally obliged to take parental leave in case of a child's birth irrespective of the social security contributions made. During parental leave, they cease to receive remuneration from employers, but in cases where they did not have completed six months of social security contributions, they also do not receive parental allowance from the social security system.

Considering that this scheme could leave new-born children totally unprotected, the Ombudsman suggested the Government a legislative amendment to ensure that the compulsory parental leave would be effectively enjoyed and that it would not cause any economic or professional harm to working parents.

The Government has not yet provided an answer to the Ombudsman's recommendation.

***The Ombudsman proposes that the Committee recommend the following to Portugal:***

***To perform legislative and other measures to enable that employed parents in the situations of compulsory parental leave with no sufficient guarantee period also obtain parental allowances and that compulsory parental leave is effectively enjoyed without causing any economic or professional harm to working parents.***

### ***Welfare (Art. 27) – Tax Benefits***

*(Example of a good practice)*

In accordance with the Tax Law, certain education expenses for children, legally determined, are eligible for decreasing the income that shall be taken into account to calculate tax amounts. However, these expenses had to be made in commercial establishments awarded with a specific economic activity code.

The Ombudsman has received several complaints from parents or other legal guardians who could not benefit from this tax regime, because they could not acquire the necessary material and equipment in shops awarded with the specific economic activity code. This onus affected mostly the rights of the persons living in rural areas, with lower economic status, where such specialized shops do not exist.

The Ombudsman's interventions caused amendments to the relevant legislation. Also, expenses for the meals of the children in school canteens and for the transportation of the children to school became eligible for obtaining the benefit of lower income tax, although companies which are providing these services do not have economic activity code specifically for selling school equipment.

The Ombudsman welcomes all initiatives aimed at helping parents and other legal guardians with support to education. It stresses the importance of making this support especially available to economically or socially more vulnerable households. In this respect, it may be important to evaluate whether the measures have an indirect discriminatory effect, making more difficult for some households to benefit from them.

### ***Welfare (Art. 27) – Housing (access to social housing)***

According to data compiled by National Housing Needs Survey of February 2018<sup>32</sup>, in 187 out of the 308 municipalities, there are 25,762 families living in precarious conditions and, therefore, in need of rehousing in Portugal. 74% of the families in need of rehousing live in the Metropolitan Area of Lisbon, which comprises 18 municipal councils, and in the Metropolitan Area of Porto, with 17 municipal councils.

46, 58% of these families live in shacks and self-built dwellings, 3, 65% in non-legalised neighbourhoods, 1, 27% in encampments and 0.02% in camping parks. The constructions identified as “Social housing” were mostly built in the first half of the 20th century. Not only they do not meet adequate housing standards but, because of their state of degradation, they also affect the dignity and security of the residents, especially children.

The majority of families still housed in shacks and self-built dwellings live in small or medium-sized clusters (about 8 families per cluster): 1,586 clusters were identified, with a total of 11,999 families in need of rehousing.

The Ombudsman receives numerous complaints related to the allocation of the families into the social housing. When a certain family household encompasses children, the Ombudsman reinforces its efforts in order to find an adequate accommodation in cooperation with municipalities, social services and the central administration. However, although families with the children are priorities for social housing accommodation, an adequate solution is sometimes not easy to find.

***The Ombudsman proposes that the Committee recommends the following to Portugal:***

***To strengthen the measures that enforce the enjoyment of the right to adequate housing to the families, giving priority to families with children***

### ***Welfare (Art. 27) – Housing (Children living in informal settlements)***

With regard to informal settlements, the information obtained by the Portuguese Ombudsman through the investigation of complaints indicates that full legitimate and safe access to essential water, sanitation and electricity services has not yet been achieved in Portugal<sup>33</sup>.

These problems affect predominantly Roma children living in informal

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<sup>32</sup>[https://www.portaldahabitacao.pt/openscms/export/sites/portugal/pt/portugal/habitacao/levantamento\\_necessidades\\_habitacionais/Relatorio\\_Final\\_Necessidades\\_Realojamento.pdf](https://www.portaldahabitacao.pt/openscms/export/sites/portugal/pt/portugal/habitacao/levantamento_necessidades_habitacionais/Relatorio_Final_Necessidades_Realojamento.pdf).

<sup>33</sup> Portuguese Ombudsman, *Informal Settlements and Human Rights* - Submission to the Questionnaire of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, May 2018.

settlements with their families, in precarious conditions and with poor access to water, which is a systemic problem. According to a recent study on the "Characterization of Housing Conditions of Roma Residents in Portugal"<sup>34</sup>, a significant proportion of these families (32%) live in non-classical dwellings such as tents or mobile homes. The study acknowledges it may not reflect the real housing needs of the Roma community in Portugal since not all municipal councils responded to the inquiry based on which the characterization was made.

During the visits the Ombudsman's staff made to informal settlements in the Lisbon Metropolitan Area, and besides the inadequate conditions of the self-built dwellings made of improvised materials, it was possible to detect situations posing serious threats to public health, such as poor sanitation systems, exposure to cold, humidity and heat and overcrowding of dwellings. These conditions may affect children's health and safety.

Moreover, the Ombudsman is aware of some private companies' refusals to provide services and delivery of goods in some neighbourhoods, invoking security reasons.

In 2017, the Parliament recommended the Government that, until adequate housing solutions are implemented, measures should be taken in order to guarantee that residents in informal settlements and neighbourhoods have access to electricity<sup>35</sup>. The Parliament also recommended the Government to adopt the legislative and administrative measures necessary to ensure that suppliers of essential public services, namely electricity, would sign contracts with families living in the mentioned conditions.

A package of measures aimed at responding to these challenges was approved in May 2018, and it includes the extraordinary regime on the temporary supply of electricity to families in vulnerable economic and social situation living in inadequate housing conditions.

***The Ombudsman proposes that the Committee asks the following to Portugal:***

***Which impact will have the package of measures approved in May 2018 had in improving the lives of children living in informal settlements?***

***The Ombudsman proposes that the Committee recommend the following to Portugal:***

***To urgently put into practice the agreed legislative measures necessary to ensure that suppliers of essential public services, namely electricity, will sign contracts with families living in the mentioned conditions.***

### ***Welfare (Art. 27) – Housing (Children affected by forced evictions)***

Since 2012, the Ombudsman is actively monitoring the eviction and forced demolition programmes. The Ombudsman suggested that the demolitions and evictions

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<sup>34</sup>[http://www.portaldahabitacao.pt/opencms/export/sites/portal/pt/portal/publicacoes/documentos/caraterizacao\\_condicoes\\_habitacao.pdf](http://www.portaldahabitacao.pt/opencms/export/sites/portal/pt/portal/publicacoes/documentos/caraterizacao_condicoes_habitacao.pdf)

<sup>35</sup> Resolution 151/2017, of July 17.

should be suspended until the municipality, the State, and eventually other social institutions, were able to rehouse all persons that did not have alternative housing. It focused especially on the impacts of forced evictions on children<sup>36</sup>. This Recommendation was issued further to complaints about the eviction and demolition of shacks and unconventional dwellings carried out by the Amadora Municipal Council, in the Lisbon Metropolitan Area.

In 2018, also the European Commission against Racism and Intolerance (ECRI) recommended that the authorities must ensure that there are no cases of illegal forced evictions and that anyone at risk of being forcibly evicted from their home is afforded the full range of guarantees provided for in international and national texts on the subject: they should be given sufficient advance notification of any decision of forcibly evict them, and they should be entitled to appropriate legal protection and not be evicted without the possibility of being rehoused in decent accommodation.

*The Ombudsman proposes that the Committee asks the following to Portugal:*

*Which concrete measures are foreseen and currently put to practice to protect family with children in the context of forced evictions*

(h) **Education, leisure and cultural activities** (arts. 28, 29 and 31);

### *Education (Art. 28) – General comments*

The Ombudsman welcomes the State's efforts to increase the investment in the education sector in order to overcome the crisis' effects left by the adoption of austerity measures. The State's report recognises that investment is still far from 2010 levels, which shows that it is aware that more efforts have to be made to attain previous levels of quality.

According to the Observatory of Education and Training Policies, the State's spending on education became the lowest in the European Union in 2014<sup>37</sup>, and several measures had a very negative impact on the education quality<sup>38</sup>. Besides cuts in personnel, these measures encompassed extinction of non-curricular subject areas, such as supervised study and Project Area<sup>39</sup>, decrease in curricular units such as Sports / Physical Education, Arts Education, Civic Education, Education for Health and Environmental Education<sup>40</sup>, increase of the number of students per class (from 24 to 26

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<sup>36</sup> Recommendation n. 3/B/2016.

<sup>37</sup> Observatory of Education and Training Policies, *The State of education in the State - Portugal*, 2014, available at <http://www.op-edu.eu>.

<sup>38</sup> “Country Report on Portugal - The impact of the crisis on fundamental rights across Member States of the EU -”, European Union, Brussels, 2015, cit., p. 22 *et seq.*

<sup>39</sup> Decree-Law no. 18/2011, 2nd February 2011.

<sup>40</sup> Decree-Law no. 139/2012, 5th July 2012.



in primary education; from 28 to 30 in all other cycles<sup>41</sup>), which affected a great number of students.

The Ombudsman is concerned with the persistence of the austerity measures effects on education during the reporting period.

The beginning of the school year of 2014/2015 was still marked by several difficulties, namely lack of teachers and other staff in several schools<sup>42</sup>. This situation still persists in some schools, namely in more remote areas, where some subjects are only assigned with teachers after one month or more after the beginning of the school year.

Moreover, similar to previous years, in 2017 (predominantly in the first term of classes), the Ombudsman received several complaints about difficulties and delays in the placement of substitute teachers (substitution usually due to illness of the previously appointed teacher). In general, there are successive refusals on the part of the various teachers who, in accordance with established recruitment procedures, are invited to fill the vacancy, resulting in significant delays in school work. While schools cannot overcome this difficulty, it has been satisfactorily observed the adoption of learning compensatory measures that, in the same school year or during the education cycle concerned, bridge the gap. However, not all schools benefit from these measures.

Moreover, as the State's report mentions, budget shortage was aggravated by the suspension of key programmes such as renovation of schools. Although it mentions that in 2017 there was an important investment in the rebuilding of schools, more information is needed on this regard.

On the other hand, the Government pursued a strategy of closing schools with the lowest number of students, namely located in more isolated or rural areas. In 2018, more 63 schools are planned to close. The Ombudsman is concerned with the alternatives foreseen for affected students.

Finally, the Ombudsman is still worried with the teachers' and other personnel's salary and career rights. During the reporting period teachers and other school personnel engaged in several strikes, with the inevitable suspension of students' activities.

***The Ombudsman proposes that the Committee recommends the following to Portugal:***

***To continue its efforts to increase the investment in the education sector in order to surpass the negative effects left by the adoption of austerity measures, not only through the increase of investment, but also by analysing the quality of education provided.***

***To map the priorities of schools building renovation and urgently initiate the works deemed necessary.***

***To provide urgent solutions for the lack of teachers, avoiding any student from being left with no assigned teacher in the beginning of a school year, or in cases of unpredictable situations, to provide adequate alternatives;***

***The Ombudsman proposes that the Committee asks Portugal:***

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<sup>41</sup> Order no. 5106-A/2012, 12th April 2012.

<sup>42</sup> P. 24

***Which solutions and alternatives are foreseen for the students whose schools are closing due to insufficient levels of enrolment?***

### ***Education (Art. 28) – Pre-school Education***

Law no. 65/2015 of 3 July established the universal guarantee of the public offer of preschool education to children from 4 years of age, to come into force in the school year 2016/2017. The Ombudsman welcomes the objective of full provision of pre-school. However, it recalls that this goal requires positive investment obligations from the State.

The State's report does not specify whether the mentioned enrolment rates respect children enrolment in public pre-schooling or also encompass children enrolled in private day-care centers.

In fact, the Ombudsman reported in 2016 an increase in the number of complaints on preschool education, mainly due to the abovementioned enlargement, as it created more pressure on allocating the places available on public facilities in specific areas. The Ombudsman contacted municipalities and educational institutions to enable that all eligible children have a place provided in preschool facilities.

In 2017 and 2018 and as far as pre-school education is concerned, the number of complaints regarding access to vacancies remained consistent, and was broadly broadcasted through the media<sup>43</sup>.

***The Ombudsman proposes that the Committee recommends the following to Portugal:***

***To continue its efforts to increase the number of available vacancies in public pre-schools establishments.***

### ***Education (Art. 28) - Premature school dropout***

The Portuguese Ombudsman recognizes the steps taken in the last decades from several governments to tackle the issue of premature school dropout. In the same way, it is important to mention that the State's report, despite the progress in this area, asserts that Portugal still lags behind the European average, which must be seen as a relevant commitment from the State.

Bearing in mind the importance that education has in child development, personal fulfillment and in being the strongest instrument to combat social inequality, it is imperative that Portugal maintains its efforts to fight premature school dropout.

### ***Education (Art. 28) – Education of Roma Children***

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<sup>43</sup> "Falta de vagas no pré-escolar e no 1.º ciclo origina onda de reclamações", Público, 3 August 2018, available in <https://www.publico.pt/2018/08/03/sociedade/noticia/falta-de-vagas-no-no-preescolar-e-1-ciclo-origina-onda-de-reclamacoes-1839956>.



The Roma community has been subjected to special attention from the State, which has approved a national strategy: the National Roma Communities Integration Strategy 2013-2020. In the education area, this strategy aims to develop mechanisms on grounds of the characteristics and cultural specificities of these communities, with a view to ensuring an effective quality education, the completion of compulsory education as well as access to vocational training and training throughout life. The priorities set out in this strategy are, among others: improving the knowledge of the school situation of Roma pupils and trainees in school; ensuring access to pre-school education; increasing schooling rates; ensuring that all Roma children complete compulsory education; promoting enrolment in secondary education; encouraging access to higher education; preventing early school dropout.

The Portuguese Ombudsman has dealt with very few situations affecting ethnic minorities, as discrimination, segregation or exclusion of the Roma community.

Recommendations to Portugal in the Second Cycle of the UPR 2014 called for efforts on improving access to education for children and youth from Roma communities, and also the European Commission against Racism and Intolerance recommends that the authorities ensure that all Roma children rigorously attend compulsory schooling up to the age of 18 years.

### ***31) Right to rest and leisure, to engage in play and recreational activities (Art. 31)***

There has been an ongoing debate in Portugal about the number of hours that children spend in school and working at home. Several parents complain that children do not have leisure and play times, as that there is a growing habit of assigning daily homework to children in 1st cycle of education.

This problem affects mostly children from six to nine years old.

According to the Programme for International Student Assessment (PISA) from 2015, albeit the number of hours of study/homework per week a Portuguese student endures stands roughly in the average of other European countries (17 hours/week), when considered the time spending in school, Portugal stands as the 6th country in Europe with more time spent studying: 45 hours/week (being 17 hours in study after school and 28 hours in school)<sup>44</sup>.

This numbers are particularly impressive as Portuguese labour law sets forth a maximum of 40 hours labour per week, as a general rule for adult workers.

Teachers claimed, on their turn, that educational content on the first cycle is very demanding and extensive, which makes very difficult for them to teach without recurring to homework and home study. More than 13.000 parents have raised the same concerns, and made a petition to the Portuguese Parliament asking for a review of the curricular goals established for the 1st cycle of education<sup>45</sup>.

### ***The Ombudsman proposes that the Committee recommends to Portugal:***

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<sup>44</sup> Available in <https://www.oecd.org/pisa/pisa-2015-results-in-focus.pdf>.

<sup>45</sup> Public petition aimed at changing curricular goals to the 1st cycle of education, with 13.891 signatures. The petition and Parliamentary procedure are available in <http://peticaopublica.com/pview.aspx?pi=PT76773>.



*To raise awareness on teachers and other professionals on the amount of homework given of students, bearing in mind the hours spent in school each day,  
To raise awareness on the importance of leisure and play time;  
To continue studying the adequacy of school contents of the 1st cycle of education, in order to analyse whether these curricula allow children to balance their study time with leisure and the right to play.*

***Right to equal opportunities for cultural, artistic, recreational and leisure activity (Art. 31, 2)***

The Ombudsman received a complaint regarding a girl who claimed that, as a female, she was not allowed to compete in an amateur cycling competition. The regulation of this competition only allowed young male athletes to take part in the race, based on the explanation that because of the physical challenges, more strength was needed.

After the intervention of the Ombudsman the girl was accepted to take part in the competition.

The Ombudsman is concerned on whether other similar situations may persist, where discriminatory barriers prevent children from benefiting from cultural, artistic, recreational and leisure activity, including sports, by eliminating potential discriminatory barriers and conditions.

***The Ombudsman proposes that the Committee recommends to Portugal:  
To enforce the right for children to benefit from cultural, artistic, recreational and leisure activity, including sports, by eliminating potential discriminatory barriers and conditions.***

**(i) Special protection measures:**

***(ii) Children in situations of emergency (arts. 22, 38 and 39):***

***Children outside their country of origin seeking refugee protection (Art. 22), migrant children and children affected by migration; - detention in unsuitable conditions***

The Ombudsman applauds all Governmental measures to comply with the European Agenda for Migrations, namely by volunteering to welcome a number of relocated asylum-seekers from Greece and Italy that exceeds those that were required by the European Commission. It also applauds the bilateral agreements aimed at receiving unaccompanied children from Afghanistan, and incentives the Government to pursue this activity of providing international protection to children in need.

However, it is concerned with the treatment of Migrant Children who arrive spontaneously to Portugal.

As already mentioned, accompanied children who are found irregularly staying in the territory and accompanied children who arrive irregularly at the border may be detained. The same applies to accompanied children who request asylum at the border. In the first situation, children are normally detained in the special detention (temporary accommodation center) in Porto (Unidade Habitacional de Santo António), which is prepared to receive children. However, in the other two cases, families with children are normally detained in the temporary detention facility located in the International airport's area. Although, according to an internal decision issued in September 2018, children may not stay in the airport detention centers for more than 7 days, the NPM is still concerned with the lack of conditions offered by these centers to accommodate children.

The Ombudsman, in its capacity of NPM, has made several visits to Temporary Detention Centers located at the airports, and has considered that these establishments are not adequate to receive children and families. None of the current establishments has a sector for families, and are totally deprived of educational or leisure materials for children. The centers are isolated and, with the exception of the NGO “*Médecins du Monde*” and the Portuguese Refugee Council, no other organisation from the civil society is allowed to visit detainees. There is also no other type of support for children, as psychologist or educational therapists. Moreover, as the NPM reports point out, meals consist in pre-heated food that is normally served in plane trips, which may not be suitable for children.

The NPM issued in 2017 a specific recommendation on the conditions of the Lisbon airport as there were no availability of areas for the installation of families, as well as adequate equipment for the accommodation of children and a proper procedure to ensure the satisfaction of the specific nutritional needs of pregnant women, infants and children<sup>46</sup>. The recommendation still has not been implemented by the Government.

However, as already mentioned, the Ministry of Internal Affairs recognized the difficulties of the airports' detention centers, and committed to initiate in 2019 the construction of a new temporary detention center located in Sintra, near Lisbon, and equipped with appropriate conditions for families and children.

***The Ombudsman proposes that the Committee recommends the following to Portugal:***

***To set forth that children may only stay in the Temporary Detention Centers located in the airports for a maximum period of 48 hours;***

***To urgently find alternative and adequate accommodation centers for asylum seeking and other migrant children;***

***To put in place measures in order to ensure the satisfaction of the specific nutritional needs of pregnant women, infants and children in emergency situated in the Temporary Detention Centers;***

***To provide appropriate training for the professionals and other employees who work with families with children in the emergency situations in Temporary Detention Centers and other similar facilities.***

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<sup>46</sup> Recommendation 17/2017/NPM.

***Children outside their country of origin seeking refugee protection (Art. 22), unaccompanied children***

The Ombudsman welcomes the State's efforts to develop a guide of procedures for hosting unaccompanied children.

In the development of this strategy, and in its practice, the State shall take into consideration that all acts and decisions must actively pursue the best interest of the child in all times.

The Ombudsman recalls that these children are particularly vulnerable, not only because, by definition, they are not accompanied by a responsible adult, but also because they are subjected to more risks of violence or trafficking. Moreover, the State has positive obligations towards these children, which must be actively pursued. These duties encompass the assignment of legal tutors who may help them enjoy their rights and fulfill their obligations. These tutors shall have adequate knowledge and training to exercise their functions. Organizations or natural persons whose interests are or may conflict with those of the unaccompanied child should not be entitled to represent the child. The tutor shall maintain a close and direct contact with the child. Thus, the State must guarantee at most extent possible that tutors will not be responsible for representing several unaccompanied children simultaneously.

Moreover, the State must continue to pursue its practice of non-detention of unaccompanied children. Adequate procedures aimed at protecting them and enabling them to fully exercise their rights must be promptly adopted. Thus, the State must accommodate these children in a safe and adequate establishment, where they can be protected and also supported. All the Convention's rights shall be guaranteed, namely the right to education, leisure, adequate standard of living, health care, etc. Children who arrive with siblings must not be separated.

Regarding long-term measures, the State must also bear in mind the best interest of the child. As the international standards point out, return to the country of origin must only be decided in cases where there is no risk of refoulement and where there is a guarantee that the child will be received by a legally responsible adult. Thus, in cases where the best interest of the child points towards his or her permanence in the territory, a legal status shall be granted to them and legal right to family reunification must be promptly enforced. In cases where the family reunification is not possible, the child must be protected in the context of the Law on Promotion and Protection of Children in Danger. In this respect, the Ombudsman welcomes the amendment made to the Nationality Law in 2018, which foresees a right to naturalisation to unaccompanied children who were subjected to the protection measure of residential care. However, the Ombudsman does not see why other unaccompanied children, who, due to impossibility to return to their country, are also subjected to protection and promotion measures (v.g. family foster care) may not benefit from the same right to naturalisation.

***The Ombudsman proposes that the Committee recommends the following to Portugal:***

***To guarantee that all unaccompanied children are assigned with a tutor;***

***To continue pursuing its policy of non-detention of unaccompanied children;***



*To actively protect all rights of the unaccompanied child foreseen in the Convention;*

*To take into account the best interest of the child on long-term measures, respecting the right to non-refoulement and the right to family unity;*

*To broaden the right to naturalisation to all unaccompanied children who, being unable to return to their country of origin, are subjected to promotion and protection measures in Portugal*

***(iii) Children in conflict with the law (arts. 40, 37 and 39):***

The Ombudsman in the capacity of the National Preventive Mechanism (NPM) has performed in 2015 six visits to Portuguese educational centers for young people aged between 12 and 16 who practiced acts qualified as a crime by the Law and are, therefore, serving an educational guardianship measures. Based on the evidence gathered and the information provided by the authorities the NMP issued recommendations to various entities (to the Minister of Justice, the Minister of Health, the General Director of Reintegration and Prison Services, the President of the High Council of the Judiciary, the Prosecutor General), for strengthening the defense of the rights of young people and improving, concomitantly, the educational guardianship system. These recommendations were presented in the Special Report "The National Preventive Mechanism and the educational centers - report of the visits carried out during the year 2015".

Recommendations addressed to the Minister of Health, were, among others, related to the difficulties arising from the absence of specialized medical boards, particularly in child and adolescent psychiatry and it emphasized that it should be solved by the process of installation of an autonomous therapeutic unit for urgent and acute cases. Based on the follow up visits that NPM performed in 2018, the Ombudsman is concerned about the lack of alternatives in the matter of health mechanisms able to provide adequate medical treatment in the cases where the mental condition and the pathology has been diagnosed.

Regarding the administration of juvenile justice in general, as already mentioned, children from 12 to 16 years of age who commits an offence qualified by the penal law as crime can be subject to educational measures, as established by the Educational Guardianship Law.

The Portuguese juvenile justice system is focused on the need for the offender to be educated on the fundamental community values. This focus on education is reinforced by the fact that even if there is proof in the judicial proceedings that the offence was committed, the educational measure can only be applied if the judge considers there is a specific need for the young offender to be educated for the standard social values. Therefore, it is important to state that the Portuguese legal framework is in line with the standards established in the CRC and in the Beijing rules.



In fact, there is a clear difference between the promotion and protection law and the educational guardianship regime, although with also clear links between both, in order to deal with situations of cross-over youth, who simultaneously are in need of a protective and an educational measure. This involves a particular and sensible articulation amongst the several actors of the system – courts; local commissions; social, educational and health services; reintegration services – so that the intervention is coherent and effective.

Despite the progress made in the coordination of these two regimes since 2001 (when they were enforced), the system would benefit from a more integrated intervention from all the institutions concerned. This is imperative to promote and protect the rights of children in those cross-over situations who found themselves in a lengthy cycle of ending a protective measure, starting an educational measure and going back to a protective measure because, in the meantime, the core issues concerning their family environment weren't solved or their autonomy skills weren't enough trained.

***The Ombudsman proposes that the Committee recommends the following to Portugal:***

***To put in place measures that fully address the educational and healthcare needs of children in educational centers, with a particular focus on mental health services.***

***To promote protocols of intervention that ensures the necessary articulation between the juvenile justice and the promotion and protection systems.***

***(vi) Children in situations of exploitation, including physical and psychological recovery and social reintegration (arts. 32, 33, 34, 35, 36 and 39);  
- trafficking of children***

Although Portugal has increased its efforts on national plans to fight against trafficking of children and protecting the victims, there is still no systematic and specializes response aimed at protecting potential children who may be victims of trafficking.

When a foreign child is found entering undocumented with other adults in the territory, according to information provided by the Aliens and Borders Service to the Ombudsman, in its NPM quality, the putative family is detained in the temporary detention center, mostly in the airport. In cases where suspicions of trafficking arise, the case is reported to the Family and Children Court, who may then apply one of the promotion and protection measures foreseen in the Law.

This procedure raises some concerns to the Ombudsman, as it implies that potential victims may spend a certain time in detention facilities which do not have, according to NPM's reports, adequate conditions to receive children and they do not have the necessary support personnel to accompany children. Thus, the Ombudsman is seriously concerned that detention in these conditions may represent a second victimization to concerned children. However, according to the Aliens and Borders Service perspective,



accommodation of potential victims in open permisses has been insufficient for guaranteeing their protection. Also, protection of children who were victims of trafficking according to the general law on promotion and protection of children in danger might be considered the best solution. This might imply, in particular, that children could be institutionalized in general shelters, which may not offer enough security or recovery services. Thus, specialized centers for accommodate potential victims of traffick, with specially trained personnel and security conditions are needed.

These aspects have been highlighted in the latter report of the Group of Experts on Action against Trafficking in Human Beings of the Council of Europe (GRETA)<sup>47</sup>.

***The Ombudsman proposes that the Committee recommend the following to Portugal:***

***To adopt specific legal measures addressing the immediate needs of protection of children who are suspected of being victims of trafficking on human beings.***

***To create shelters specifically aimed at protecting children who were victims of trafficking on human beings.***

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<sup>47</sup> GRETA, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal, second evaluation round*, 2017, p. 23.