

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



Constitutional Affairs

Justice, Freedom and Security

Gender Equality

Legal and Parliamentary Affairs

Petitions

**Country Report on Portugal
for the Study on
Member States' Policies for
Children with Disabilities**

Study for the LIBE Committee





DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

Country Report on Portugal for the Study on Member States' Policies for Children with Disabilities

STUDY

Abstract

Upon request of the LIBE committee, this study looks at the situation of children with disabilities in Portugal to identify the gaps in the legal framework and its implementation, the obstacles faced by children with disabilities and best practices. This country study is part of a larger study which analyses all the 28 Member States. In the first phase of the study, a comparative analysis has been drawn based on 18 of the country studies. In the second phase of this study, the situation in the remaining ten countries and Scotland has been analysed. The overall report "Member State Policies on Children with Disabilities" provides some recommendations for EU action to enhance the situation of children with disabilities.

DOCUMENT REQUESTED BY THE
COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

AUTHOR(S)

Ms. Paula Campos Pinto, Ms. Teresa Janela Pinto, Ms. Diana Teixeira
Under the supervision of Milieu Ltd. (Belgium), 15 rue Blanche, B-1050, Brussels, tel: +32
25143601; Project Director and review of report: Marta Ballesteros and Project Manager:
Nathalie Meurens, e-mail: marta.ballesteros@milieu.be and nathalie.meurens@milieu.be;
web address: <http://www.milieu.be/>.

RESPONSIBLE ADMINISTRATOR

Ms Erika SCHULZE
Policy Department C - Citizens' Rights and Constitutional Affairs
European Parliament
B-1047 Brussels
E-mail: poldep-citizens@ep.europa.eu

Editorial assistant:
Ms. Lucia-Cristina ACHIHAEI

LINGUISTIC VERSIONS

Original: EN
Translation: PT

ABOUT THE EDITOR

Policy Departments provide in-house and external expertise to support EP committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny.

To contact the Policy Department or to subscribe to its monthly newsletter please write to:
poldep-citizens@ep.europa.eu

European Parliament, manuscript completed in December 2014.
© European Union, Brussels, 2014.

This document is available on the Internet at:
<http://www.europarl.europa.eu/studies>

DISCLAIMER

The opinions expressed in this document are the sole responsibility of the author and do not necessarily represent the official position of the European Parliament.

Reproduction and translation for non-commercial purposes are authorized, provided the source is acknowledged and the publisher is given prior notice and sent a copy.

.

CONTENTS

LIST OF ABBREVIATIONS	5
EXECUTIVE SUMMARY	6
INTRODUCTION	8
1. OVERVIEW OF THE SITUATION AND CHALLENGES FOR CHILDREN WITH DISABILITIES IN PORTUGAL	10
1.1. Introduction to the situation of children with disabilities in Portugal	10
1.2. Review of issues and identification of possible regulatory gaps	11
2. OVERVIEW OF THE NATIONAL LEGAL FRAMEWORK	13
2.1. General overview of the national legal and institutional framework	13
2.2. Children with disabilities specific legal and institutional framework	14
2.2.1. Legal framework	14
2.2.2. Institutions and authorities	16
2.2.3. Definitions	17
3. LEGAL FRAMEWORK FOR CHILDREN WITH DISABILITIES IN PORTUGAL	18
3.1. Implementation of the provisions of the CRPD and CRC	18
3.1.1. Best interests of the child (Art. 3 CRC; Art. 7 CRPD)	18
3.1.2. Non-discrimination (Art. 2 CRC; Arts. 3 and 5 CRPD)	20
3.1.3. Evolving capacities of the child (Art. 5 CRC and Art. 3 CRPD)	22
3.1.4. The right to be heard/to participate (Art. 12 CRC; Arts. 7 and 30 CRPD)	23
3.1.5. Freedom from violence (Art. 19 CRC; Art. 16 CRPD) and its implementation	25
3.1.6. Right to family life (Art. 9 CRC; Art. 23(3) CRPD)	27
3.1.7. Right to assistance (Art. 23 CRC; Arts. 23(5), 26 and 28 CRPD)	29
3.1.8. The right to inclusive education (Art. 28 CRC; Art. 24 CRPD) and its implementation	31
3.2. Specific issues faced by children with disabilities	34
3.2.1. Gender vulnerability	34
3.2.2. Children as vulnerable suspects	35
3.2.3. Other particular issues faced by children with disabilities in Portugal	36

4. ASSESSMENT OF THE PRACTICAL IMPLEMENTATION OF THE RIGHTS AND LEGAL PRINCIPLES	37
4.1. Enforcement and reporting mechanisms	37
4.2. Gaps, problems and issues in the implementation	39
4.3. Best practices	41
4.4. Data and monitoring mechanisms	42
4.5. Recommendations	43
5. CONCLUSIONS	46
REFERENCES	47
ANNEX 1 – SUMMARY TABLE	50
ANNEX 2 – STATISTICAL INFORMATION	112
ANNEX 3 – STUDY ON MEMBER STATES' POLICIES FOR CHILDREN WITH DISABILITIES - EXECUTIVE SUMMARY	117
ANNEX 4 - OVERVIEW OF RELATED STUDIES	128

LIST OF ABBREVIATIONS

Charter	The Charter of Fundamental Rights of the European Union
CEI	Specific Individual Curriculum
CJEU	Court of Justice of the European Union
CNE	National Commission for Education
CoE	Council of Europe
CPCJs	Children and Youth Protection Commissions
CRC	United Nations Convention on the Rights of the Child
CRPD	United Nations Convention on the Rights of Persons with Disabilities
ECHR	Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms
ECMI Js	Entidades competentes em matéria de infância e juventude
EU	The European Union
ICF	International Classification of Functioning, Disability and Health
IEP	Student's Individual Education Plan
INR	National Institute for Rehabilitation
PEI	Individual Education Programs
PIT	Individual Transition Plan
PSP	Public Security Police
SNIPi	National Early Intervention System
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations

EXECUTIVE SUMMARY

Portugal has ratified both the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol. Both treaties are directly applicable in the country, and thus can be invoked before the courts. The legal framework emphasises the right to inclusion, participation and non-discrimination. The rights of children and of persons with disabilities are well reflected in the national legislation. As a result, overall, children with disabilities' rights are guaranteed in the Portuguese legal framework.

The welfare of children with disabilities is a recent object of law and public policy in Portugal. Until the 1974 revolution, there was little or no support available to children with disabilities, who had to rely entirely on their families for needed care. Following the revolution, a number of non-profit organisations and cooperatives were created to provide education, vocational training and day care activities for children and adults with disabilities as public funds were made available to support these programmes; however, segregation of children with disabilities was endorsed. The accession of Portugal to the European Union in 1986 and, more recently, the ratification of the CRPD have contributed to a renewed attention to disability issues, notably a greater emphasis on policies that fight discrimination, promote inclusion and social participation.

Overall, while the rights and principles recognised in the CRC and CRPD are provided for in the legal framework, the practical implementation of many of them is problematic. The right to non-discrimination on the grounds of disability is enshrined in specific legislation, including in areas pertaining to the situation of children with disabilities (such as access to goods and services, education, health and transportation) and the obligation to provide reasonable accommodation is recognised in relation to education and employment. However, the rights and particular vulnerabilities of girls with disabilities are not mentioned anywhere, nor is it anywhere recognised that they might be the subject of multiple discrimination.

The right of the child to be heard in all decisions affecting him/her and according to his/her level of maturity is clearly stated in most legal statutes. Nevertheless, there are important gaps in the implementation of this right in judicial procedures, often justified by arguments that emphasise the potential risks for the child (e.g. re-traumatisation or risk of being manipulated by adults). Moreover, this principle is absent from the legislation that regulates inclusive education, which prevents children from participating in decision-making concerning their education.

The right to family life is well protected in the legal framework, but there are problems in its implementation. The number of children at risk who are removed from their family and institutionalised remains very high in the country. The creation of 'reference schools' for deaf and blind children require them to travel long distances every day to attend the school (especially in rural areas), which may potentially violate their right to maintain emotional ties with siblings and family members.

Access to assistance is ensured, but the level of financial benefits available is very low and there is not a personal assistance scheme available. Austerity measures introduced since 2011 have led to more stringent eligibility criteria and budget cuts in the provision of social services.

The right to inclusive education is fully acknowledged and regulated at various levels. The Early Intervention System, recently reorganised in the country, ensures a strong start for an increasing number of children with disabilities, or at risk of presenting developmental disabilities. A new law on inclusive education has led to the closure of special schools and the mainstreaming of children with disabilities in regular schools. However, insufficient quality and quantity of human and material resources in mainstream schools are compromising the education process of children with disabilities.

Lastly, the lack of a National Disability Strategy (the former one ended in 2013) to guide and coordinate disability policy at national level, the weak enforcement of existing legal provisions, notably in the area of accessibility, and the lack of awareness of disability rights among Portuguese society create many barriers to the full enjoyment of their rights for children with disabilities.

INTRODUCTION

In December 2010, the European Union (EU) became a party to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). In doing so, the EU recognised the challenges persons with disabilities face in securing their rights and highlighted the need for supportive EU actions to be firmly on the agenda of the European Union and its Member States.

Children with disabilities are already vulnerable because they are children. Their disability renders them particularly vulnerable. As such, they deserve specific safeguards and protection from the EU and its Member States.

The key legal framework for EU action in this field is the EU decision to ratifying the CRPD, the requirement under Article 10 TFEU for the EU to combat discrimination based on disability, as well as the EU objective of promoting the rights of the child found under Article 3 TEU. This framework provides the EU with a unique position to push forward for further protection of the rights of children with disabilities, and to develop legislative or policy initiatives. The UN Convention on the Rights of the Child (CRC) provides another basis for action in this area¹.

This national report for Portugal is part of a larger study which aims at providing the European Parliament with an overview of the situation of children with disabilities in all the EU Member States, with a view to evaluating the need for European legislation to enhance the rights of children with disabilities in the European Union. The project reviews the existing legal, policy and institutional frameworks in the Member States. Each country report analyses the implementation of international principles and rights stemming from the CRPD and the CRC to uncover any particular issues that necessitate further policy and legislative actions at national and EU level. In a first phase, 18 selected countries have been analysed, the results of which formed the basis for a comparative analysis in the overall report called "Member States Policies for Children with Disabilities" published in 2013. In a second phase, which took place in 2014, the situation of children with disabilities in the remaining 10 countries, as well as Scotland, have been analysed in separate country reports, including this present report.

The key elements deriving from the CRC and CRPD, with regard to children with disabilities include:

- The obligation to act in the best interests of the child;
- The right to non-discrimination;
- The consideration of the evolving capacities of the child;
- The right to be heard/to participate;
- The right to be free from violence;
- The right to family life;
- The right to assistance;
- The right to education, including inclusive education.

¹ All the 28 Member States have ratified the CRC, and all 28 Member States have signed the CRPD (Finland, Ireland and the Netherlands have signed but not yet ratified).

Given their ratification² of both UN Conventions, the Member States are obliged to take necessary measures to ensure the respect of the rights set forth for each child or person with a disability within their jurisdiction. The Member States should take the appropriate measures to ensure that children are protected against all forms of discrimination or violence, including adopting all appropriate legislative, administrative and other measures for the implementation of those rights. Moreover, the protection of the rights of children with disabilities should be mainstreamed in all policies and programmes in accordance with Article 4(3) of the CRPD on the involvement of persons with disabilities in all decision-making processes.

Due to the scale of this subject and the scarcity of materials available, the scope of this study does not cover in detail the wide range of issues arising from and relating to the situation of children with disabilities. It does not aim to provide an in-depth analysis but rather an overview of the situation of children with disabilities' rights in Portugal. This study presents a snapshot of some of the major issues and obstacles faced by children with disabilities and their families, a legal analysis of the implementation of the main rights and principles recognised in the CRC and CRPD and relevant in the context of the situation of children with disabilities and points to some potential solutions at national and EU level to improve their situation.

Each country report is structured as follows: it first looks at the situation of children with disabilities at the national level. It describes the national legal and institutional framework for the protection of children with disabilities and analyses national implementation of principles and rights developed in the UN Conventions (CRC and CRPD). It then considers specific issues relevant to the situation of children with disabilities, including children as suspects, gender issues and education. Finally, the report covers the mechanisms in place to implement the legal framework, highlighting gaps, problems, best practices, and recommendations found by the literature or via interviews with stakeholders.

² Except for Finland, Ireland and the Netherlands which have signed but not yet ratified the CRPD.

1. OVERVIEW OF THE SITUATION AND CHALLENGES FOR CHILDREN WITH DISABILITIES IN PORTUGAL

KEY FINDINGS

- The national policy focuses on the following areas: inclusion and participation in early intervention and education and the right to non-discrimination.
- The following gaps, problems and challenges have been identified: lack of data on the rights of children with disabilities, budget cuts on areas such as education, health and social care, trimming down of the provision of services and increasing the risk of poverty, lack of access to the built environment, to transportation and to information, lack of personal assistance services, persistent stereotypes, prejudices and negative attitudes and overprotective attitudes of the family.

1.1. Introduction to the situation of children with disabilities in Portugal

Portugal has signed the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol on 30 March 2007 and the treaty became binding after ratification on 23 September 2009. The Convention on the Rights of the Child (CRC) is also binding in Portugal, having been signed on 26 January 1990 and ratified on 21 September 1990 (see section 2.1).

The welfare of children with disabilities is a recent subject of law and public policy in Portugal. Up until the 1974 revolution, public initiatives focused on disability were of limited scope. Apart from a few large public institutions from the 19th and early 20th century, there were only a handful of charities, founded by families and professionals in the 1950s and the 1960s. Lacking appropriate public services and supports, most children with disabilities remained at home, being cared for by their families. Following the revolution, a number of local cooperatives, run by parents of disabled children and professionals, as well as other non-profit associations emerged to provide special education services for children with disabilities, and as they aged, vocational training programmes, sheltered employment and day care occupational activities³. Public funds were also made available to support education and rehabilitation programs, although the segregation of children with disabilities was generally endorsed.⁴

The accession of Portugal to the European Union in 1986 and more recently, the ratification of the CRPD and its Optional Protocol have contributed to a renewed attention to disability issues, notably a greater emphasis on policies that fight discrimination and promote inclusion and social participation. A new Disability Act⁵, and an Anti-Discrimination Law⁶ were passed. None of these legislation specifically mentions children with disabilities; however, they contain principles that guide disability policy in general and provisions that

³ Pinto, Paula. 'At the crossroads: Human rights and the politics of disability and gender in Portugal' (2001). *Alter, European Journal of Disability Research*, 5(2): 116-128.

⁴ Notably through the 1986 Education System Act⁴. The act accepted that "special education students" were confided to separate classrooms in the regular school or, most commonly, separate schools, whether private, not-for profit, or public.

⁵ Law 38/2004 'Disability Act' (Bases gerais do regime jurídico da prevenção, reabilitação e participação da pessoa com deficiência), Official Gazette of 18 August 2004,

⁶ Law 46/2006 'Anti-Discrimination Law' (Lei que Proíbe e Pune a Discriminação), Official Gazette of 28 August 2006.

are particularly relevant for this group (e.g. Article 22 in the Disability Act on 'support to family', Article 24 on 'prevention' and Article 34 on the 'right to education').

The legal framework to protect the rights of children with disabilities appears particularly strong in the areas of assistance (early intervention) and education. The recently established Early Intervention System provides services to children 0-6 years old and their families, through the action of local, multidisciplinary teams that undertake "preventive and rehabilitative activities in the areas of health, education and social support"⁷, aiming to stimulate the child's development and social inclusion. Similarly, the recently passed Law on 'Specialised Support for Inclusive Education' (amended in May 2008) promotes the placement of children with disabilities in mainstream regular schools, leading to the closure of special education schools. In the school year 2012/2013 66,004 students received some form of specialized support within a population of 1,408,890 students attending compulsory education.

Despite the progress achieved over the last few years, there is still no National Plan specifically addressing the rights of children with disabilities; the National Disability Strategy⁸ in place from 2011-2013 contained some measures related to children (e.g. awareness-raising campaigns in schools, the implementation of the Early Intervention System, and the de-institutionalization of children with disabilities) but this policy is now expired and has not yet been replaced by a new one.

1.2. Review of issues and identification of possible regulatory gaps

There is a lack of literature and data on the situation of children with disabilities in Portugal. No official survey has ever been conducted on this issue and the last population Census (2011) which included questions of the Washington Group on "limitation to daily life activities" as a proxy for disability, excluded from this measurement children under the age of 6 years.

A study conducted in 2012 on the impact of the austerity measures of the Portuguese government on the rights of persons with disabilities⁹ addresses a number of issues of relevance to children with disabilities. This study concludes that the economic crisis and the austerity measures implemented in the country from 2008 on had a significant and negative impact on the lives of children with disabilities. Reforms that took place imposed budget cuts on areas such as education, health and social care, trimming down the provision of services and delaying or postponing supports to promote independent living (such as personal assistance schemes and accessibility in the building environment). The authors of the study point out the effects of these measures on families who are increasingly pressured to take on care responsibilities, aggravating their economic and social vulnerability, while reinforcing the dependent role of the persons with disabilities in the family and in society.

According to the same study, restrictions imposed on the social security budget further translated in the introduction, in 2010, of more stringent eligibility criteria and a pension

⁷ Articles 3 and 4, Decree-Law 281/2009 'Early Intervention System' (Criação do Sistema Nacional de Intervenção Precoce na Infância), Official Gazette of 6 October 2009.

⁸ Resolution of the Council of Ministers 97/2010, 'National Disability Strategy' (Estratégia Nacional para a Deficiência), Official Gazette of 14 December 2010 available at http://www.inr.pt/bibliopac/diplomas/rcm_0097_2010.htm.

⁹ Pinto, Paula & Teixeira, Diana, 'Assessing the impact of European governments' austerity plans on the rights of people with disabilities' (2012) available at <http://oddh.iscsp.utl.pt/index.php/en/>.

freeze since 2011. Given that families of children with disabilities depend greatly on social transfers as their major source of income, the changes the report suggests exacerbated the risk of poverty among this group.

More recently, a monitoring study on the human rights of children with disabilities has been released.¹⁰ The research included a qualitative study of the life experiences of persons with disabilities of 12 years and older, gathered through in-depth interviews. Participating children reported instances of rights' violations and denial that span across the domains of education, intimacy and family life, social participation, health and rehabilitation, economic security and access to social support and to information and communication systems. Barriers to access rights often included:

- Lack of access to the built environment (roads and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces) to transportation and to information and communication systems which reduced the opportunities of social interaction for children with disabilities;
- Lack of personal assistance services requiring children to rely on their families for needed support which increased their isolation, vulnerability to abuse in the family and social exclusion;
- Persistent stereotypes, prejudices and negative attitudes regarding children with disabilities, notably from non-disabled children in mainstream schools. These attitudes led children to experience erosion of personal dignity and segregation, even when attending mainstreamed schools
- Overprotective attitudes of the family preventing the child with disabilities from taking part in social activities considered typical for children of their age.

These data suggest the need for disability awareness-raising and education targeted at families of children with disabilities, their peers and society in general in order to de-construct negative stereotypes associated with disability and the implementation of measures aimed at facilitating accessibility and independent living of children with disabilities.

¹⁰ Pinto, Paula Campos et al. 'Monitoring the human rights of persons with disabilities in Portugal: Holistic report' (Monitorização dos direitos humanos das pessoas com deficiência em Portugal: Relatório holístico) (2014), available at <http://oddh.iscsp.utl.pt/index.php/en/>.

2. OVERVIEW OF THE NATIONAL LEGAL FRAMEWORK

KEY FINDINGS

- Portugal has signed and ratified both Conventions: the CRC was signed on 26 January 1990 and ratified on 21 September 1990 and the CRPD and its Optional Protocol were signed on 30 March 2007 and ratified on 23 September 2009.
- The rights of children with disabilities are included in the general legislation covering children's rights, as well as in disability-specific laws. The most important ones are: the Constitution (particularly article 69 on Children), the Civil Code (especially Book IV on Family Law), Law 147/99 on Protection of Children and Youth at Risk, Law 38/2004 'Disability Act', Decree-Law 291/2009, which establishes the national early intervention system and Decree-Law 3/2008, providing the legal framework for special education. The last two are specifically focused on children with disabilities.

2.1. General overview of the national legal and institutional framework

The Portuguese legal system is based upon the continental system of codification, with the legislation adopted by the Parliament (Assembleia da República) being the main source of law.

Portugal has a Constitution which, in hierarchical terms, is the first and most important law of the country. Until the 19th century, the French legal system played a significant role in influencing the Portuguese legal system, but more recently the German legal system has gained more importance in this respect.

Under the National Constitution, the Portuguese political system is divided into three main independent branches: the Executive branch held by the government, the Legislative branch held by the Parliament, and the judicial branch held by the court system. The Parliament is the main legislative body. However, in specific areas, or under special authorisation from the Parliament, the Government can also legislate.

The sources of law are the following:

The law is published in different codes and different legislative pieces. Within the law, there is a hierarchy whereby the Constitution is the most important law, followed by decrees of the Parliament and then by different laws and regulations issued by the Government. Jurisprudence also plays a role as a secondary source of law since courts' decisions are often taken into consideration in new legislative processes.

The court system in Portugal is structured as follows: at the base are the Common Courts (with various specialised courts including juvenile and family courts), then the Appellate Courts and at the top of the hierarchy is the Supreme Court of Justice. For cases that raise issues of compliance with the constitutional law, the Constitutional Court is the court of last resort. Portugal has a monist system. International treaties (including UN Conventions) come into force and are directly applicable upon their ratification by Parliament.

2.2. Children with disabilities specific legal and institutional framework

2.2.1. Legal framework

The rights of children with disabilities are enacted in Portugal through general and disability-specific legislation. Article 69 of the Portuguese Constitution¹¹ is dedicated to children stating that “children shall possess the right to protection by society and the state, especially from all forms of abandonment, discrimination and oppression and from the abusive exercise of authority in the family or any other institution”.

The Civil Code, Book IV on Family Law¹², establishes further protection measures, notably with regard to divorce, parental responsibilities, guardianship and adoption¹³.

The Educational Guardianship Law¹⁴ provides for respect of the physical and mental health and dignity of a minor and specifies that the application of measures that result in cruel, inhuman or degrading treatment of a minor, or which may compromise the minor's physical or mental health, are forbidden. This law also states that the application of disciplinary measures cannot result in corporal punishment, deprivation of food or visitation rights, and that no disciplinary sanction can violate the minor's right to dignity. This law reinforces the principles contained in the Constitution and the Penal Code, prohibiting all forms of violence against minors.

The most important legislation concerning child protection is the Law on the Protection of Children and Youth¹⁵ which defines the structure and functioning of the children and youth protection system. This law establishes that an intervention to assure the promotion and protection of the rights of children and youth at risk must take place when the parents, the legal representative, the guardian, third persons or the child him/herself, endanger the child's security, health, education or development. The law especially applies in cases of abandonment, physical or psychological mistreatment, sexual abuse, forced labour and other circumstances which might endanger the child's well-being and full development¹⁶.

The Decree-Law on the Foster Care System defines that foster care is aimed at fostering the integration of a child or young person in a family environment and the provision of care appropriate to his/her needs and well-being, as well as the education necessary to enable his/her full development¹⁷.

The Law on the Prevention of domestic violence and protection and assistance to the victims¹⁸ establishes a legal framework of support for the victims of domestic violence, regardless of their age, and foresees a number of principles of intervention, including obtaining the victim's free and informed consent before initiating any intervention¹⁹.

¹¹ 'Constitution' (Constituição da República Portuguesa) 2005.

¹² 'Civil Code' (Código Civil).

¹³ Articles 1576 to 2020, *ibid*.

¹⁴ 'Educational Guardianship Law' (Lei Tutelar Educativa), Official Gazette of 14 September 1999.

¹⁵ Law 147/99 'Protection of Children and Youth' (Lei de Protecção de Crianças e Jovens em Perigo), Official Gazette of 1 September 1999.

¹⁶ Articles 1 and 3, *ibid*.

¹⁷ Article 2 of Law 11/2008 'Foster Care System' (Regime de Execução do Acolhimento Familiar), Official Gazette of 17 January 2008.

¹⁸ Law 112/2009 'Domestic Violence' (Violência Doméstica e Assistências às Vítimas), Official Gazette of 16 September 2009.

¹⁹ Article 9, *ibid*.

The rights of children with disabilities are not specifically addressed in the Disability Act²⁰. However, this act contains the basic principles, such as the principle of participation²¹ or the principle of quality²², that guide the development of disability policy, as well as some provisions that are particularly relevant for children with disabilities (e.g. Article 22 on 'support to family', Article 24 on 'prevention' and Article 34 on the 'right to education', etc.). It also provides for accessibility to housing, transportation and information.

The Anti-Discrimination Law²³ covers all sectors and refers to the rights of children with disabilities in the context of the prohibition of discrimination in access to education²⁴.

The Decree-Law on 'Early Intervention System'²⁵ specifically refers to children with disabilities. This legal instrument incorporates the principles of the CRC and follows an Ordinance, issued in 1999, which already attempted to set in place a framework for early intervention, but was unsuccessful in attaining a balanced geographic distribution of the service provision. The reformed early intervention system aims to: a) ensure the protection of children's rights and the development of their capacities; b) provide for the early detection and referral of all children at risk of facing alterations in their development or with serious developmental delays; c) ensure appropriate intervention measures in order to prevent or reduce developmental delays; d) support the families in their access to health, social security, education services and resources; e) engage the community through the creation of a mechanism of social support²⁶.

The Decree-Law on 'Specialised Supports for Inclusive Education'²⁷ establishes the legal framework for special education and provides for the right to education for children with disabilities. In light of this law, public schools and the private schools that are directly or indirectly funded by the Ministry of Education are subject to the principle of non-discrimination on the ground of disability and thus cannot deny registration to students on the basis of their disabilities. Hence, attendance of a special educational institution is the last resort, when inclusion in a mainstream school is not possible, given the needs of the student and the lack of support available at the school. To facilitate access to education for children with disabilities, the legislation foresees a number of educational measures such as personalised pedagogical support or curriculum adaptations. This decree-law also creates the so-called 'reference schools' for deaf and/or blind or low vision students. Reference schools are public mainstream schools which concentrate human and technical resources on the bilingual education of deaf students and the education of blind/low vision students. The legislation does not provide children with disabilities the ability to contest decisions made in relation to their own education.

The Health Law²⁸ foresees special measures for especially vulnerable groups, including children and persons with disabilities. The Accessibility Law²⁹ establishes standards for

²⁰ Law 38/2004 'Disability Act'.

²¹ Article 9, *ibid*.

²² Article 11, *ibid*.

²³ Law 46/2006 'Anti-discrimination law'.

²⁴ Article 4 h) and i), *ibid*.

²⁵ Decree-Law 281/2009 'Early Intervention System'.

²⁶ Article 4, *ibid*.

²⁷ Decree-Law 3/2008 'Specialized Supports for Inclusive Education' (Apoios Especializados para a Educação Inclusiva) Official Gazette of 7 January 2008.

²⁸ Base II (c), Law 48/90 'Base Health Law' (Lei de Bases da Saúde), Official Gazette of 24 August 1990.

²⁹ Law 163/2006 'Accessibility Law' (Lei da Promoção da Acessibilidade), Official Gazette of 8 August 2006.

accessibility to public buildings and public space, a pre-requisite to promote the social participation and inclusion of children with disabilities in the lives of their communities.

2.2.2. Institutions and authorities

Responsibility over matters related to children with disabilities in Portugal is spread across several ministries: issues related to education are under the Ministry of Education (ME), issues related to social welfare (financial benefits and social services) are under the Ministry of Solidarity, Employment and Social Security (MSESS), and health and rehabilitation are under the Ministry of Health (MH). Each Ministry sets up its own eligibility criteria and uses different disability assessment instruments – the Ministry of Education follows the International Classification of Functioning, Disability and Health (ICF) while the MSESS uses a much older scale of incapacity measurement. The only exception is the National Early Intervention System (SNIPI) which is managed and funded by three ministries (ME, MSESS, MH). The ICF-CY is the scale used in the SNIPI to assess children's needs and determine programme eligibility, but it only covers children from birth until six years old.

The Portuguese system on the protection of children and youth at risk³⁰ was created in accordance with a number of principles, namely the best interests of the child/young person; the right to privacy; timely, minimal and proportional intervention; parental responsibility and prevalence of the family; mandatory need to inform the child/young person and his/her family on their rights and on the reasons which originated the intervention; mandatory hearing and participation of the child/young person in all decisions concerning him/her; and finally, the principle of subsidiarity.

This last principle implies that the system is built following a rationale of decentralisation. This means that the responsibility of ensuring the child's protection and well-being should, on a priority basis, be borne by the local institutions working with children and youth (i.e. public services in the field of education, health, security, sports and culture, as well as social services and any private organisations involved in children or youth services), called ECMIJs (Entidades competentes em matéria de infância e juventude).

Whenever these first line entities are unable to eliminate the situation of danger, a second line structure of intervention is activated – the Children and Youth Protection Commissions (Comissões de Protecção de Crianças e Jovens - CPCJs). The CPCJs are non-judiciary official institutions with functional autonomy which aim to promote the rights of the child and young person, and to prevent or remove any situations that might affect their safety, health, training, education or full development.

In cases where the parents/legal representatives do not give their consent or do not cooperate with the CPCJs in accordance with the established intervention plan (Promotion and Protection Agreement), the case is referred to the judicial authorities, i.e. to the civil courts (third and last line of intervention).

The CPCJs and courts can order specific protection and promotion measures, which include natural family environment measures, such as support to the parents and/or other family members, and placement measures, such as foster or institutional care.

³⁰ Law 147/99 'Protection of Children and Youth'.

In the disability sector, the National Institute for Rehabilitation (INR) is the public body that is responsible for the implementation of the anti-discrimination law³¹. Complaints against disability-based discrimination should be made, either through a specific form, or through a written report submitted either to the INR or to the government members charged with disability policy or other organisations with competence to initiate an infraction process (e.g. the National Authority on Communications, the Portuguese Insurance Institute, the General Auditor on Education and Cultural Activities, etc.). Once this process is initiated, a copy must be sent to the INR, together with the final report of the process. Individual persons, or disability organisations on their behalf, may submit complaints. The INR is obliged to produce an annual report with information about the discriminatory acts reported over the year and the final penalties imposed³².

Legally created through Decree-Law 212/75, since 1999 the Ombudsman (Provedor de Justiça) is also the Portuguese National Institution of Human Rights, accredited with Status A, in accordance with the Paris Principles. The Ombudsman aims to ensure justice and legality in the workings of public administration, applying informal means of investigation to the complaints submitted by citizens. In addition to the possibility of receiving complaints online or in person, the Portuguese Ombudsman operates dedicated telephone lines to children and citizens with disabilities, which provide information, referral and intervention services when required. In Portugal there is no Children's Ombudsman.

2.2.3. Definitions

The Civil Code defines as "minor" a child "who has not yet reached 18 years of age"³³. When reaching the age of 18, one acquires full capacity for the exercise of his/her rights and the ability to manage his/her life and property³⁴.

The Disability Act provides a definition of a person with a disability stating that "a person is considered disabled if, by loss or anomaly, congenital or acquired, of functions or structures of the body, including psychological functions, he/she presents specific difficulties which, in conjunction with environmental factors, are susceptible of making more difficult or limit activity and participation on equal terms with others"³⁵. This definition follows the approach proposed by the ICF that acknowledges the interaction of bodily and environmental factors in the production of disability.

There is no definition of either "child with disability" or of "disability".

³¹ Article 8 of Law 46/2006 'Anti-discrimination law'.

³² Article 8(3), *ibid.*

³³ Article 122 of the Civil Code.

³⁴ Article 130, *ibid.*

³⁵ Art. 2 of Law 38/2004 'Disability Act'.

3. LEGAL FRAMEWORK FOR CHILDREN WITH DISABILITIES IN PORTUGAL

KEY FINDINGS

- Overall, the legal framework effectively reflects the standards, principles and norms enshrined in the CRC and the CRPD. Two major gaps, however, have been found: the lack of recognition of the right of a child with disabilities to express his/her views in matters related to special education; and the lack of consideration of the special vulnerability of girls with disabilities to discrimination and violence.
- The implementation of CRPD and CRC rights and principles is incomplete, and in some cases problematic, mostly due to: (a) a lack of tradition in giving the child an opportunity to express his/her views (paternalistic and patriarchal society); (b) the persisting practice of institutionalisation of children and youths at risk and the newly created 'schools of reference' for deaf and blind students; (c) stringent conditions of eligibility and low levels of financial benefits provided to children with disabilities and their families; (d) austerity measures in place that have had a negative impact on the provision of disability-related services and resources.

3.1. Implementation of the provisions of the CRPD and CRC

3.1.1. Best interests of the child (Art. 3 CRC; Art. 7 CRPD)

The general obligation to act in the best interests of the child is established in Article 69 of the Constitution which states that "with a view to their integral development, children shall possess the right to protection by society and the state".

The same principle is enshrined in several articles of the Civil Code, notably those dealing with parental responsibility between spouses³⁶ and parental responsibility in case of divorce or judicial separation³⁷ (both part of the Divorce Law updated in 2008)³⁸. The Divorce Law gives power to the court to assess the extent to which the best interests of the child are protected in agreements regarding parental responsibility, as well as in decisions regarding the place of the child's residence and visiting rights³⁹. In all of these decisions the court must consider first and foremost the best interests of the child and "favour opportunities of contact with both parents and the sharing of responsibilities among them"⁴⁰.

Under Portuguese law, adoption is enacted to fulfil the best interests of the child⁴¹ and therefore is premised on a number of conditions, including, if biological parents, by action or omission, risking the security, health, formation, education and development of the child⁴².

The Law on the Protection of Children and Youth provides for the best interests of the child and youth's as the primary principle that must guide the promotion and protection

³⁶ Article 1901 of the Civil Code.

³⁷ Article 1906, *ibid.*

³⁸ Law 61/2008 'Divorce Law' (Lei do Divórcio), Official Gazette of 31 October 2008.

³⁹ Article 1905 of the Civil Code.

⁴⁰ Article 1906, *ibid.*

⁴¹ Article 1974, *ibid.*

⁴² Article 1978, *ibid.*

of children and youth that face serious risk or are endangered⁴³. It establishes, as the remit of the Extended Commissions⁴⁴, to promote actions and to collaborate with the competent authorities in order to detect facts and situations that compromise the child's development and social inclusion, as well as to inform and collaborate with the competent authorities in the identification of possible shortcomings and of the resources needed in order to promote the rights, well-being and full development of the child and young person⁴⁵. The law further states that a child and young person, either separately or accompanied by the parents or any other person of his/her choice, has the right to be heard and participate in the actions undertaken and the definition of measures which concern them⁴⁶.

There is no explicit reference to the protection of the 'best interests of the child' in the Base Law on Education⁴⁷, Base Law on Social Security⁴⁸, or in the Educational Guardianship Law⁴⁹. However, several provisions of these acts suggest that the principle of best interests of the child guided the legislator in developing these laws. For example, 'Base Law on Education' states, as one of the organising principles of the education system, "to contribute to the full development of the student through the development of his/her personality and citizenship and preparing him/her to a critical assessment of civic, moral, aesthetic and spiritual values and enabling a full and balanced physical development"⁵⁰, and the Educational Guardianship Law establishes, as one of the criteria for the selection of measures to implement, that "the court will prefer, among measures that are adequate and sufficient, those which are less intrusive for the autonomy and decision-making of the minor and are more susceptible of obtaining his/her agreement and the agreement of the parents, legal representatives or de facto guardians"⁵¹.

Although the legislation that addresses the principle of the 'best interests of the child' makes no explicit reference to children with disabilities, presumably the above mentioned norms apply equally to them. Given the standards of the CRPD (Article 7), a lack of reference to the principle of the best interests of the child with disabilities is more surprising in the context of disability-specific legislation. However, neither the law that establishes the basis for the rehabilitation system in Portugal⁵², nor the Decree-law that provides support to promote inclusive education⁵³, and not even the Decree-law that creates the Early Intervention System⁵⁴ specifically address this principle. This absence may be problematic as it is contrary to the empowerment, autonomy and self-advocacy in the protection of the rights and interests of children with disabilities. In addition, legal

⁴³ Article 4(a) of Law 147/99 'Protection of Children and Youth'.

⁴⁴ According to article 12 of Law 147/99 'Protection of Children and Youth', Extended Commissions are "non-judiciary commissions, with functional autonomy, established at local level with the goal of promoting the rights of children and youth and prevent or put an end to situations that endanger their security, health, education and full development". They are composed of one representative from each of the following entities: municipality, social care services, Ministry of Education, health services, parents' associations, Police, and local private, non-profit association working with children and families (Article 17, Law 147/99 'Protection of Children and Youth').

⁴⁵ Article 18, *ibid*.

⁴⁶ Article 4(i), *ibid*.

⁴⁷ Law 49/2005 'Base Law on Education' (Lei de Bases do Sistema Educativo) Official Gazette of 31 August 2005.

⁴⁸ Law 83-A/2013 'Base Law on Social Security' (Lei de Bases da Segurança Social) Official Gazette of 30 December 2013.

⁴⁹ Law 166/99, 'Educational Guardianship Law'.

⁵⁰ Article 3 of Law 49/2005 'Base Law on Education'.

⁵¹ Article 6 Law 166/99, 'Educational Guardianship Law'.

⁵² Law 38/2004 'Disability Act'.

⁵³ Decree-Law 3/2008 'Specialised Support for Inclusive Education'.

⁵⁴ Decree-Law 281/2009 'Early Intervention System'.

scholars and experts on children's rights⁵⁵ have pointed out that a clarification of what the concept of the best interests of the child entails is lacking, and as a result, the principle is more often enunciated than actually implemented.

3.1.2. Non-discrimination (Art. 2 CRC; Arts. 3 and 5 CRPD)

The general right to non-discrimination is established for all citizens in the Constitution which provides that no one can be advantaged, disadvantaged or deprived of any right or exempted from any duty on the grounds of ascendance, sex, race, language, place of origin, religion, political beliefs or ideology, education, economic status, social condition or sexual orientation⁵⁶. This provision does not specifically mention disability as a ground on which discrimination is prohibited.

The Constitution further recognises that persons with disabilities "shall fully enjoy the rights and shall be subject to the duties enshrined in this Constitution, save the exercise or fulfilment of those for which their condition renders them unfit"⁵⁷. Presumably the right to non-discrimination is included here, although no explicit reference is made to it. The right of all children to be protected against "all forms of abandonment, discrimination and oppression" is also established in the Constitution⁵⁸, yet the grounds on which discrimination against children is prohibited are not specified.

Prohibition of discrimination on the basis of disability has been more recently re-enacted in two key legal documents: the 2004 Disability Act⁵⁹ and the 2006 Anti-discrimination Law⁶⁰. Both pieces of legislation prohibit direct and indirect forms of disability-based discrimination in all spheres of life and put forward the principle of affirmative action or positive discrimination, as a way to compensate for structural inequalities that persons with disabilities have faced.

The Anti-discrimination law defines what constitutes discriminatory practices⁶¹. These include, among others, the denial or imposition of limitations in access to the provision of goods and services, the built environment and public-use facilities, healthcare, public transport and information technology.

Prohibition of discrimination against children with disabilities is explicitly addressed in the guiding principles of the Inclusive Education Decree-Law, which states that public and publicly-funded private schools are forbidden to deny registration to children with disabilities⁶². The Health Law⁶³ foresees that special measures should be established for especially vulnerable groups, including children and persons with disabilities, but it does not address direct discrimination of children and persons with disabilities.

The specific rights and particular vulnerabilities of disabled girls are not mentioned in any of these laws, nor is it anywhere recognised that they might be subjected to multiple

⁵⁵ IAC, Best Interest of the Child (O superior interesse da criança) (sd), available at <http://www.iacrianca.pt/divulgacao/publicacoes-iac>.

⁵⁶ Article 13 of the 'Constitution'.

⁵⁷ Article 71, *ibid*.

⁵⁸ Article 69, *ibid*.

⁵⁹ Law 38/2004 'Disability Act'.

⁶⁰ Law 46/2006 'Anti-discrimination law'.

⁶¹ Article 4, *ibid*.

⁶² Article 2 of Decree-Law 3/2008 'Specialised Support for Inclusive Education'.

⁶³ Base II (c), Law 48/90 'Base Health Law' (Lei de Bases da Saúde), Official Gazette of 24 August 1990.

discrimination. However, the National Action Plan for Gender Equality 2014-2017⁶⁴ includes a measure aimed at combating discrimination against girls and women with disabilities, notably through awareness raising activities.

The obligation to provide "reasonable accommodation" is addressed in the Base Law on Education⁶⁵ which states that the design and equipment of school facilities should take into account the needs and characteristics of children with disabilities. The Disability Act provides for accessibility to housing, transportation and information⁶⁶. Within the Accessibility law⁶⁷, which establishes standards for accessibility to public buildings and the public space, the principle of reasonable accommodation is used to justify exceptions to the accessibility rules, which are allowed "whenever the adaptations needed are disproportionately difficult or require economic and financial means disproportionate or unavailable"⁶⁸. Hence, this provision may be used to justify the non-implementation of the law. Finally, reasonable accommodation is also reflected in the Portuguese legislation in relation to work, but this is not particularly relevant for children with disabilities⁶⁹.

It is important to note that the accessibility law has been under revision since 2012 and the second phase of the National Accessibilities Plan 2012/2020⁷⁰ has never been initiated. Research has shown that the lack of accessibility to transportation, communication and information systems, and the built environment is one of the main causes of the exclusion and denial of rights for persons with disabilities in Portugal⁷¹.

Under the Anti-discrimination law, complaints about discrimination should be made, either through a specific form, or through a written report submitted to the National Institute for Rehabilitation (INR), which is the government body charged with disability policy, or to other organisations with competence to initiate an infraction process. Once this process is initiated, a copy must be sent to the INR, together with the final report of the process. Individual persons, or disability organisations on their behalf, may submit complaints. Presumably, complaints submitted on behalf of children with disabilities shall follow similar steps. Complaints can also be filed with the Ombudsman and children can access this mechanism too. Courts will only deal with discrimination cases if the INR or the Ombudsman refers a file to them.

⁶⁴ Measure 33, Resolution of the Council of Ministers 103/2003 'National Action Plan for Gender Equality 2014-2017' (V Plano Nacional para a Igualdade de Género, Cidadania e Não-discriminação 2014-2017) Official Gazette of 31 December 2013.

⁶⁵ Article 42, Law 49/2005 'Base Law on Education'.

⁶⁶ Articles 32, 33 and 42, Law 38/2004 'Disability Act'.

⁶⁷ Law 163/2006 'Accessibility Law'.

⁶⁸ Art. 10, *ibid*.

⁶⁹ Articles 85, 86, 87, and 88 of Law 27/2014 'Labour Code' (Código do Trabalho) Official Gazette of 8 May 2014.

⁷⁰ Resolution of the Council of Ministers 9/2007, 'National Accessibility Plan' (Plano Nacional de Promoção da Acessibilidade) Official Gazette of 17 January 2007.

⁷¹ Pinto, Paula Campos & Teixeira, Diana 'DRPI-Portugal: Final Report' (DRPI-Portugal: Relatório Final). (2012), Lisboa, ISCSP, available at: <http://oddh.iscsp.utl.pt/index.php/en/2013-04-24-13-36-12/publications-of-oddh-researchers/item/40-drpi-portugal> and Pinto, Paula & Teixeira, Diana Monitoring the rights of persons with disabilities in Portugal: preliminary report (Monitorização dos direitos humanos das pessoas com deficiência em Portugal: relatório preliminar), (2014), available at <http://oddh.iscsp.utl.pt/index.php/pt/2013-04-24-18-50-23/publicacoes-dos-investigadores-oddh/item/151-monitoriza%C3%A7%C3%A3o-dos-direitos-das-pessoas-com-defici%C3%Aancia-em-portugal>.

3.1.3. Evolving capacities of the child (Art. 5 CRC and Art. 3 CRPD)⁷²

The term “evolving capacities of the child” has no direct translation in Portuguese and has therefore been interpreted by Portuguese law and policy in variable ways.

Article 1878 of the Civil Code, clarifying the concept of parental rights, states that parents “in accordance with their child’s maturity, must take into account their views in important family matters and recognise their autonomy to organise their own lives”. This article recognises the importance of promoting the child’s development and autonomy, in accordance with his/her level of maturity. Although it dates back from 1977, subsequent legislation shows that the incorporation of this principle is still generally lacking.

Most legislation addresses this issue in incomplete terms, rather referring to the need to promote “the integral development” of the child, without defining the concept. Therefore, the recognition of greater self-determination of the child as the child’s capacity evolves is lacking in Portuguese legislation. For instance, the Portuguese Constitution provides for the child’s right to receive protection from society and the State, “with a view to the child’s integral development”⁷³. The Decree on the Early Intervention System states the need to ensure the protection of children’s rights and the development of their capacities⁷⁴, but gives no further specification of the concept and what it entails.

Other legislation reflects this principle in a more explicit manner. For instance, the Children and Youth Protection Law defines, as its object, the promotion and protection of the rights of children and youth at risk, assuring their well-being and full development⁷⁵. It also stipulates that child and youth protection measures aim to provide children with the conditions necessary to protect and promote, inter alia, their well-being and full development. Still, this principle is included without specifically addressing the need to take into account the developing abilities of the child and his/her growing autonomy, reflecting a relatively static understanding of the child’s needs, interests and skills.

The legislation regulating the promotion and protection measures⁷⁶, as well as the Law on Domestic Violence⁷⁷, foresee the right of the child to be heard and to participate in accordance with the child’s maturity.

Some of the legislation concerning specific child and youth protection measures goes a bit further in recognising the principle of evolving capacities of the child. For instance, Decree-Law on the Foster Care System defines that foster care is aimed at fostering the integration of the child or young person in a family environment and the provision of care appropriate to his/her needs and well-being, as well as the education necessary for his/her

⁷² The concept of evolving capacities of the child establishes that as children acquire enhanced competencies and experience, there is a reduced need for direction and a greater capacity for the children to take responsibility for decisions affecting their lives. In light of the CRC, the concept of evolving capacities of the child entails that parents (or persons legally responsible) should have the right and the duty to provide, in a manner consistent with the evolving capacities of the child, appropriate guidance in the exercise by the child of his/her rights. See the overview project report for a more detail description of the concept.

⁷³ Article 69 of the ‘Constitution’.

⁷⁴ Article 4 of the Decree-Law 281/2009 ‘Early Intervention System’.

⁷⁵ Article 1 of Law 147/99 ‘Protection of Children and Youth’.

⁷⁶ Article 22 of Law 12/2008 ‘Protection in Natural Family Environment’ (Protecção em Meio Natural de Vida), Official Gazette of 17 January 2008.

Article 24 of Law 11/2008 ‘Foster Care System’.

⁷⁷ Article 9 of Law 112/2009 ‘Domestic Violence’.

full development⁷⁸. It also foresees that the reassessment of foster care measures must take into account the child's "emotional stability" as well as "concrete signs of evolving capacities of the natural family to assure the integration and care of the child or young person, in a way that guarantees development according to the evolving capacities of the child"⁷⁹. Moreover, it further stipulates, as duties of the foster families, to guide and educate the child or young person with diligence and affection, contributing to his/her full development⁸⁰.

All of the above mentioned legislation applies equally to any child, regardless of whether or not he/she has a disability.

The Decree-Law on the Specialised Support for Inclusive Education states that "special education targets the social and educational inclusion, access and educational success, autonomy, emotional stability, as well as the promotion of equal opportunities, preparing for the continuation of studies, for professional life and for transition from school to employment for children and youth with special educational needs"⁸¹. This law mentions the need to promote the development and autonomy of the child, even if only in very broad terms.

The Disability Act provides for a more general understanding of the concept of evolving needs and capacities, establishing the right of persons with disabilities to "the means and services necessary to his/her development throughout the life course"⁸² and to "quality in the means and services of prevention, habilitation and rehabilitation, considering technical evolution and his/her personal and social needs"⁸³. It further stipulates that habilitation⁸⁴ and rehabilitation comprise measures in the domain of employment, work and training, consumption, social security, health, housing and urban development, transportation, education and teaching, culture and science, tax system, sports and leisure, which aim to promote learning and skill development, autonomy and quality of life of persons with disabilities⁸⁵. However, it does not specifically address the needs of children with disabilities.

3.1.4. The right to be heard/to participate (Art. 12 CRC; Arts. 7 and 30 CRPD)

The Right to be heard

The right of a child to be heard is enshrined in Portuguese legislation. In fact, Portugal was a pioneer in the legal consecration of the right of the child to be heard. Article 1878 of the Civil Code⁸⁶, clarifying the concept of parental rights, states that parents "in accordance with their child's maturity, must take into account their views in important family matters and acknowledge their autonomy to organise their lives".

⁷⁸ Article 2 of Law 11/2008 'Foster Care System'.

⁷⁹ Article 6, *ibid*.

⁸⁰ Article 21, *ibid*.

⁸¹ Article 1 of Decree-Law 3/2008 'Specialised Support for Inclusive Education'.

⁸² Article 10 of Law 38/2004 'Disability Act'.

⁸³ Article 11, *ibid*.

⁸⁴ Habilitation involves the acquisition of skills, abilities and knowledge that will enable a person to function in society. These kinds of programmes usually target children born with disabilities. Rehabilitation means restoring capacity and ability. This generally applies to acquired disabilities.

⁸⁵ Article 25, *ibid*.

⁸⁶ 'Civil Code'

The right of the child to be heard in any judicial proceedings affecting him/her is clearly foreseen by the Children and Youth Protection Law⁸⁷ (promotion and protection proceedings) and by the Educational Guardianship Law⁸⁸ (criminal proceedings⁸⁹).

The Children and Youth Protection Law⁹⁰ acknowledges and protects the right of the child to be heard in any procedures developed within the scope of child protection and intervention, mentioning the need to inform children of their rights, the reasons that determined the intervention and how this intervention is going to take place. It also provides for the right of the child to be heard and to take part in the actions and definition of the measures of protection and promotion, either separately or in the company of his/her parents or another person of his/her choice. Furthermore, the intervention by the Child Protection Committees depends on the "express consent of the parents, legal representatives or guardian", but also on the "non-opposition of the child", if aged 12 or over (as a mandatory condition)⁹¹. Although the opposition of children under 12 should also be taken into account, giving due weight to the capacity of the child to understand the reasons that have led to the intervention, in the best interests of the child, protective measures might be applied with no consent, when the absence of intervention might endanger the child⁹².

The Educational Guardianship Law⁹³ states that the minor is entitled to "be heard by the judicial authorities whenever he/she requires" and to be "informed of the rights that assist him/her" in any stage of the judicial proceedings. The law also states that these rights can be exercised on behalf of the child by the parents, legal representatives, the person who has custody over the child or by a defender.

Similar principles are present in the specific legislation concerning promotion or protection measures (e.g. Decree-Law on 'Foster Care System'; Decree-Law on 'Protection in natural family environment'⁹⁴). The right of the child to be heard in any legal procedures affecting him/her is also included in Article 45 of the Educational Guardianship Law⁹⁵ and Articles 9 and 10 of Law 112/2009⁹⁶ on the Prevention of Domestic Violence.

The right to participate

The Disability Act which establishes the general basis for the regime of prevention, habilitation and rehabilitation of persons with disabilities does not specifically address the rights of children with disabilities. However, Article 9 (Participation principle) provides for the right of a person with disabilities to participate in the planning, development and monitoring of the policies of prevention, habilitation, rehabilitation and participation of persons with disabilities. Article 40 of the same act further specifies that "Participation includes the specific measures necessary to ensure the participation of persons with disabilities, or their representative organisations, namely in the drafting of disability laws,

⁸⁷ Law 147/99 'Protection of Children and Youth'.

⁸⁸ Law 166/99 'Educational Guardianship Law'.

⁸⁹ Criminal proceedings related to children aged 12-16 are regulated by the Educational Guardianship Law; proceedings related to children under that age are covered exclusively by the Child Protection Law.

⁹⁰ Law 147/99 'Protection of Children and Youth'.

⁹¹ Articles 9 and 10 of Law 147/99 'Protection of Children and Youth'.

⁹² Article 91, *ibid*.

⁹³ Article 45 of Law 166/99 'Educational Guardianship Law'.

⁹⁴ Law 12/2008 'Protection in Natural Family Environment'.

⁹⁵ Law 166/99 'Educational Guardianship Law'.

⁹⁶ Law 112/2009 'Prevention of Domestic Violence'.

the implementation and evaluation of the policies mentioned in this law, in order to guarantee their involvement in every life situation and of society in general”.

Despite being clearly stated in most of the legal acts, the right of the child to be heard and to participate in the decision-making affecting him/her is not always respected, for a variety of reasons (e.g. risk that hearing the child in guardianship or protection procedures might re-traumatise the child, or risk of the child being manipulated by the adults closest to him/her). However, in these cases, as the Portuguese Bar Association⁹⁷ states, these risks should not prevent the parties involved forfeiting the right to participation; on the contrary, they require that support is provided to hear the child in the best possible conditions.

Considering that the right to be heard and to participate is enshrined in the Constitution, it is somewhat surprising to see this principle is completely absent from Decree-Law 3/2008⁹⁸ which establishes the Specialised Support for Inclusive Education. In fact, when considering who should be consulted when establishing the child's individual educational programme, Article 10 mentions it should be developed “collectively and on a mandatory basis” by the responsible teacher and/or class director, the special education teacher, the legal representative and, whenever necessary, other child support services. However, it makes no reference to the need to involve and hear the child when establishing the educational programme, in clear violation of the participation principle, as established both in the CRC and the CRPD.

3.1.5. Freedom from violence (Art. 19 CRC; Art. 16 CRPD) and its implementation

The general principle of protection of the child against all forms of violence and violations of his/her dignity and rights is enshrined in Article 69 of the Constitution, which provides for the child's right to receive protection from society and the State, in order to achieve the child's integral development, especially against all forms of abandonment, discrimination and oppression and against the abuse of authority within the family and other institutions.

The Penal Code⁹⁹ foresees an aggravation of the sentence for domestic violence or mistreatment when the victim is a minor¹⁰⁰. Article 152 of the Penal Code states that whoever, on a repeated or non-repeated basis, inflicts physical or psychological damages, including corporal punishment, deprivation of freedom and sexual offences to particularly helpless persons, due to their age, disability, sickness, pregnancy or economic dependency from the person with whom they live, is subject to imprisonment of one to five years. The law foresees an aggravation of the sentence of two to eight years if the victim is a minor. If the offence results in a serious offence to the physical integrity of the victim or in the death of the victim, the sentence is also aggravated. Moreover, whoever is condemned within this legal framework can, in due consideration of the seriousness of the offence and the relationship of the offender to the child, be inhibited from exercising parental rights, custody or guardianship, for a period of one to ten years.

The Penal Code also specifies the conditions that could configure a case of mistreatment¹⁰¹, namely when the offender “has entrusted to his/her care or guardianship

⁹⁷ Available at:

http://www.oa.pt/cd/Conteudos/Artigos/detalhe_artigo.aspx?sidc=31634&idc=8351&idsc=21852&ida=75761.

⁹⁸ Decree-Law 3/2008 ‘Specialised Support for Inclusive Education’.

⁹⁹ ‘Penal Code’ (Código Penal), 1995.

¹⁰⁰ Article 152, *ibid.*

¹⁰¹ Article 152A, *ibid.*

the guidance, education or work of a minor or a particular defenceless individual, in reason of his/her age, disability, sickness or pregnancy", "inflicts upon him/her, on a repeated or non-repeated basis, physical or psychological damages, including corporal punishment, freedom deprivation and sexual offences, or cruel treatment" and "employs him/her in dangerous, inhuman or forbidden activities" or "overloads him/her with excessive work". Offenders convicted for mistreatment face imprisonment of one to five years, with an aggravation of the sentence if the mistreatment results in a serious offence to the physical integrity of the victim or in the death of the victim.

The Law on the Prevention of Domestic Violence and Protection and Assistance to the Victims¹⁰² establishes a legal framework of support to the victims of domestic violence, regardless of their age. According to this law, any victim, regardless of his or her descent, nationality, social condition, sex, ethnic group, language, religion, disability, political or ideological views, sexual orientation, culture and educational level has the right to benefit from the fundamental rights inherent to the dignity of the human being, and must be provided with an equal chance to live without violence and to preserve his or her mental and physical health¹⁰³. This law also foresees a number of principles of intervention, namely the duty to inform the victim¹⁰⁴, the right of the victim to be heard and to be a witness¹⁰⁵ and the need to obtain the victim's free and informed consent before initiating any intervention¹⁰⁶. The consent of the victim is a mandatory and sufficient condition to initiate support procedures if the victim is aged 16 or older; a mandatory, but normally not sufficient condition if the victim is aged 12-15 (in this case, consent from the legal representative or from a legally designated authority, should be obtained). Children younger than 12 also have the right to be heard, according to their level of maturity¹⁰⁷.

The law also foresees a number of mechanisms of support and assistance to the victims of domestic violence, namely juridical advice, counselling and direct protection, when the authorities have reason to believe the victim is in danger¹⁰⁸. Especially vulnerable victims might present their testimonies through alternative media, bypassing the need for a public hearing, whenever the Public Prosecutor's Office allows it. However, the law does not specify what is considered an especially vulnerable victim, and if children with or without disabilities might be included in this group.

Apart from these general rules that apply to all victims, regardless of their age, Law 113/2009¹⁰⁹ includes the general principles of the protection of minors against sexual abuse and exploitation, including a non-discrimination principle, according to which the "measures designed to protect the rights of the victims, should be assured without prejudice of sex, race, colour, language, religion, political or other views, national or social origin, belonging to a national minority, wealth, descent or any other situation." No specific reference is made to age or disability, as grounds of possible discrimination.

¹⁰² Law 112/2009 'Domestic Violence'.

¹⁰³ Article 5 of the 'Penal Code'.

¹⁰⁴ Article 15 of the Law 112/2009 'Domestic Violence'.

¹⁰⁵ Article 16, *ibid.*

¹⁰⁶ Article 9, *ibid.*

¹⁰⁷ Article 9(5), *ibid.*

¹⁰⁸ Article 20, *ibid.*

¹⁰⁹ Law 113/2009 'Protection of minors against sexual abuse and exploitation', (Contra a Exploração Sexual e o Abuso Sexual de Crianças), Official Gazette of 17 September 2009.

The Educational Guardianship Law¹¹⁰ addresses the respect for the physical and mental health and dignity of a minor by specifying that the application of measures that result in cruel, inhuman or degrading treatment of the minor, or which may compromise the minor's physical or psychic health, are forbidden and that no disciplinary sanction can be performed in violation of the minor's right to dignity¹¹¹. This law reinforces the principles already contained in the Constitution and the Penal Code, prohibiting all forms of violence against minors.

The most important legal act concerning child protection is Law 147/99¹¹² which defines the children and youth protection system, namely in cases of abandonment, physical or psychological mistreatment, sexual abuse, among other situations which might endanger or compromise the well-being of the child. In accordance with the subsidiarity principle, the child's protection should be assured, on a priority basis, by the local organisations working with children and the youth. Whenever these institutions cannot remove the danger to the well-being of the child, the Children and Youth Protection Commissions (CPCJs) are involved and may activate a number of protection measures, such as parental support, support to other family members, institutional care, among others. Whenever the CPCJs fail to obtain the consent and cooperation of the child, and of his/her legal representatives, for the established intervention plan, the case is referred to the judicial authorities.

The key loopholes that have been attributed to the Portuguese child protection system include the insufficient allocation of time to the members assigned to the CPCJs, the frequent rotation of its members, which implies additional periods of training and instability in the monitoring of child protection cases, the bureaucracy of the proceedings and the lack of effective procedures of communication between the entities involved¹¹³.

In summary, Portugal clearly acknowledges the right of the child to be free from violence by a number of legal provisions. Yet, important shortcomings in the implementation of the existing legislation have been reported. Moreover, the existing legal framework does not reflect the additional vulnerability faced by girls and children with disabilities.

3.1.6. Right to family life (Art. 9 CRC; Art. 23(3) CRPD)

The right to family life is effectively reflected in the national legislation, both in the general legal framework as well as in the disability-specific legislation.

The general right to family life is enshrined in the Portuguese Constitution which specifically states that "Children shall not be separated from their parents, save when the latter do not fulfil their fundamental duties towards them, and then always by judicial order"¹¹⁴. Respect for the preservation of emotional ties with close family members is also protected under the Civil Code which stipulates that parents cannot deprive the child of contact with siblings and ascendants¹¹⁵. The Civil Code assigns the court the power to protect the best interests of the child and his/her healthy emotional development by ensuring that the child maintains close relationships with both parents, even in the face of

¹¹⁰ Educational Guardianship Law.

¹¹¹ Article 188, *ibid*.

¹¹² Law 147/99 'Protection of Children and Youth'.

¹¹³ Perista, P. & Silva, M. Combating child abuse and neglect in Portugal (2011). Report supported by the Daphne III Programme. Lisbon: CESIS.

¹¹⁴ Article 36(6) of the 'Constitution'.

¹¹⁵ Article 1887A of the 'Civil Code'.

divorce or separation¹¹⁶. The Law on the Protection of Children and Young People at Risk stipulates that the placement of children in alternative care should be temporary and that the decision to institutionalise a child should be reviewed every six months¹¹⁷.

The right to hear the child, when separation from both parents is deemed necessary by the court, is also guaranteed. The Law on the 'Protection of children and youth at risk' establishes, as a general principle, that children and youth, either separately or accompanied by a person of their choice, should be heard and participate in the proceedings and decision-making regarding the measures aimed at protecting their rights, including institutionalisation measures¹¹⁸. Under Portuguese law, the enactment of an adoption process requires the consent of the child if he/she is over 12 years old¹¹⁹.

While all the above mentioned measures apply to all children, including children with disabilities, the 'Disability Act' defines the general basis for the regime of rehabilitation and addresses the rights of families of children with disabilities. In accordance with the Disability Act, the State must adopt measures that provide support to families of persons with disabilities to enable their full participation¹²⁰. Following this general framework, the Decree-law on the 'Early Intervention System' creates the national 'Early Intervention System' with the purpose of supporting children with disabilities (from birth to six years old) and their families. Similarly, the Decree-law on the Specialised Support for Inclusive Education clarifies the role of families in education stating that "parents or guardians have the right and the duty to actively participate, exercising parental authority under the terms of the law, in all matters related to the special education provided to their child and, for that purpose, have the right to access all the information available in the student's file"¹²¹.

Although adequately enshrined in the legal framework, the implementation of the right to family life is often problematic in practice. A recent study shows that the number of children removed from their families and placed in alternative care in 2012 was at its highest for the last six years (2,289 or 27% - 177 more than in 2011 and 105 or 5% more than in 2006).¹²² This situation was denounced in the alternative report submitted by UNICEF-Portugal and other civil society organisations to the third and fourth periodic reports of Portugal under the Convention on the Rights of the Child¹²³. The same report also claims that "while the Law on the Protection of Children and Young People at Risk (Law 147/99, 1st September) stipulates that the placement of children in alternative care should be temporary and that the decision to institutionalise a child should be reviewed every 6 months, this does not happen in practice" and many children remain without an individualised life project and care plan which is likely to delay their return to the natural family¹²⁴. According to the study cited¹²⁵, of all the children placed in alternative care in

¹¹⁶ Articles 1776A, 1901 and 1906, *ibid*.

¹¹⁷ Article 62 of the Law on the 'Protection of Children and Youth'.

¹¹⁸ Article 49i), *ibid*.

¹¹⁹ Article 1981 of the 'Civil Code'.

¹²⁰ Article 22 of Law 38/2004 'Disability Act'.

¹²¹ Article 3(1) Decree-Law 3/2008 'Specialised Support for Inclusive Education'.

¹²² Instituto da Segurança Social, I.P.: Departamento de Desenvolvimento Social e Programas/ Unidade de Infância e Juventude/Núcleo de Assessoria Técnica aos Tribunais e Acolhimento Institucional, 'Characterization of the Annual Situation of Children and Youth under Custody' (CASA 2012: Relatório de Caracterização Anual da Situação de Acolhimento das Crianças e Jovens), March 2013, available at <http://www4.seg-social.pt/documents/10152/13326/CASA2012>.

¹²³ UNICEF et al., 'Alternative report to the third and fourth periodic reports of Portugal under the Convention on the Rights of the Child', available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CRC.

¹²⁴ UNICEF et al., Alternative report to the third and fourth periodic reports of Portugal under the Convention on

2012 (8,557 children), 14% had been diagnosed with intellectual disability, 3% with physical disabilities and 4% with psychosocial disabilities (mental illness)¹²⁶. The authors recognise that these numbers might be underestimated, particularly in what concerns the diagnosis of psychosocial disabilities; they nevertheless signal that a significant proportion of children with disabilities are being deprived of their family environment.

The implementation of Decree-Law on the Specialised Support for Inclusive Education is also problematic. The statute creates the so-called 'reference schools', which Deaf and blind children are required to attend in order to learn Sign Language or Braille¹²⁷, regardless of whether or not the school is located in their community. This requires disabled students, especially those who live in rural areas, to travel long distances. This creates a new form of segregation that is also likely to violate children with disabilities' rights to the maintenance of emotional family ties, by reducing the time they spend with family and with same-age non-disabled siblings, who will likely attend a different school¹²⁸.

3.1.7. Right to assistance (Art. 23 CRC; Arts. 23(5), 26 and 28 CRPD)

Portuguese legislation effectively provides for the right to assistance for children with disabilities. Article 71 of the Constitution affirms the duties of the State in promoting the national policy for "the prevention of disability and the treatment, rehabilitation and integration of disabled citizens and the provision of support to their families". The Law on the 'General basis of the regime of rehabilitation' specifies various domains that such policy must cover, ranging from habilitation and rehabilitation, to sports and leisure, to education, vocational training and employment, social security and health, housing, transportation and urbanism¹²⁹. This policy has been evolving over the years and is enshrined in a number of legal documents (decree-laws, regulations and ordinances).

In accordance with this legislation, children with disabilities are entitled to early intervention programmes¹³⁰ and special educational support¹³¹, to habilitation/rehabilitation care, to assistive devices and to vocational training programmes¹³².

The Early Intervention System comprises the national coordination commission, regional coordination sub-commissions, technical units and local teams, which provide services to children from birth to six years old, at risk of or with disabilities, and their families. These local, multidisciplinary teams should identify the children that could benefit from the programme and design and implement the adequate individualised intervention strategies, according to the diagnosis and context-assessment. They undertake "preventive and rehabilitative activities in the areas of health, education and social support"¹³³.

the Rights of the Child n.d., page 17.

¹²⁵ Instituto da Segurança Social, I.P.: 'Characterization of the Annual Situation of Children and Youth under Custody'.

¹²⁶ Instituto da Segurança Social, I.P.: 'Characterization of the Annual Situation of Children and Youth under Custody'.

¹²⁷ Articles 18 and 19 of Decree-Law 3/2008 'Specialised Support for Inclusive Education'.

¹²⁸ Correia, L. M.. 'Special education in Portugal: the new law and the ICF-CY'. *Procedia Social and Behavioral Sciences*, 9 (2010) 1062-1068.

¹²⁹ Law 38/2004 'Disability Act', articles 25, 26, 30, 31, 32, 33, 34, and 38.

¹³⁰ Decree-Law 281/2009 'Early Intervention System'.

¹³¹ Decree-Law 3/2008 'Specialised Support for Inclusive Education'.

¹³² Decree-Law 290/2009, 'Support to the Professional Qualification of Persons with Disabilities' (Programa de Apoio à Qualificação de Pessoas com Deficiência), Official Gazette of 12 October 2009.

¹³³ Articles 3 and 4, Decree-Law 281/2009 'Early Intervention System'.

According to the Law on 'Specialised Support for Inclusive Education'¹³⁴, specialised support to facilitate children's with disabilities access to education includes: a) personalised pedagogical support; b) curriculum adaptations; c) adaptations in the registration process; d) adaptations in the evaluation process; e) specific individual curriculum; and f) technical devices¹³⁵. Both early intervention measures and forms of special educational assistance are provided to children with disabilities free of charge¹³⁶.

On a means-tested basis, which is in accordance with the family income, children with disabilities and their families may also be entitled to special financial benefits, aimed at compensating the costs related to disability and dependence¹³⁷. The eligibility requirements¹³⁸ necessary to access these financial benefits are determined according to the candidates' "need", calculated on the basis of all family members' income (including that of relatives or next of kin in a direct or indirect line up to the third degree, living in the same household). For the purpose of this calculation, all revenues from work, capital and assets, pensions and social support are considered, with the exception of financial disability benefits.

Special measures are taken in the rehabilitation and health sector to promote access to healthcare for all persons with a degree of incapacity over 60%. These special measures include reimbursements of medicines¹³⁹ and transportation for non-urgent medical care¹⁴⁰. The rehabilitation system is universal and tends to be free of charge, according to an assessment of the economic and social conditions of each citizen¹⁴¹. However, in 2012, user-fees were introduced for access to health services (e.g. consultations, medical exams, therapies and emergency procedures), which also apply to persons with disabilities. Only persons with an incapacity level equal or above 60% and children under 12 years old are exempt from the payment of user-fees in accessing healthcare¹⁴².

Positive discrimination measures for parents of children with disabilities are further embedded in the Labour Code, including the availability of flexible and part-time working and the reduction of working time to assist a child with disabilities¹⁴³.

However, there is a gap between the legal commitments and their practical implementation. As reported in a recent study on the impact of austerity measures on the rights of persons with disabilities¹⁴⁴, "from 2008 on, a number of reforms and the funds allocated to programs and services, particularly in the areas of employment, education,

¹³⁴ Decree-Law 3/2008 'Specialised Support for Inclusive Education'.

¹³⁵ Article 16, *ibid*.

¹³⁶ Article 3 of Law 85/2009 'Establishes the scheme of compulsory education for children and youth of school age and enshrines the universality of pre-school education for children aged 5 or older' (Estabelece o regime da escolaridade obrigatória para as crianças e jovens que se encontram em idade escolar e consagra a universalidade da educação pré-escolar para as crianças a partir dos 5 anos de idade), Official Gazette of 27 August 2009.

¹³⁷ Decree-Law 133/97, 'Family Benefits' (Prestações Familiares), Official Gazette of 30 May 1997.

¹³⁸ Decree-Law 70/2010 'Eligibility requirements for Family Benefits' (Regras de Cálculo para atribuição de Prestações Familiares), Official Gazette of 16 de June 2010.

¹³⁹ Decree-Law 70/2010, *ibid*.

¹⁴⁰ Ordinance 142-B/2012 'Access to non-urgent medical transportation' (Transporte não-urgente de doentes) Official Gazette of 15 May 2012.

¹⁴¹ Base XXIV of Law 48/90 'Basic Health Law' and Article 64 of the 'Constitution'.

¹⁴² Article 4 of Decree-Law 113/2011 'Healthcare User-fees' (Taxas Moderadoras), Official Gazette of 29 November 2011.

¹⁴³ Articles 49, 53, 54, 55 and 56 of Law 27/2014 'Labour Code'.

¹⁴⁴ Pinto, Paula Campos and Teixeira, Diana, 'Assessing the Impact of European Governments' Austerity Plans on the Rights of People with Disabilities: Portugal Country Report' (2012) page 20, available at <http://oddh.iscsp.utl.pt/index.php/en/projects/impact-of-european-governments-austerity-plans>.

health and social care have been considerably reduced. In consequence, the provision of services is being trimmed down or is at least stagnant". In the area of social security, for example, the reform has involved the introduction of more stringent eligibility criteria in 2010, and a pension freeze since 2011; in the health sector it resulted in the introduction of user fees for persons with disabilities and other groups on a means-tested basis; in education it involved an aggressive policy of the closure of private and non-profit special education schools and of mainstreaming children with disabilities into regular schools without the allocation of adequate support; and in vocational training and employment it determined a drastic reduction in the number of hours of vocational training for young people with disabilities and the elimination of some incentives to employers who hire persons with disabilities. Furthermore, due to the lack of personal support services when accessing healthcare services and facilities, for example the lack of Portuguese Sign Language interpreting services in hospitals and healthcare centres, as well as a general lack of adapted transportation¹⁴⁵, children with disabilities may face discrimination in access to needed care.

Research has shown that for many persons with disabilities (including children) and their families, social benefits constitute the main sources of income; given the low levels of social benefits provided, many of them are living below the poverty line¹⁴⁶. The implementation of austerity measures has made their lives even more difficult and therefore the report concludes that "the realisation of rights for persons with disabilities and their families is in great jeopardy, as the advancements made with the ratification of the CRPD, the adoption in 2011 of a National Disability Strategy, and the reforms initiated to promote inclusive education, improve accessibility and promote independent living are being compromised or postponed due to reduced public funding and the overarching imperative of containing sovereign debt"¹⁴⁷.

3.1.8. The right to inclusive education (Art. 28 CRC; Art. 24 CRPD) and its implementation

The right to education is recognised by the Portuguese Constitution¹⁴⁸, which also establishes the duty of the State to promote and support access to education for citizens with disabilities¹⁴⁹.

In Portugal, education is compulsory and free of charge for all children aged 5-18 years old, from pre-school to grade 12¹⁵⁰. It is the responsibility of the Ministry of Education to provide human and technical resources and the tools necessary to guarantee education for all children, regardless of their abilities¹⁵¹.

¹⁴⁵Pinto, Paula Campos et al 'DRPI-Portugal: Final Report' (DRPI-Portugal: Relatório Final). (2012), Lisboa, ISCSP, available at: <http://oddh.iscsp.utl.pt/index.php/en/2013-04-24-13-36-12/publications-of-oddh-researchers/item/40-drpi-portugal> and Pinto, Paula et al. 'Monitoring the rights of persons with disabilities in Portugal: holistic report' (Monitorização dos direitos humanos das pessoas com deficiência em Portugal: relatório holístico), (2014), available at <http://oddh.iscsp.utl.pt/index.php/pt/2013-04-24-18-50-23/publicacoes-dos-investigadores-oddh/item/151-monitoriza%C3%A7%C3%A3o-dos-direitos-das-pessoas-com-defici%C3%Aancia-em-portugal>.

¹⁴⁶ Portugal, Sílvia (Coord), Sena Martins, Bruno and Hespanha, Pedro, 'Assessment of the impact of financial and social costs of disability' (Estudo de Avaliação do Impacto dos Custos Financeiros e Sociais da Deficiência) (2010) available at [http://www.ces.uc.pt/myces/UserFiles/livros/1097_impactocustos%20\(2\).pdf](http://www.ces.uc.pt/myces/UserFiles/livros/1097_impactocustos%20(2).pdf).

¹⁴⁷ Pinto et al., op. cit., pages 20-21.

¹⁴⁸ Article 73 of the Constitution.

¹⁴⁹ Article 74, ibid.

¹⁵⁰ Articles 1,2 and 3of Law 85/2009 'Regime of Compulsory Education'.

¹⁵¹ 'Constitution', Article 74; Law 85/2009 'Compulsory Education' Article 3; and Law 38/2004 ' Disability Act' Article 34.

The right of children with disabilities to education is further established in the Disability Act¹⁵² and in the Base Law of Education¹⁵³. Furthermore, the anti-discrimination law specifies that the denial or limitation of access to school facilities, whether private or public, is a form of discrimination¹⁵⁴.

The Law on 'Specialised Support for Inclusive Education' (amended in May 2008) led to the closure of special education schools and the placement of children with disabilities in mainstream regular schools. According to this law, public schools and the private schools that are directly or indirectly funded by the Ministry of Education are subject to the principle of non-discrimination on the ground of disability. Therefore, they cannot deny registration of children or youths on the basis of their disabilities¹⁵⁵. Measures of positive discrimination are established to facilitate access to education, notably through the priority given to children with disabilities in registration¹⁵⁶.

The same law states that special education in Portugal is organised around a 'diversity of models of integration', providing every child with 'the least restrictive environment' as long as "from the modality of integration does not result segregation or exclusion of the child or youth with special needs"¹⁵⁷. In situations where the implementation of special education measures is insufficient "given the type and degree of the student's disability", those who participate in the referral and assessment of the child (including parents) "may suggest the attendance to a special school"¹⁵⁸. Attendance of a special school is, therefore, regarded by the law as the last resort, when inclusion in the mainstream school fails, given the degree of need of the student and the lack of adequate support provided by mainstream schools.

Decree-Law 3/2008 entitles parents to contest the placement of their child in a special school as well as any other decision regarding the provision of educational support to their children. In such circumstances, parents may appeal the decision by submitting a written file to the Ministry of Education¹⁵⁹. The legislation does not recognise the child's right to contest decisions made in relation to his/her own education.

Once a child or a young person with special needs is referred to a school, an assessment of the student is done by the special education and psychology offices of the school. This assessment should determine whether the child presents or not "significant limitations at the level of activity and participation in one or various domains of life, resulting from functional or structural permanent impairments"¹⁶⁰. While other evaluation tools may also be used, the International Classification of Functioning, Disability and Health (ICF) provides the reference for the students' assessment. Parents are entitled to actively participate in the evaluation process of their children, but no reference is made in the law as to the participation of the child/young person.

¹⁵² Article 34 of the Law 38/2004 'Disability Act'.

¹⁵³ Specifically in Articles 20, 21, 28 and 42 (4) and more broadly in Articles 2, 5 and 7 of Law 49/2005 of 30 August.

¹⁵⁴ Article 4 of Law 46/2006, 'Anti-discrimination Law'.

¹⁵⁵ Article 2(2) of Decree-Law 3/2008 'Specialised Support for Inclusive Education'.

¹⁵⁶ Article 2(3) of Decree-Law 3/2008 'Specialised Support for Inclusive Education'.

¹⁵⁷ Article 4(6), *ibid.*

¹⁵⁸ Article 4(7), *ibid.*

¹⁵⁹ Article 3(3), *ibid.*

¹⁶⁰ Article 1, *ibid.*

The outcome of the assessment is a technical-pedagogical report that becomes the basis for the elaboration of the student's individual education plan (IEP)¹⁶¹. An IEP spells out the specific education and evaluation strategies that will be put in place for the student, the school subjects that will be covered, the general and specific goals that will be achieved, and the human and technical resources that will be needed, including special equipment and materials. Parents must sign the IEP as a means of expressing their agreement¹⁶². When the school does not have the human resources needed to implement the IEP, particularly if specialised professionals such as speech therapists, occupational therapists, psychologists, Sign Language interpreters and others are required, schools are entitled to hire them, "under the regular legal and procedural terms"¹⁶³. Schools may also establish partnerships with private non-profit organisations and specialised resource centres in order to obtain specialised support.

According to Decree-Law 3/2008, children may learn Braille and Sign Language from pre-school to the end of compulsory education in specially designated mainstream schools - the so-called 'reference schools' for Deaf and/or blind or low vision students. Reference schools are public mainstream schools that concentrate human and technical resources for the bilingual education of deaf students and the education of blind/low vision students¹⁶⁴. In order to learn Braille or Sign Language, deaf and blind/low vision students thus need to attend a reference school, whether or not it is located in their neighbourhood¹⁶⁵.

Despite the rhetoric of the law, important gaps persist in the implementation of these principles and norms. Mainstream schools lack the human and technical resources to address the needs of children with disabilities¹⁶⁶. Moreover, the use of the ICF as an assessment tool has been problematic for many students with disabilities: a lack of training for applying the instrument and a high degree of subjectivity in the assessments conducted, and consequently in the support provided, has been reported¹⁶⁷. Another study¹⁶⁸ also showed that the number of students entitled to special support has decreased since 2008 (the year of implementation of the Decree-Law 3/2008). The author argues that the new inclusive education system is in fact promoting the exclusion of many children, as it focuses only on those children with permanent disabilities while creating new forms of segregation by concentrating support in only a number of schools (the reference schools), while all the others are left without adequate resources. A similar conclusion is detailed in the report of the National Education Council¹⁶⁹, which points to the problems created by the new eligibility criteria that leave out children with temporary education needs. Without

¹⁶¹ Article 6, *ibid.*

¹⁶² Article 9, *ibid.*

¹⁶³ Article 29, *ibid.*

¹⁶⁴ Article 18, *ibid.*

¹⁶⁵ Article 19 of Decree-Law 3/2008 'Specialised Support for Inclusive Education'.

¹⁶⁶ Pinto, Paula Campos e Teixeira, Diana Assessing the impact of European governments' austerity plans on the rights of people with disabilities- Country report: Portugal (2012), European Consortium of Foundations on Human Rights and Disability and Pinto, Paula Campos and Teixeira, Diana 'Monitoring the human rights of persons with disabilities in Portugal: Preliminary Report' (Monitorização dos direitos humanos das pessoas com deficiência em Portugal: relatório preliminary) (2014) available at <http://oddh.iscsp.utl.pt/index.php/pt/2013-04-24-18-50-23/publicacoes-dos-investigadores-oddh/item/151-monitoriza%C3%A7%C3%A3o-dos-direitos-das-pessoas-com-defici%C3%Aancia-em-portugal>.

¹⁶⁷ FENPROF 'Study on the implementation of ICF in schools' (Estudo sobre aplicação da CIF nas escolas. Lisboa) (2010) available at <http://www.fenprof.pt/?aba=27&mid=115&cat=67&doc=4497>.

¹⁶⁸ Correia, L. M., 'Special education in Portugal: the new law and the ICF-CY'. *Procedia Social and Behavioral Sciences*, 9 (2010) 1062-1068.

¹⁶⁹ Perdígão, Rute; Casas-Novas, Teresa; Gaspar, Teresa 'Public Policies in special Education; Technical REport of the National Education Council' (Políticas Públicas de Educação Especial: Relatório Técnico. Conselho Nacional da Educação) (2014) available at http://www.cnedu.pt/content/noticias/CNE/RelatorioTecnico_EE.pdf.

timely and adequate support these children may risk seeing their difficulties turn into permanent impairments. Finally, a recent monitoring study on the rights of persons with disabilities¹⁷⁰ found the persistence of labelling and negative stereotypes associated with disability contributing to disrespectful relationships among students with and without disabilities. The same study reported that the lack of specialised support in mainstream schools, including the lack of pedagogical materials in accessible formats, the lack of training of teachers and school staff and the lack of accessible transportation, constitute important barriers to education for children with disabilities in Portugal.

3.2. Specific issues faced by children with disabilities

3.2.1. Gender vulnerability

Portuguese legislation does not adequately protect children with disabilities against gender discrimination. The specific rights and the vulnerability of girls with disabilities are not acknowledged in the Anti-discrimination law or in the Disability Act and therefore multiple discrimination is not recognised in the legislation.

In Portugal, sterilisation is only allowed for women over 25 years old; the woman's free and informed consent is always required, except if sterilisation is performed for therapeutic reasons¹⁷¹. The Portuguese Medical Association Ethics Code further states that in the case of minors and persons deemed incapable, sterilisation shall only be performed "to prevent severe health risks for the person or his/her hypothetical children, and always following a judicial consent"¹⁷².

Sexual education is compulsory in schools¹⁷³ and is provided in the context of health education. The National Institute for Rehabilitation offers training seminars on issues related to disability every year. In 2014, the annual programme includes, among others, a seminar on Disability and Sexuality, one on Discrimination and one on the Prevention of Violence. These seminars are free of charge and are attended by disability professionals, persons with disabilities and their families.

Furthermore, the 5th National Plan for Gender Equality, Citizenship and Non-discrimination 2014-2017¹⁷⁴ includes actions to prevent discrimination against women and girls with disabilities through the implementation of awareness raising activities addressed to staff working on social inclusion.

¹⁷⁰ Pinto, Paula Campos & Teixeira, Diana. 'Monitoring the human rights of persons with disabilities in Portugal: Preliminary Report' (Monitorização dos direitos humanos das pessoas com deficiência em Portugal: relatório preliminar) (2014) available at <http://oddh.iscsp.utl.pt/index.php/pt/2013-04-24-18-50-23/publicacoes-dos-investigadores-oddh/item/151-monitoriza%C3%A7%C3%A3o-dos-direitos-das-pessoas-com-defici%C3%Aancia-em-portugal>.

¹⁷¹ Article 10 of Law 3/84 'Sexual education and family planning' (Educação sexual e planeamento familiar) Official Gazette of 24 March 1984.

¹⁷² Article 66 of the Portuguese Medical Association Ethics Code.

¹⁷³ Law 60/2009 'Regime of implementation of sexual education in schools' (Estabelece o regime de aplicação da educação sexual em meio escolar) Official Gazette of 6 August 2009.

¹⁷⁴ Resolution of the Council of Ministers 103/2003 'National Action Plan for Gender Equality 2014-2017' (V Plano Nacional para a Igualdade de Género, Cidadania e Não-discriminação 2014-2017) Official Gazette of 31 December 2013.

3.2.2. Children as vulnerable suspects

Different judicial regimes apply in Portugal, depending on the age of the offender. While in civil law terms maturity is reached at 18 years of age¹⁷⁵, in criminal law it is defined at 16 years of age. Children aged 16-21 years old are subject to a specific regime, the Regime of the Young Adult¹⁷⁶, while those below 16 years of age cannot be criminally liable for their actions. Nevertheless, the Education Guardianship Law establishes that if a minor aged 12-16 years old commits an act classified as a crime, measures of educational guardianship should be applied¹⁷⁷. This regime is intended to educate the minor and promote his/her inclusion in the community, with dignity and responsibility¹⁷⁸.

As such, the guardianship measure applied must reflect the seriousness of the act committed by the minor. In addition, the best interests of the child must be considered in the choice of the measure¹⁷⁹. The guardianship measures include the following: deprivation of the right to ride motorcycles or the right to obtain the permit to ride motorcycles; reparation to the victim¹⁸⁰; financial contribution or community-work; the imposition of moral rules of conduct (e.g. prohibition to visit particular places or to undertake certain behaviours); institutionalisation in an Education Centre (i.e. detention centre); etc.¹⁸¹.

Children under 12 who "engage in behaviours, activities or consumptions that seriously endanger their health, security, upbringing, education or development" are treated under the Children and Youth Protection Law¹⁸², which provides a number of measures including family support, entrustment to a guardian, support to autonomy, foster care and institutionalisation.

The law also establishes a lack of liability of children on the grounds of the minor's "psychic anomaly". In such cases, the Prosecutor will refer the child to mental health services and, if deemed necessary, will determine compulsory institutionalisation¹⁸³. The child might be forced to undertake medical, psychiatric, psychological or other kinds of treatment, whether in private or public institutions, in an out-patient or in-patient regime¹⁸⁴.

The law establishes the right of the child to participate and be heard in any decision-making or judicial proceedings concerning the guardianship measures¹⁸⁵. The child also has the right to the assistance of a defender or a parent, legal representative or the de facto guardian, unless it goes against the interests of the child, depending on the specific circumstances of the case, upon decision of the judge. However, the law does not make

¹⁷⁵ Article 122 of the 'Penal Code'.

¹⁷⁶ Decree-Law 401/82 'Regime of Young Adults' (Regime dos Jovens Adultos) Official Gazette of 23 Septembre 1982.

¹⁷⁷ Article 1 of the 'Educational Guardianship Law'.

¹⁷⁸ Article 2, *ibid*.

¹⁷⁹ Articles 6 and 7, *ibid*.

¹⁸⁰ According to article 11 of the 'Educational Guardianship Law', the reparation to the victim can be done in three ways, to be decided by the judge according to the specific circumstances:

- a) Apologizing to the victim,
- b) Partial or complete financial compensation for patrimonial damages,
- c) Performing a service to the victim, whenever the activity is possible, appropriate and directly related to the offence.

¹⁸¹ Article 4, *ibid*.

¹⁸² Article 3 (f) of Law 147/99 'Protection of Children and Youth'.

¹⁸³ Article 49 of the 'Educational Guardianship Law'.

¹⁸⁴ Article 14, *ibid*.

¹⁸⁵ Article 45, *ibid*.

any reference to the specific rights of children with disabilities nor does it establish any special protection measures addressed at children with disabilities.

Finally, the Law on the Protection of Witnesses states that particularly vulnerable witnesses, on the grounds of age or health condition, are entitled to the support of a social worker or other qualified staff, including during the process, and if needed shall be provided with psychological support¹⁸⁶.

3.2.3. Other particular issues faced by children with disabilities in Portugal

A study to monitor the rights of persons with disabilities in Portugal,¹⁸⁷ which included in-depth interviews with children with disabilities aged 12 to 17 years old, has collected individual reports of experiences of rights' denial and violations over the last five years. The study concludes that persons with disabilities in Portugal, including children, continue to face discrimination and violations of their rights. Isolation, marginalisation, as well as persisting negative images and disrespectful attitudes, constitute the main social barriers faced by persons with disabilities. Lack of accessibility in the environment and transportation, and lack of adequate support for an autonomous life, further contribute to the deprivation of their rights.

The study also monitored the national disability policies and assessed the key policy instruments against the standards of the CRPD. The authors concluded that the disability policy in Portugal is stagnant, as evidenced by the lack of implementation of several measures of the National Disability Strategy 2011-2013 and the National Accessibility Plan, as well as the time gap in adopting a new Strategy. All of this reveals a strong disinvestment in the protection of the rights of persons with disabilities and therefore of children with disabilities too.

¹⁸⁶ Articles 26 and 27 of Law 93/99 'Protection of Witnesses' (Lei de proteção de testemunhas) Official Gazette of 14 July 1999 (Ammended by Law 42/2010, Official Gazette of 3 September 2010 and Law 29/2008, Official Gazette of 4 July 2008).

¹⁸⁷ Pinto, Paula Campos et al., 'Monitoring the human rights of persons with disabilities in Portugal: Holistic report' (Monitorização dos direitos humanos das pessoas com deficiência em Portugal: relatório holístico) (2014) available at <http://oddh.iscsp.utl.pt/index.php/pt/2013-04-24-18-50-23/publicacoes-dos-investigadores-oddh/item/151-monitoriza%C3%A7%C3%A3o-dos-direitos-das-pessoas-com-defici%C3%Aancia-em-portugal>.

4. ASSESSMENT OF THE PRACTICAL IMPLEMENTATION OF THE RIGHTS AND LEGAL PRINCIPLES

KEY FINDINGS

- The child and most often his/her legal representatives usually turn first to the complaint and mediating mechanisms within the INR and the Ombudsman before filing a judicial claim.
- The main gaps identified in relation to the practical implementation relate to the lack of quality and quantity of resources, particularly in mainstream schools, to implement the inclusive education agenda, as well as the incomplete implementation of the accessibility legislation and the persistence of negative attitudes and stereotypes regarding persons with disabilities.
- There are a number of good practices including the existence of legislation promoting inclusive education, the Early Intervention System and the existence of local social networks and child protection commissions at local level.
- There is a lack of data collected and disaggregated according to the type of disability, age and gender. The INR collects data on complaints about discrimination on grounds of disability.
- Recommendations involve the endorsement of a new National Disability Strategy to coordinate disability policy at national level and to strengthen enforcement mechanisms of the existing legislation notably in the areas of accessibility, right to education and social participation.

4.1. Enforcement and reporting mechanisms

The rights of children with disabilities in Portugal are ensured through different protection, enforcement and reporting mechanisms that may be activated separately or jointly by a few complainants, in order to protect the best interests of the child.

The majority of the complaints related to violations of the rights of children with disabilities are submitted to the following organisations:

- Complaints related to disability-based discrimination should be reported to the National Institute for Rehabilitation (INR), which is the public body responsible for the implementation and enforcement of the Anti-Discrimination Law¹⁸⁸. These complaints can be directly addressed to the INR, through their website or through a written report submitted either to the INR or to other organisations competent to initiate an infraction process (e.g. the National Authority on Communications, the Portuguese Insurance Institute, the General Auditor on Education and Cultural Activities, among others). A copy of all processes related to disability-based discrimination must be sent to the INR, which is obliged to monitor these claims and compile an annual report about all discriminatory acts against persons with disabilities¹⁸⁹. The non-discrimination law does not mention whether children can submit complaints to the INR in person. Moreover, the website is not specifically directed at children and youth.
- The Ombudsman ('Provedor de Justiça') which is simultaneously, since 1999, the Portuguese National Institution of Human Rights, is charged with defending

¹⁸⁸ Article 8 of Law 46/2006 'Anti-discrimination law'.

¹⁸⁹ Article 8(3) of Law 46/2006 'Anti-discrimination law'.

and promoting the rights, liberties, guarantees and legitimate interests of the citizens, assuring justice and legal compliance in the exercise of public duties¹⁹⁰. The Ombudsman may intervene following a formal complaint or by its own initiative, whenever it becomes aware of any situation that may justify intervention. This intervention is independent of any other administrative or judicial proceedings¹⁹¹. The Ombudsman can submit recommendations to the appropriate agencies, identify legal shortcomings, issue recommendations concerning the interpretation, revision or withdrawal of existing legislation, perform verification and inspection visits and generally proceed with any investigations and inquiries necessary to safeguard the legitimate interests of every citizen. The Ombudsman comprises a Child, Senior Citizen and Disabled Person's Unit, responsible for managing complaints and developing activities for the promotion and protection of the rights of these target groups, and makes available three support phone lines, directed to each of these target groups, as well as a child-friendly website, that only partially complies with accessibility standards. Through these media, children with disabilities, or another person on their behalf, can file their complaints directly or raise any question related to their rights. Formal complaints can also be addressed directly by email. Most situations are solved directly through this phone line support, by providing information and/or referring the case to the appropriate services. However, if there has been no response from the concerned services 48 hours after this referral, a formal process is opened and transferred to the competent unit of the Ombudsman Office.

- The Children and Youth Protection Commissions ('Comissões de Protecção de Crianças e Jovens' - CPCJs) are non-judiciary official institutions with functional autonomy which aim to promote the rights of the child and young person, and to prevent or remove any situations that might affect their well-being and development. Complaints related to situations of violence, negligence or mistreatment against children with disabilities may be referred, directly or indirectly, to the CPCJs. This communication might be done by a judicial or law enforcement authority¹⁹², by the competent entities in matters of children and youth – ECMIJs¹⁹³ or by any person who becomes aware of a situation of risk¹⁹⁴. In this last case, the communication process might be done firstly to the ECMIJs, to the CPCJs or directly to the Public Prosecutor's Office. The law does not specify if children can or cannot submit a complaint by themselves, even though the common practice is for the child to denounce the situation firstly to the ECMIJs, since those are the professionals interacting directly with the child (e.g. teachers, health workers, community workers, among others), whereas the professionals working for the CPCJs do not usually develop an outreach work and only intervene with the child after the initial referral is made.

Following a complaint, any of the previously mentioned organisations can engage in intervention procedures (e.g. to clarify the nature of the complaint, identify how the best interests of the child are affected and, whenever possible, suggest measures to minimise or overcome the situation). Unlike the Ombudsman, who can start these procedures even if no specific complaint is received, whenever it becomes aware of a situation that may justify intervention¹⁹⁵, the CPCJs and the INR can only intervene once a specific complaint is

¹⁹⁰ In accordance to article 23 of the Constitution and article 1 of the Statute of the Ombudsman.

¹⁹¹ In accordance to Article 23.2 of the Constitution and articles 4 and 21.2 of the Statute of the Ombudsman.

¹⁹² Article 64, Law 147/99 'Protection of Children and Youth'.

¹⁹³ Article 65, *ibid*.

¹⁹⁴ Article 66, *ibid*.

¹⁹⁵ Article 4 of the 'Statute of the Ombudsman'.

submitted. Still, their decisions are not legally binding¹⁹⁶. For this reason, whenever their recommendations are not complied with or prove insufficient to solve the situation, the process may be referred to a judicial authority, in order to ensure the protection of the best interests of the child. In accordance with this principle, situations that endanger the health, safety and development of the child may be addressed to the Public Prosecutor's Office as the ultimate safeguard to the protection of the well-being of the child. Similarly, the Ombudsman may refer some situations to the Constitutional Court, in order to confirm if legal provisions abide by the principles set by the Constitution.

In what concerns the right of the child to be heard and to present a complaint, any of the previous mechanisms allows for the child to be heard in accordance with the legal provisions cited in section 4.1.4. Nonetheless, as one of the stakeholders interviewed¹⁹⁷ emphasised, this right can only be truly fulfilled if the child is given the necessary support when presenting a claim or being heard following a complaint, namely if adequate support and mediation is provided by the professionals working in these organisations or in child-protection or disability rights' organisations. This seldom occurs. In most cases complaints are presented either by family members, the school or community services.

4.2. Gaps, problems and issues in the implementation

The analysis of the situation of children with disabilities in Portugal reveals a significant gap between the recent advancements in the legal framework of protection of children with disabilities and its effective implementation¹⁹⁸.

Problems start with the process of law formulation. The existing regulations related to children with disabilities are often inappropriate or incomplete, lacking specification of how they are to be applied and of the necessary mechanisms of control and enforcement, which frequently lead to discrepancies in the interpretation and implementation of the relevant EU directives¹⁹⁹.

These problems are especially notorious in the field of education, a domain currently under intense scrutiny and criticism in Portugal, also echoed by all the interviewees²⁰⁰. Following the publication of Decree-Law 3/2008, most children and youths with disabilities who used to attend special education schools were integrated in regular schools. This transition ought to be accompanied by a series of measures designed to support integration, but in reality the ongoing financial constraints and problems of articulation between structures result in the absence of a timely allocation of fundamental resources and in a disregard for the accommodations foreseen by the inclusive education law and other legal acts (e.g. excessive class size; considerable delays in the deployment of special education and frequent turnovers that are prejudicial to the stability and quality of the intervention; shortage of specialised staff; lack of adequate support materials and other resources; issues concerning the adaptation of examination procedures)²⁰¹. This state of

¹⁹⁶ According to Article 8 of Law 46/2006 'Anti-discrimination law', article 11 of the Law 147/99 'Protection of Children and Youth' and article 3 of the 'Statute of the Ombudsman'.

¹⁹⁷ Information collected through consultation with national stakeholders (FENACERCI).

¹⁹⁸ Information collected through consultation with national stakeholders (Fundação LIGA, Fenacerci, Pais em Rede).

¹⁹⁹ Information collected through consultation with national stakeholders (Ombudsman, Fundação LIGA, Fenacerci, Pais em Rede).

²⁰⁰ Information collected through consultation with national stakeholders (Ombudsman; Fundação LIGA; FENACERCI; Pais em Rede).

²⁰¹ Information collected through consultation with national stakeholders (Ombudsman; Fundação LIGA; FENACERCI; Pais em Rede); Perdigão, R.; Casas-Novas, T.; Gaspar, T. 'Public Policies in special Education -

affairs was, recently, the object of severe criticism from the National Commission for Education (CNE – 'Comissão Nacional de Educação'), who stated that there is a clear mismatch between the principles set out in the legal framework for special education and the quality and quantity of resources available for their implementation, leading CNE to affirm that these problems "represent a waste of resources, but mostly of time, essential and irrecoverable in a learning process, especially for students who require specialised resources and professionals. The provision of supports, namely in regards to material means and human resources, throughout the school year, is a fundamental requirement, without which the principle of inclusion is reduced to mere rhetoric"²⁰².

Another concern raised relates to the total inadequacy of certain legal provisions, namely Ordinance 275-A from 11 September 2012. This Ordinance presents serious problems of implementation, because it implies several resources and requisites that frequently cannot be met by the schools, such as the rigid definition of the school subjects that are to be taught and the number of hours dedicated to each subject²⁰³. As such, these students are left without a viable option for continuing their studies. Moreover, the process of certification of students with individual curricula must also be rethought, in order to make reference to the specific skills that were developed throughout the school years²⁰⁴.

The use of the ICF as an assessment tool to determine special education needs has been another source of difficulties. While viewed as important to create a shared language between the various professionals involved in the support to children with disabilities, to the extent that it implies a functionality-based approach, this tool tends to result in the creation of standardised Individual Education Programs (PEI), even for students with very diverse needs²⁰⁵. Furthermore, to date, several professionals are yet to master the ICF concepts and language, which results in problems of interpretation and application, generating discrepancies in the assessments²⁰⁶. This issue is aggravated by the fact that there is no effective appeal system in the field of education to which the parents or other interested parties can turn to when they believe that their child's best interests have not been properly addressed²⁰⁷. The appeal system allows only for contestation of the placement of a child in a school but not of the child's assessment.

The refusal of enrolment of any children on the ground of disability is forbidden by law²⁰⁸. However, since the law also states they should be provided with the best possible care, this frequently leads to situations of mitigated refusal, where children are redirected to other

Report of the National Education Council' (Políticas Públicas de Educação Especial: Relatório Técnico. Conselho Nacional da Educação) (2014) available at http://www.cnedu.pt/content/noticias/CNE/RelatorioTecnico_EE.pdf.

²⁰² Perdígão, R.; Casas-Novas, T.; Gaspar, T. 'Public Policies in special Education - Report of the National Education Council'.

²⁰³ Perdígão, R.; Casas-Novas, T.; Gaspar, T. 'Public Policies in special Education - Report of the National Education Council'.

²⁰⁴ Information collected through consultation with national stakeholders (Ombudsman, Pais em Rede) and Perdígão, R.; Casas-Novas, T.; Gaspar, T. 'Public Policies in special Education - Report of the National Education Council'.

²⁰⁵ Perdígão, R.; Casas-Novas, T.; Gaspar, T. 'Public Policies in special Education - Report of the National Education Council'.

²⁰⁶ Information collected through consultation with national stakeholders (Ombudsman) and Perdígão, R.; Casas-Novas, T.; Gaspar, T. 'Public Policies in special Education - Report of the National Education Council'.

²⁰⁷ Information collected through consultation with national stakeholders (Ombudsman, Fundação LIGA) and Perdígão, R.; Casas-Novas, T.; Gaspar, T. 'Public Policies in special Education - Report of the National Education Council'.

²⁰⁸ Decree-Law 3/2008 'Specialised Support for Inclusive Education'.

schools, supposedly better adapted to receiving them, but which were not their first choices²⁰⁹.

As for other issues, the creation of the National System of Early Intervention (SNIPI) has had sizeable benefits, namely a significant increase in the number of children supported. Nonetheless, once again this growth in the number of beneficiaries was not accompanied by a proportional increase in the available resources, which means that the quality of the support provided is not always the most appropriate²¹⁰. The scarceness of adequate resources is especially detrimental to the well-being of children with severe or multiple disabilities, who have a greater need for personalised therapeutic care and educational support, which is frequently insufficient due to resource restrictions²¹¹.

The increasing financial constraints have also impacted direct financial benefits²¹², namely the attribution of the special education supplement ('subsídio de educação especial') or the personal assistance allowance ('subsídio de assistência a terceira pessoa'). However, as the Ombudsman states, not all problems concerning these supplements are related to budget cuts and many problems arise from issues of regulation and implementation (e.g. lack of clarity of the existing regulations concerning the criteria for eligibility and the procedures for applying; lack of articulation between structures and bureaucratic procedures that result in added obstacles for accessing benefits)²¹³. Similar problems were identified in relation to healthcare and the process of provision of technical devices²¹⁴.

Another problem concerns the incomplete implementation of the accessibility law, resulting in persistent barriers to access the built environment, namely educational and healthcare facilities, and a lack of adapted transportation²¹⁵.

Finally, negative representations and attitudes on the part of professionals, and even families, were addressed as barriers by some stakeholders. Many professionals working with children with disabilities lack specific and adequate training on disability issues²¹⁶. As for the families, in response to the added vulnerability faced by children with disabilities (e.g. violence, mistreatment, bullying), many families still display overprotective and infantilising attitudes, especially towards children with intellectual disabilities and girls, that hinder their social participation and full development²¹⁷.

4.3. Best practices

Despite the above mentioned constraints and resource restrictions, it is possible to identify a number of best practices related to the protection and promotion of the rights of children with disabilities in Portugal.

²⁰⁹ Information collected through consultation with national stakeholders (Ombudsman, Fundação LIGA, Pais em Rede) and Perdigão, R.; Casas-Novas, T.; Gaspar, T. 'Public Policies in special Education - Report of the National Education Council'.

²¹⁰ Information collected through consultation with national stakeholders (Fundação LIGA).

²¹¹ Information collected through consultation with national stakeholders (Ombudsman, Fundação LIGA, Fenacerci, Pais em Rede).

²¹² Information collected through consultation with national stakeholders (Ombudsman, Fundação LIGA, Pais em Rede).

²¹³ Information collected through consultation with national stakeholders (Ombudsman).

²¹⁴ Information collected through consultation with national stakeholders (Fundação LIGA).

²¹⁵ Information collected through consultation with national stakeholders (Ombudsman, Fundação LIGA, Pais em Rede).

²¹⁶ Information collected through consultation with national stakeholders (Fundação LIGA, Pais em Rede).

²¹⁷ Information collected through consultation with national stakeholders (Fundação LIGA, Fenacerci, Pais em Rede).

The existence of well-functioning social networks throughout the country can be especially useful in the promotion of the social inclusion of children with disabilities²¹⁸. In Portugal, two kinds of structures have proved particularly useful at this level:

- Local or national networks of public and private organisations (e.g. social networks within each municipality, known as 'redes sociais', or extended child protection commissions) that promote the discussion of various subjects relevant to the well-being and protection of children with disabilities.
- Formal and informal youth structures and initiatives working on different issues related to children and youth, including the rights of children with disabilities (e.g. youth parliament; national and municipal youth councils).

Both kinds of structures contribute to identifying children at risk of exclusion and draft intervention plans, promoting more effective and efficient resource allocation. They also help to raise awareness about key issues and promote solidarity and inclusion at local level.

Concerning legal provisions, despite some problems of implementation, it is generally acknowledged that both the inclusive education law (Decree-Law 03/2008) and the national system of early intervention (SNIPI) represented significant steps forward for advancing the rights of children with disabilities in Portugal²¹⁹. The implementation of the SNIPI provided for a significant increase in the number of children covered by early intervention programmes, especially in rural areas, contributing to a reduction in regional inequalities. Similarly, the inclusive education law contributed to reducing disparities of understandings and practices towards children's educational integration, leading to several positive changes and to a higher appreciation of the right to inclusive education.

Another important example of a promising practice concerns the programme 'Significativo Azul' ('Blue Significant'), an initiative developed by FENACERCI and the PSP (Public Security Police), which aims to promote an exchange of knowledge and expertise between these two organisations in issues related to the rights, vulnerabilities and intervention with persons with disabilities. Through this partnership, both organisations contribute to increase persons with disabilities' awareness of their rights and the mechanisms of enforcement available, in order to provide better access to the protection of their rights²²⁰.

4.4. Data and monitoring mechanisms

As stated in section 4.1, the National Institute for Rehabilitation (INR) is the entity responsible for overseeing the enforcement of the anti-discrimination law²²¹. As such, all disability-based complaints must be reported to the INR. This implies that, despite the fact that several organisations can process complaints related to violations of the rights of children with disabilities (e.g. INR; Ombudsman; Children and Youth Protection Commissions; Public Prosecutor's Office), all complaints should be reported to the INR, which is then obliged to produce an annual monitoring report, compiling this information (e.g. total number of complaints; object of the complaints; status of the procedure). As of 21 November 2014, the 2013 report has not yet been released but according to the 2012 report²²², released in March 2013, the number of complaints almost tripled in 2012 in

²¹⁸ Information collected through consultation with national stakeholders (Fenacerci).

²¹⁹ Information collected through consultation with national stakeholders (Fundação LIGA).

²²⁰ Information collected through consultation with national stakeholders (Fenacerci).

²²¹ Article 8 of Law 46/2006 'Anti-discrimination law'.

²²² INR 'Annual Report on the Implementation of the Anti-Discrimination Law, 2012' (Relatório Anual – 2012 sobre A Prática de Atos Discriminatórios em Razão da deficiência e do Risco Agravado de Saúde)(2013) available at <http://www.inr.pt/content/1/1185/lei-da-nao-discriminacao>.

relation to 2011 (from 54 to 131), a trend that in the report is deemed due to "better dissemination of the mechanism". According to the same report, the majority of complaints filed in 2012 were, as in previous years, accessibility-related, but complaints relating to health, employment and education also increased in 2012. However, this data is not disaggregated by age so it is not possible to identify how many of these cases concern children with disabilities.

Nevertheless, no judicial cases were filed on the basis of disability-discrimination. The same report explains this may be due to the fact that the issues reported are ongoing situations, but also due to a lack of financial resources on the part of the claimant and a lack of accommodation in the judicial system to the special requirements of claimants with disabilities, as well as a lack of clarity in the definition and difficulties in the provision of judicial proof in cases of 'disability-based discrimination'.

The INR is also the government body responsible for the implementation of the CRPD and for collecting statistics on disability. There is a significant gap in terms of data regarding the lives of children with disabilities. While the 2011 Census included the Washington Group questions to determine limitations in daily life activities (as a proxy for disability), these questions were not applied to children under six years old. Data from the Census shows that in Portugal there are 52,214 children aged 5-14 years old with limitations in at least one daily life activity (of which 57% are boys and 43% are girls, 45% are between 5-9 years old and 55% are between 10-14 years old).

4.5. Recommendations

Based on the previously addressed issues, a number of recommendations can be addressed to the Portuguese Government:

- Endorse a new National Disability Strategy (the former one ended in 2013) to guide and coordinate disability policy at national level, particularly in all that is relevant to the well-being of children with disabilities²²³.
- Strengthen mechanisms of monitoring and enforcement of existing legal provisions in the field of education. Some options suggested by the stakeholders include the creation of a more effective system of appeal, within the Ministry of Education, competent to review and address complaints in the field of education in a timely manner; or the creation of a monitoring structure, integrating representatives of the parents, the INR, the Ministry of Education, the Ministry of Solidarity, among other relevant structures, capable of monitoring, evaluating and guiding the processes, instruments and resources involved in special education²²⁴.
- Ensure the effective application and enforcement of accessibility regulations in accordance with the principle of universal design present in the CRPD and with the specific directives contained in the law of accessibility²²⁵.
- Review the existing legislation to ensure that all key legal acts concerning children with disabilities respect the principles of the CRPD and the CRC. All interventions concerning children with disabilities should abide by principles of

²²³ Information collected through consultation with national stakeholders (Pais em Rede).

²²⁴ Information collected through consultation with national stakeholders (Ombudsman, Fundação LIGA, Pais em Rede).

²²⁵ Information collected through consultation with national stakeholders (Ombudsman, Fundação LIGA, Fenacerci, Pais em Rede).

participation and empowerment. As such, children, their families and their representative organisations, should be heard and actively involved, not only in the process of policy implementation, but also in the process of policy formulation and monitoring. The participation of children and their families in the definition of their educational plans must also be reinforced, reviewing the criteria established in the Inclusive Education Law so as to include the principle of the right of the child to be heard in the definition and assessment of his/her educational plan, and to ensure the effective involvement of the parents and the students in the elaboration of the CEI (Specific Individual Curriculum) and PIT (Individual Transition Plan), avoiding a pro-forma collaboration that limits itself to the parents' signature of the plan, without a real chance of understanding, discussing and influencing the plan, as happens frequently²²⁶.

- Ensure that the current financial constraints do not serve as an excuse to overlook fundamental rights of children with disabilities, namely the right to inclusive education, including the necessary accommodation, in accordance to international treaties and the national law²²⁷ (e.g. integrating children with disabilities, whenever possible, in regular classes, respecting the restriction in the maximum number of students per class and providing adequate additional support)²²⁸.
- Review current regulations concerning the provision of special education benefits in order to clarify the criteria of eligibility, the responsibilities of each stakeholder and to harmonise procedures and reduce the bureaucratic burden on the families and services that currently exist due to problems of coordination²²⁹.
- Withdraw Directive 275-A/2012 that refers students with Specific Individual Curricula (CEI) to an institutional path, based on functional training, blocking the right to other educational paths²³⁰.
- Develop research on the rights of children with disabilities and collect systematic disaggregate data by sex in order to investigate intersections of disability and gender and draft appropriate policies²³¹.
- Promote awareness-raising initiatives and special training, concerning disability issues, directed at different target-groups:
 - Compulsory disability-specific, initial and lifelong training for professionals involved in the care of children with disabilities, particularly in the context of education, but also healthcare and social services²³²;
 - Specific support and training for parents of children with disabilities, in order to provide them with the skills necessary to make informed decisions about their child's needs²³³;

²²⁶ Information collected through consultation with national stakeholders (Fundação LIGA, Pais em Rede). This implies revision in particular of Decree-Law 3/2008 'Specialized Supports for Inclusive Education'.

²²⁷ CPRD; CRC; Decree-Law 3/2008 'Specialized Supports for Inclusive Education'.

²²⁸ Information collected through consultation with national stakeholders (Ombudsman, Fenacerci, Pais em Rede) and Perdigão, R.; Casas-Novas, T.; Gaspar, T. 'Public Policies in special Education - Report of the National Education Council'.

²²⁹ Information collected through consultation with national stakeholders (Ombudsman, Fundação LIGA, Pais em Rede).

²³⁰ Information collected through consultation with national stakeholders (Pais em Rede).

²³¹ Information collected through consultation with national stakeholders (Fenacerci, Pais em Rede).

²³² Information collected through consultation with national stakeholders (Pais em Rede) and Perdigão, R.; Casas-Novas, T.; Gaspar, T. 'Public Policies in special Education - Report of the National Education Council'.

²³³ Information collected through consultation with national stakeholders (Fundação LIGA, Fenacerci).

Awareness-raising campaigns on issues related to violence and the particular risk faced by children with disabilities (e.g. addressing different kinds of violence and abuse and how to act in those circumstances), both at national and EU level²³⁴.

²³⁴ Information collected through consultation with national stakeholders (Fundação LIGA, Fenacerci).

5. CONCLUSIONS

Overall, the rights of children with disabilities are guaranteed in Portuguese legislation, but the practical implementation of many of them remains problematic.

The right to non-discrimination on the grounds of disability is recognised and the right to reasonable accommodation is addressed in the context of education and employment. Moreover, although legislation has existed since 1997, imposing accessibility standards to new constructions and the progressive adaptation of old infrastructure, enforcement of this law is poor and many barriers to the physical environment and public transportation persist, creating obstacles for the participation of children with disabilities in social life.

The right of children to express his/her views in decisions affecting them is guaranteed in general law, but is lacking in disability-specific legislation, notably in the education sector.

Violence against children and vulnerable persons due to disabilities is severely sanctioned by the Criminal Code, but data is lacking to determine its effectiveness.

Access to assistance is ensured, but the level of financial benefits available is generally very low. However, the Early Intervention System, recently reorganised in the country, is a good practice that is ensuring a better start for an increasing number of children with disabilities or at risk of presenting developmental problems.

Recently passed legislation on inclusive education has provided for massive mainstreaming of children with disabilities in regular schools. However, the majority of regular schools lack the quality and quantity of resources (technical and human) to provide for the adequate care of children with disabilities. This compromises the quality of their education and results in many children returning to social care institutions after completing education.

In conclusion, children with disabilities' rights are guaranteed and benefit overall from a satisfactory legal protection. However, several gaps exist, mostly with regard to the practical implementation of the rights and principles in Portugal which result in important barriers to the full enjoyment of their rights.

REFERENCES

1. Legislation

a. International Law

- United Nations Convention on the Rights of the Child.
- United Nations Convention on the Rights of Persons with Disabilities.

b. National Law²³⁵

- Constitution (Constituição da República Portuguesa), 2005.
- Civil Code (Código Civil).
- Penal Code (Código Penal), 1995.
- Law 46/2006 'Anti-discrimination law' (Proíbe e pune a discriminação em razão da deficiência e da existência de risco agravado de saúde).
- Law 38/2004 'Disability Act' (Bases gerais do regime jurídico da prevenção, reabilitação e participação da pessoa com deficiência).
- Law 163/2006 'Accessibility Law' (Lei da Promoção da Acessibilidade).
- Base II (c), Law 48/90 'Base Health Law' (Lei de Bases da Saúde).
- Law 49/2005 'Base Law on Education' (Lei de Bases do Sistema Educativo).
- Law 27/2014 'Labour Code' (Código do Trabalho).
- Law 83-A/2013 'Base Law on Social Security' (Lei de Bases da Segurança Social).
- Decree-Law 133/97, 'Family Benefits' (Prestações Familiares).
- Decree-Law 70/2010 'Eligibility requirements for Family Benefits' (Regras de Cálculo para atribuição de Prestações Familiares).
- Article 4 of Decree-Law 113/2011 'Healthcare User-fees' (Taxas Moderadoras).
- Decree-Law 281/2009 'Early Intervention System' (Criação do Sistema Nacional de Intervenção Precoce na Infância).
- Decree-Law 3/2008 'Specialized Supports for Inclusive Education' (Apoios Especializados para a Escola Inclusiva).
- Decree-Law 290/2009, 'Support to the Professional Qualification of Persons with Disabilities' (Programa de Apoio à Qualificação de Pessoas com Deficiência).
- Law 85/2009 'Establishes the scheme of compulsory education for children and youth of school age and enshrines the universality of pre-school education for children aged 5 or older' (Estabelece o regime da escolaridade obrigatória para as crianças e jovens que se encontram em idade escolar e consagra a universalidade da educação pré-escolar para as crianças a partir dos 5 anos de idade).
- Law 112/2009 'Domestic Violence' (Violência Doméstica e Assistências às Vítimas).
- Law 147/99 'Protection of Children and Youth' (Lei de Protecção de Crianças e Jovens em Perigo).
- Law 11/2008 'Foster Care System' (Regime de Execução do Acolhimento Familiar).
- Law 166/99, 'Educational Guardianship Law' (Lei Tutelar Educativa).
- Law 12/2008 'Protection in Natural Family Environment' (Protecção em Meio Natural de Vida).
- Law 113/2009 'Protection of minors against sexual abuse and exploitation' (Contra a Exploração Sexual e o Abuso Sexual de Crianças).
- Law 93/99 'Protection of Witnesses' (Lei de protecção de testemunhas)

²³⁵ All the legislation is available in Portuguese in <https://dre.pt/web/guest/pesquisa-avancada>

(Amended by Law 42/2010 and Law 29/2008).

- Ordinance 142-B/2012 'Access to non-urgent medical transportation' (Transporte não-urgente de doentes).
- Law 3/84 'Sexual education and family planning' (Educação sexual e planeamento familiar).
- Law 60/2009 'Regime of implementation of sexual education in schools' (Estabelece o regime de aplicação da educação sexual em meio escolar).
- Decree-Law 401/82 'Regime of Young Adults' (Regime dos Jovens Adultos).

2. Literature

- Correia, L. M. Special education in Portugal: the new law and the ICF-CY. *Procedia Social and Behavioral Sciences*, 9 (2010) 1062-1068.
- CNPCJR 'Annual Evaluation Report of the CPCJs, 2009' (Relatório anual de avaliação da atividade das CPCJ no ano de 2009) (2010) available at http://www.cnpcjr.pt/preview_documentos.asp?r=3143&m=PDF.
- CNPCJR 'Annual Evaluation Report of the CPCJs, 2010' (Relatório anual de avaliação da atividade das CPCJ no ano de 2010) (2011) available at http://www.cnpcjr.pt/preview_documentos.asp?r=3453&m=PDF.
- CNPCJR 'Annual Evaluation Report of the CPCJs, 2011' (Relatório anual de avaliação da atividade das CPCJ no ano de 2011) (2012) available at http://www.cnpcjr.pt/preview_documentos.asp?r=3795&m=PDF.
- CNPCJR 'Annual Evaluation Report of the CPCJs, 2012' (Relatório anual de avaliação da atividade das CPCJ no ano de 2012) (2013) available at http://www.cnpcjr.pt/Relatorio_2012_28maio.pdf.
- CNPCJR 'Annual Evaluation Report of the CPCJs, 2013' (Relatório anual de avaliação da atividade das CPCJ no ano de 2013) (2014) available at http://www.cnpcjr.pt/%5CRelatorio_Avaliacao_CPCJ_2013.pdf.
- FENPROF 'Study on the implementation of ICF in schools' (Estudo sobre aplicação da CIF nas escolas. Lisboa) (2010) available at <http://www.fenprof.pt/?aba=27&mid=115&cat=67&doc=4497>.
- INR 'Annual Report on the Implementation of the Anti-Discrimination Law, 2009' (Relatório Anual – 2009 sobre A Prática de Atos Discriminatórios em Razão da deficiência e do Risco Agravado de Saúde) (2010) Available at <http://www.inr.pt/content/1/1185/lei-da-nao-discriminacao>.
- INR 'Annual Report on the Implementation of the Anti-Discrimination Law, 2010' (Relatório Anual – 2010 sobre A Prática de Atos Discriminatórios em Razão da deficiência e do Risco Agravado de Saúde) (2011) Available at <http://www.inr.pt/content/1/1185/lei-da-nao-discriminacao>.
- INR 'Annual Report on the Implementation of the Anti-Discrimination Law, 2011' (Relatório Anual – 2011 sobre A Prática de Atos Discriminatórios em Razão da deficiência e do Risco Agravado de Saúde) (2012) Available at <http://www.inr.pt/content/1/1185/lei-da-nao-discriminacao>.
- INR 'Annual Report on the Implementation of the Anti-Discrimination Law, 2012' (Relatório Anual – 2012 sobre A Prática de Atos Discriminatórios em Razão da deficiência e do Risco Agravado de Saúde) (2013) Available at <http://www.inr.pt/content/1/1185/lei-da-nao-discriminacao>.
- Instituto da Segurança Social, I.P.: Departamento de Desenvolvimento Social e Programas/ Unidade de Infância e Juventude/Núcleo de Assessoria Técnica aos Tribunais e Acolhimento Institucional, 'Characterization of the Annual Situation of Children and Youth under Custody' (CASA 2012: Relatório de Caracterização Anual da Situação de Acolhimento das Crianças e Jovens), March 2013, available at

- <http://www4.seg-social.pt/documents/10152/13326/CASA2012>.
- Perdigão, R.; Casas-Novas, T.; Gaspar, T. 'Public Policies in special Education; Technical Report of the National Education Council' (Políticas Públicas de Educação Especial: Relatório Técnico. Conselho Nacional da Educação) (2014) available at http://www.cnedu.pt/content/noticias/CNE/RelatorioTecnico_EE.pdf.
 - Perista, P. & Silva, M. Combating child abuse and neglect in Portugal (2011). Report supported by the Daphne III Programme. Lisbon: CESIS, available in <http://www.youthpolicy.nl/yp/downloadsyp/Daphne-report-Portugal.pdf>.
 - Pinto, P. & Teixeira, D., 'Monitoring the rights of persons with disabilities in Portugal: preliminary report' (Monitorização dos direitos humanos das pessoas com deficiência em Portugal: relatório preliminar), (2014), available at <http://oddh.iscsp.utl.pt/index.php/pt/2013-04-24-18-50-23/publicacoes-dos-investigadores-oddh/item/151-monitoriza%C3%A7%C3%A3o-dos-direitos-das-pessoas-com-defici%C3%Aancia-em-portugal>.
 - Pinto, P. & Teixeira, D., 'DRPI-Portugal: Final Report' (DRPI-Portugal: Relatório Final). (2012), Lisboa, ISCSP, available at: <http://oddh.iscsp.utl.pt/index.php/en/2013-04-24-13-36-12/publications-of-oddh-researchers/item/40-drpi-portugal>.
 - Pinto, P. & Teixeira, D., 'Assessing the Impact of European Governments' Austerity Plans on the Rights of People with Disabilities: Portugal Country Report' (2012) page 20, available at <http://oddh.iscsp.utl.pt/index.php/en/projects/impact-of-european-governments-austerity-plans>.
 - Portugal, S. (Coord), Sena Martins, B. and Hespanha, P., 'Assessment of the impact of financial and social costs of disability (Estudo de Avaliação do Impacto dos Custos Financeiros e Sociais da Deficiência) (2010) available at [http://www.ces.uc.pt/myces/UserFiles/livros/1097_impactocustos%20\(2\).pdf](http://www.ces.uc.pt/myces/UserFiles/livros/1097_impactocustos%20(2).pdf).
3. Other
- Resolution of the Council of Ministers 103/2003 'National Action Plan for Gender Equality 2014-2017' (V Plano Nacional para a Igualdade de Género, Cidadania e Não-discriminação 2014-2017), available in <http://www.cig.gov.pt/planos-nacionais-areas/cidadania-e-igualdade-de-genero/>.
 - Resolution of the Council of Ministers 9/2007, 'National Accessibility Plan' (Plano Nacional de Promoção da Acessibilidade), available in <http://www.min-saude.pt/NR/ronlyres/2B978891-A1DC-422D-AD8D-2E619BAF00A8/0/03660377.pdf>.
 - UNICEF et al., Alternative report to the third and fourth periodic reports of Portugal under the Convention on the Rights of the Child, n.d., available at http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CRC.
 - Portuguese Bar Association (Ordem dos Advogados), 'Information about the best interest of the child' (Informação sobre o Superior Interesse da Criança) (2009), available at http://www.oa.pt/cd/Conteudos/Artigos/detalhe_artigo.aspx?sidc=31634&idc=8351&idsc=21852&ida=75761.
 - 'Portuguese Medical Association Ethics Code' (Código Deontológico da Ordem dos Médicos), available at https://www.ordemdosmedicos.pt/send_file.php?tid=ZmljaGVpdm9z&did=c06d06da9666a219db15cf575aff2824.
 - Statute of the Ombudsman' (Estatuto do Provedor de Justiça), Law 9/91, of 9 April 1991 (Amended by Law 30/96 14 August 1996, Law 52-A/2005, of 10 October 2005, and Law 17/2013 of 18 February 2013), available at <http://www.provedor-jus.pt/?idc=81&idi=15378>.

ANNEX 1 – SUMMARY TABLE

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
Best interests of the child	
<p><u>PORTUGUESE CONSTITUTION</u> Article 36 Family, marriage and filiation</p> <ol style="list-style-type: none"> Spouses have equal rights and duties in relation to civil and political capacity and in regards to upbringing and maintaining their children. Children born out of the wedlock cannot, for that reason, be subject to any discrimination and the law or official departments cannot use discriminatory designations relative to filiation. Parents have the right and the duty of upbringing and maintaining their children. Children cannot be separated from their parents, except if parents do not fulfill their fundamental duties towards their children in which case a court decision is required. Adoption is regulated and protected under the law, which shall ensure expeditious ways to conduct adoption processes. <p>Article 69 Childhood</p> <ol style="list-style-type: none"> Children have the right to protection, by society and by the State, so that they can develop to their fullest potential. Protection is especially needed against all forms of neglect, discrimination and oppression and against the abusive exercise of authority in the family and other institutions. The State ensures special protection to orphan and abandoned children and children who 	<p>Incomplete implementation</p> <p>The principle can be found in the Portuguese legal framework, particularly with regard to the legislation concerning separation from parents, parental responsibilities, deprivation of family environment, and adoption. However, it is not explicitly mentioned in the context of disability-specific legislation, notably in the legislation that establishes the legal basis of the Portuguese rehabilitation system, the Early Intervention System and the provision of supports to facilitate inclusive education. For this reason, implementation is assessed as incomplete.</p> <p>In addition, there are some gaps in the implementation of this principle, related to:</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>have been deprived of a normal family environment.</p> <p>3. The work of school age minors is prohibited under the law.</p> <p><u>CIVIL CODE</u></p> <p>Article 1887-A Conviviality with siblings and ascendants Parents cannot unreasonably deprive the child of contact with siblings and ascendants.</p> <p>Article 1776-A Agreement on the exercise of parental responsibilities</p> <ol style="list-style-type: none"> 1. When an agreement is submitted on the exercise of parental responsibilities in relation to children who are minor, the process is sent to the Prosecutor, so that he/she assesses the agreement within 30 days. 2. If the Prosecutor considers that the agreement does not duly protect the best interest of the child, applicants may amend the agreement in compliance or submit a new agreement, which should be re-assed by the Prosecutor. <p>Article 1901 Parental responsibilities within marriage</p> <ol style="list-style-type: none"> 1. Within marriage, parental responsibilities belong to both parents. 2. Parents shall exercise parental responsibilities by mutual agreement. If agreement fails, on matters of particular importance, any of them may apply to the court which will attempt conciliation. 3. If conciliation is not achieved, the court will hear the child before issuing a decision, unless when circumstances strongly advice the opposite. <p>Article 1906 Parental responsibilities in case of divorce, judicial separation of persons and properties, declaration of nullity of the marriage</p> <ol style="list-style-type: none"> 1. Parental responsibilities relative to the issues of particular importance to the life of the 	<ul style="list-style-type: none"> • A lack of clarification of the concept and what it entails; • A major concern with finding expedite solutions, rather than solutions better adjusted to the complexities of the issues at stake.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>child are jointly exercised, under the same terms that existed during marriage...</p> <ol style="list-style-type: none"> 2. When the joint exercise of parental responsibilities on issues of particular importance to the life of the child is deemed, by the court, contrary to the best interest of the child, the court must, by reasoned decision, determine that these responsibilities are discharged by one of the parents. 3. ... 4. ... 5. The court shall decide, in the best interest of the child, the place of residence and the visiting rights, taking into account all relevant circumstances, notably the eventual agreement of the parents and the availability shown by each of them to promote the relationship of the child with the other parent. 6. ... 7. The court shall always decide in the best interest of the child, including to maintain a relationship of great proximity with both parents, promote and accept agreements and to favour opportunities of contact with both parents and the sharing of responsibilities among them. <p>Article 1915 Inhibition of the exercise of parental responsibilities</p> <ol style="list-style-type: none"> 1. At the request of the Prosecutor, of any relative of the minor or of the person under whose custody the child is placed, whether de facto or under the law, the court may order the prohibition of exercising parental responsibilities when any of the parents culpably violate his/her duties towards the child and seriously injures the child, or when, by inexperience, illness, absence or other reasons, the parent is not able to meet those obligations. 2. Inhibition may be total or be limited to the representation and management of child's properties; it can involve both parents or just one of them and it may concern all the children or just some of them. 3. ... <p>Article 1918</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Risk for the security, health, moral formation and education of the child When the security, health, moral formation or education of the child is at risk and is not a case for inhibiting the exercise of parental responsibilities the court, at the request of the Prosecutor or of any of the persons indicated in Article 1915 (1), may enact appropriate measures, including entrusting the child to a third person or to an educational or social assistance institution.</p> <p>Article 1919 Exercise of parental responsibilities while the special measures last</p> <ol style="list-style-type: none"> 1. Even when the special measures referred to in article 1918 are put in place, parents maintain their parental responsibilities in all matters that are not irreconcilable with the measures taken. 2. If the minor is entrusted to a third person or to an institution of education or social assistance, a visiting regime is established, unless it is against the best interest of the child. <p>Article 1974 General Requisites [for adoption]</p> <ol style="list-style-type: none"> 1. Adoption aims to fulfill the best interest of the child and will be enacted when it presents real advantages for the child, is founded on legitimate reasons, involves no unfair sacrifice to other children of the adopter and when it may reasonably be expected that a link similar to that of parent-child will be established between the adopter and the adoptee. 2. ... <p>Article 1978 Entrustment of the child aiming at future adoption</p> <ol style="list-style-type: none"> 1. The court may entrust the child to a couple, a single person or an institution aiming at future adoption when the parents-child emotional ties are inexistent or are seriously compromised due to one of the following situations: <ol style="list-style-type: none"> a) Parents are dead or are unknown; b) Consent has been given for adoption of the child; 	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>c) Parents have abandoned the child; d) If parents, by action or omission, even if by incapacity due to mental illness, have put at serious risk the security, health, formation and education or the development of the child; e) If the parents of the minor entrusted to a person or to an institution show no interest for the child, and compromise seriously the quality and continuity of the relationship, for at least, the 3 months before the request of entrustment.</p> <p>2. In the assessment of the situations described above, the court must attend first and foremost to the rights and best interest of the child.</p> <p><u>LAW 147/99</u> <u>Protection of Children and Youth at Risk</u></p> <p>Article 4 Guiding principles of the intervention Interventions aimed at the promotion and protection of children and youth at risk are guided by the following principles:</p> <p>a) The best interest of the child and the youth – interventions shall attend first and foremost to the interests and rights of the child and the youth, without failing to consider other legitimate interests, present among the plurality of interests evident in each specific case;</p> <p>b) c) d) e) f) g) h) ...</p> <p>i) Compulsory audition and participation – the child and the youth, separately or accompanied by the parents or by any person the child or youth chooses, as well as the parents, legal advocates, or person to which the child is de facto entrusted to, have the right to be heard and participate in the proceedings and decision-making regarding the measures aimed at promoting and protecting their rights.</p> <p><u>LAW 166/99</u> <u>Educational Guardianship Law</u> 7 - In the cases described in paragraphs 4 and 6 [children aged 12-16 who have committed acts</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>qualified as crimes under the law] the measures proved to be more favorable to the educational interests of the child shall apply, having regard to the seriousness of the act and the need for educating the child on the right.</p> <p><u>LAW 38/2004</u> <u>Defines the general basis of the regime of prevention, habilitation and rehabilitation of the person with disabilities (Disability Act)</u> does not specifically mention the principle of best interest of the child with disabilities</p> <p><u>Decree-Law 281/2009</u> <u>Creates the National System of Early Intervention</u> does not specifically mention the principle of best interest of the child with disabilities</p> <p><u>Decree-Law 3/2008</u> <u>Specialized Supports for Inclusive Education</u> does not specifically mention the principle of best interest of the child with disabilities</p>	
Non-discrimination	
<ul style="list-style-type: none"> • General <p><u>PORTUGUESE CONSTITUTION</u> Article 13 Principle of equality</p> <ol style="list-style-type: none"> 1. All citizens possess the same social dignity and are equal before the law. 2. No one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation. 	<p>Incomplete implementation</p> <p>The prohibition of discrimination on the grounds of disability is foreseen in the Anti-Discrimination Law (Law 46/2006 of 28 August) and in the Disability Act (Law 38/2004 of 18 August). In this legal statute, the specific rights of children with disabilities are mentioned with regards to access to education (Article 4 (h)(i)). Direct and indirect</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Article 26 Other personal rights</p> <ol style="list-style-type: none"> 1. Everyone is accorded the rights to personal identity, to the development of personality, to civil capacity, to citizenship, to a good name and reputation, to their image, to speak out, to protect the privacy of their personal and family life, and to legal protection against any form of discrimination. 2, 3, 4, <p>Article 71 Disabled Citizens</p> <ol style="list-style-type: none"> 1. Citizens with physical or mental disabilities fully enjoy the rights and are subject to the duties enshrined in the Constitution, save for the exercise or fulfilment of those for which their condition renders them incapable. 2. The state undertakes to implement a national policy for the prevention of disability and the treatment, rehabilitation and integration of disabled citizens and the provision of support to their families, to educate society in such a way as to make it aware of the duties of respect and solidarity towards them, and to undertake the charge of ensuring that their rights are effectively fulfilled, without prejudice to the rights and duties of their parents or guardians. 3. ... <p>Article 69 Childhood</p> <ol style="list-style-type: none"> 1. With a view to their integral development, children have the right to protection by society and the state, especially from all forms of abandonment, discrimination and oppression and from the improper exercise of authority in the family or any other 	<p>discrimination based on disability is prohibited.</p> <p>The rights and particular vulnerabilities of girls with disabilities are not mentioned anywhere, nor is it anywhere recognised that they might be the object of multiple discrimination.</p> <p>The Anti-Discrimination Law restrains the principle of “reasonable accommodation” to work-related situations only (article 5) but the Base Law of Education provides for ‘reasonable accommodation’ in the context of school facilities design and equipment within the Accessibility law²³⁶, which establishes standards for accessibility to public buildings and public space, the principle of reasonable accommodation is used to justify exceptions to the accessibility rules, which are allowed “whenever the adaptations needed are disproportionately difficult or require</p>

²³⁶ Law 163/2006 ‘Accessibility Law’.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>institution.</p> <p>2. The state shall ensure special protection for children who are orphaned, abandoned or deprived of a normal family environment in any way.</p> <p>3. Labour by minors of school age is prohibited, as laid down by law.</p> <p><u>Law 38/2004</u> <u>Defines the general basis of the regime of prevention, habilitation and rehabilitation of the person with disabilities (Disability Act)</u></p> <p>Article 6 Non-discrimination principle</p> <p>1. No one can be discriminated, directly or indirectly, by action or omission, on the grounds of disability.</p> <p><u>Law 46/2006</u> <u>Anti-discrimination Law</u></p> <p>Article 1 Aim</p> <p>1 — The present diploma aims to prevent and forbid discrimination, direct or indirect, on the grounds of disability, in all of its forms, and sanction any actions which translate in the violation of any fundamental rights or in the refusal or restriction of the exercise of economic, social, cultural or other rights, by any person, on the grounds of disability.</p> <p>...</p> <p>2. Article 4 Discriminatory practices Discriminatory practices against persons with disabilities are considered to be the actions or omissions, intentional or negligent, which violate the principle of equality, namely:</p> <p>a) Refusal of provision or impediment of access to goods or services; b) c) ...</p>	<p>economic and financial means disproportionate or unavailable”.</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>d) Refusal or impediment of the use and diffusion of sign language;</p> <p>e) Refusal or restraint of access to the build environment or to public spaces or buildings open to the public;</p> <p>f) Refusal or restraint of access to public transportation, either by air, land or sea;</p> <p>g) Refusal or restraint of access to healthcare in public or private facilities;</p> <p>h) Refusal or restraint of access to educational facilities, public or private, as well as any means of support/compensation in accordance with the specific needs of students with disabilities;</p> <p>i) Constitution of classes or adoption of other internal organization measures in public or private educational facilities, in accordance with the criteria of discrimination on the grounds of disability, except if these criteria are justified by the goals mentioned in number 2 of article 2.</p> <p>j) ...</p> <p>l) Actions where, publically and with the intent for ample diffusion, a natural or legal person, either public or private, transmits a statement or information resulting in the threat, insult or abased on the grounds of disability;</p> <p>m) Adoption of measures which restrain access to new technologies.</p> <p><u>Decree-Law 3/2008</u> <u>Specialized Supports for Inclusive Education (rectified by Law 21/2008 of 12 May)</u></p> <p>Article 2 Guiding Principles 1 — Special education will follow, on a permanent basis, the principles of justice and social solidarity, non-discrimination and fight against social exclusion, equality of opportunities in access and school success, participation of the parents and confidentiality of information. 2 — In accordance with the previous number, schools or school groupings, private educational facilities with parallel teaching, professional school, directly or indirectly funded by the Ministry of</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Education (ME), cannot reject the application or enrolment of any child or young person on the grounds of their incapacity or special education needs.</p> <p>3 — Children and youth with permanent special education needs should enjoy priority in the matriculation process, being entitled, according to this Decree-Law, to attend kindergarten or school on the same terms as any other child.</p> <p>4 — Children and youth with permanent special education needs are entitled to recognition of their uniqueness and to the provision of adequate educational responses.</p> <p>...</p> <p><u>Law 48/90</u> <u>BASIC HEALTH LAW</u> Base II Health Policy</p> <ol style="list-style-type: none"> 1. Health policy has a national scope and must observe the following principles: <ol style="list-style-type: none"> a)... b) It constitutes a priority goal to achieve equality between all citizens when accessing health services, regardless of their economic situation or where they live, as well as assuring equity in the allocation and use of resources; c) Special measures will be taken concerning particularly vulnerable groups, such as children, teenagers, pregnant women, the elderly, persons with disabilities, drug addicts or workers when their occupation justifies it; d) e) f) g) h) i) ... <ul style="list-style-type: none"> • Hidden (indirect discrimination) <p><u>Law 38/2004</u> <u>Defines the general basis of the regime of prevention, habilitation and rehabilitation of the person with disabilities (Disability Act)</u></p> <p>Article 6 Non-discrimination principle</p> <ol style="list-style-type: none"> 1. ... 	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>2. The person with disability must benefit from positive action measures, in order to assure the exercise of his/her rights and duties, correcting situations of factual inequality that subsist in his/her life.</p> <p><u>Law 46/2006</u> <u>Anti-discrimination Law</u></p> <p>Article 3 Concepts For the purpose of this law, the following definitions shall apply: a) b) c) ... d) «Positive discrimination» measures which aim to assure persons with disabilities the exercise or enjoyment, on an equal basis, of their rights.</p> <ul style="list-style-type: none"> • Gender <p><u>Council of Ministers Resolution 103/2013</u> <u>National Plan for Gender Equality, Citizenship and Non-Discrimination 2014-2017</u></p> <p>33) Promote actions to prevent the phenomenon of discrimination of girls and women with disabilities [4 actions per year]</p> <ul style="list-style-type: none"> • Accessibility <p><u>Law 46/2006 of 28 August</u> <u>Anti-discrimination Law</u></p> <p>Article 4 Discriminatory Practices</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Discriminatory practices against persons with disabilities are considered to be the actions or omissions, intentional or negligent, which violate the principle of equality, namely:</p> <p>a) Refusal of provision or impediment of access to goods or services;</p> <p>b) c) ...</p> <p>d) Refusal or impediment of the use and diffusion of sign language;</p> <p>e) Refusal or restraint of access to the build environment or to public spaces or buildings open to the public;</p> <p>f) Refusal or restraint of access to public transportation, either by air, land or sea;</p> <p>g) ...</p> <p>h) Refusal or restraint of access to educational facilities, public or private, as well as any means of support/compensation in accordance with the specific needs of students with disabilities;</p> <p>i) j) l) ...</p> <p>m) Adoption of measures which restrain access to new technologies.</p> <p><u>Law 38/2004</u> <u>Defines the general basis of the regime of prevention, habilitation and rehabilitation of the person with disabilities (Disability Act)</u></p> <p>Article 3 Objectives The present law aims to fulfil a global, integrated and cross-cutting policy of prevention, habilitation, rehabilitation and participation of persons with disabilities, namely through:</p> <p>a) b) c)</p> <p>d) The promotion of a society for all, through the elimination of barriers and adoption of measures designed to promote the full participation of persons with disabilities.</p> <p>Article 24 Prevention</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>1— ...</p> <p>2— The State must promote, directly or indirectly, all necessary measures for effective prevention, namely with regards to information and raising awareness on:</p> <p>a) Accessibilities</p> <p>...</p> <p>Article 32</p> <p>Right to housing and urban planning</p> <p>The State must adopt, through a national plan on accessibility, bearing in mind the principles of universal design:</p> <p>a) Specific and necessary measures to assure the right to housing for persons with disabilities, in articulation with local municipalities;</p> <p>b) Specific and necessary measures to assure the right of persons with disabilities to access both external and internal spaces, through the elimination of architectural barriers in the construction, amplification and renovation.</p> <p>Article 33</p> <p>Right to transportation</p> <p>The State must adopt, through a national plan on accessibility, specific and necessary measures to assure the access of persons with disabilities, namely to circulation and use of the public transportation network, special transportation and any other appropriate means of transportation, as well as to social support arrangements.</p> <p>Article 43</p> <p>Information</p> <p>1 – The State and other public and private entities must make available to persons with disabilities, in an accessible format, namely in Braille, large print, audio, sign language, or appropriate digital tools, information about the services, resources and benefits devoted to them.</p> <p>2 – Media should make information available to persons with disabilities, as well as contribute to</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>the awareness of the general public, in order to eliminate discriminatory practices on the grounds of disability.</p> <p>Article 44 Information society The State must adopt, through a national plan on accessibility, specific and necessary measures to assure the access of persons with disabilities to the information society.</p> <p><u>Decree-Law 163/2006 of 8 August</u> <u>Accessibility Law</u></p> <p>Article 2 Scope of application ... 2— Technical standards also apply to the following buildings, establishments, public use equipment and public streets: a) Sidewalks and other paved paths; b) c) ... d) Health centres, nursing centres, diagnostic centres, hospitals, maternity clinics, health clinics, medical centres in general, rehabilitation centres, medical offices, pharmacies and thermal facilities; e) Pre-school, primary, secondary and higher education facilities, training centres, residential facilities and canteens; f) Train and metro stations, truck centrals, maritime and fluvial stations, airport terminals and aerodromes, public transportation stops, petrol stations and service stations; g) Tunnel or overhead pedestrian crossings in railways, highways and freeways; h) i)... j) Public toilets;</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>l) Churches and other religious buildings; m) Museums, theatres, cinemas, congress and conference centres and public libraries, as well as other buildings or facilities designed for recreational and sociocultural activities; n) ... o) Sports facilities, namely stadiums, sports and athletics fields, pavilions, pools and training centres, including gyms and health clubs; p) Recreational and leisure facilities, namely playgrounds, amusement parks, gardens, beaches and clubs; q) r) s) ... 3— The technical standards of accessibility also apply to residential buildings.</p>	
Evolving capacities of the child	
<p><u>CIVIL CODE</u> Article 1878 1. ... 2. Children must obey their parents; however, these should take into account the opinion of the child in all important family matters, in accordance with their child's maturity, and acknowledge them the autonomy to organise their own lives.</p> <p><u>PORTUGUESE CONSTITUTION</u> Article 69 Childhood 1. Children are entitled to protection from the society and the State, in order to achieve their full development, especially against all forms of abandonment, discrimination and oppression and against the abuse of authority within the family and other institutions. (...)</p> <p><u>DECREE-LAW 281/2009</u> <u>National System of Early Intervention</u></p>	<p>Incomplete implementation</p> <p>The term "evolving capacities of the child" has no direct translation in Portuguese and has therefore been translated and interpreted by Portuguese law and policy in variable terms. Most child protection legislation addresses this issue in incomplete terms, usually referring the need to promote "the full development" of the child, without further defining the concept. Furthermore, in many cases, this principle is included without any mention of the need to take into consideration the developing</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Article 4 Objectives SNIPI has the following objectives: 1. Assure children the protection of their rights and the development of their capacities, through the IPI actions developed nationwide. (...)</p> <p><u>LAW 147/99</u> <u>Protection of children and youth at risk</u></p> <p>Article 1 Object</p> <p>The present diploma aims to assure the promotion and protection of the rights of children and youth at risk, thus ensuring their well-being and full development.</p> <p>Article 18 Remit of the Extended Commission 1. (...) 2. The remit of the Extended Commission is: a) (...) b) To promote actions and collaborate with the competent authorities in order to detect facts and situations, within their jurisdiction, which affect the interests and rights of the child and young person, endanger their security, health, training or education or somehow compromise their development and social inclusion; c) To inform and collaborate with the competent authorities to identify possible shortcomings and the resources needed to promote the rights, well-being and full development of the child and young person; d) e) f) g) h) (...)</p> <p>Article 34</p>	<p>capabilities of the child and his/her growing autonomy.</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Purpose [of the Protection Measures] The measures to promote the rights and protect children and youth at risk, from now on called protection and promotion measures, aim to:</p> <ul style="list-style-type: none"> a) (...) b) Promote the conditions necessary to protect and promote their safety, health, training, education, well-being and full-development; c) (...) <p><u>DECREE-LAW 11/2008</u> <u>Foster care system</u></p> <p>Article 2 Definition and objectives of foster care As foreseen in the article 46 from the annex to the Law 147/99 from September 1st, foster care consists in the bestowment of the care of the child or young person to an individual or family, empowered to do so, and is aimed at fostering the integration of the child or young person in a family environment and the provision of care appropriate to his/her needs and well-being, as well as the education necessary to her full development.</p> <p>Article 6 Measure reassessment The reassessment of the measure, foreseen in article 62 of the annex to the Law 147/99 from September 1st, presupposes the evaluation of the current condition of the child or young person and of the measure's results. For the purpose of the previously mentioned assessment, the technical team should consider:</p> <ul style="list-style-type: none"> 1. The satisfaction of basic hygiene, health, affection and comfort conditions of the child or young person; 2. His/her emotional stability; 	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>3. The fulfillment of an educational plan, career guidance, professional training and leisure occupation, in respect for the child or young person's individuality, initiative and interests;</p> <p>4. The fulfillment of the health scheme and psycho-pedagogical guidance;</p> <p>5. The views of the child or young person, of his/her legal representative or guardian, of the individual or of the family to whom his/her guard has been attributed to according to foster care;</p> <p>6. The social and community integration of the child and natural family;</p> <p>7. To concrete signs of evolving capacities of the natural family to assure the integration and care of the child or young person, in a way that guarantees development according to the evolving capacities of the child.</p> <p>Article 21 Duties of the foster families</p> <ol style="list-style-type: none"> 1. The obligations of the foster families are: 2. Attending, on a priority basis, to the best interest and rights of the child or young person; 3. Guiding and educating the child or young person with diligence and affection, contributing to his/her full development. <p><u>DECREE-LAW 3/2008</u> <u>Specialized Supports for Inclusive Education</u></p> <p>Article 1 Object and scope</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>1. ...</p> <p>2. Special education targets the social and educational inclusion, access and educational success, autonomy, emotional stability, as well as the promotion of equal opportunities, preparing for the continuation of studies, for professional life and for transition from school to employment for children and youth with special educational needs, in the above mentioned conditions.</p> <p><u>LAW 38/2004</u> <u>General basis of the regime of prevention, habilitation and rehabilitation of the person with disabilities (Disability Act)</u></p> <p>Article 10 Global principle The person with disabilities is entitled to the means and services necessary to her development throughout the life-course.</p> <p>Article 11 Quality principle The person with disabilities is entitled to quality in the means and services of prevention, habilitation and rehabilitation, considering technical evolution and her personal and social needs. (...)</p> <p>Article 25 Habilitation and rehabilitation Habilitation and rehabilitation comprise the measures, namely in the domain of employment, work and training, consumption, social security, health, housing and urban development, transportation, education and teaching, culture and science, fiscal system, sports and leisure, which aim to promote learning and skill development, autonomy and quality of life of persons with disabilities. (...)</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
Right of the child to be heard/right to participate	
<p><u>CIVIL CODE</u> Article 1878</p> <p>...</p> <p>3. ...</p> <p>4. Children must obey their parents; however, these should take into account the opinion of the child in all important family matters, in accordance with their child's maturity, and acknowledge them the autonomy to organise their own lives.</p> <p><u>LAW 147/99</u> <u>Protection of children and youth at risk</u></p> <p>Article 4 Guiding principles of the intervention The intervention designed to promote and protect the rights of the child or young person at risk must obey the following principles: a), b), c), d), e), f), g) ...</p> <p>h) Obligation to inform – the child or young person, the parents, the legal representative or guardian are entitled to be informed of the rights that assist them, of the reasons that led to the intervention and how the intervention is going to take place;</p> <p>i) Mandatory hearing and participation – the children or young person, separately or in the company of his/her parents or person of his/her choice, as well as the parents, legal representative or guardian are entitled to be heard and to take part in the actions and definition of the measures of protection and promotion.</p>	<p>Incomplete implementation</p> <p>The right of the child to be heard in all decisions affecting him/her is clearly stated in most legal statutes. However, this right is not always respected, under different pretences (e.g. risk that hearing the child in parental guardianship or protection procedures might re-traumatise the child; risk of the child being manipulated by adults).</p> <p>Moreover, this principle is completely absent from Decree-Law 3/2008²³⁷ which establishes the Specialised Supports for Inclusive Education. In fact, when considering who should be consulted when establishing the child's individual educational programme, article 10 mentions it should be developed "together and on a mandatory basis" by a variety of stakeholders (i.e. teachers, legal representative, other professionals), but completely omits the need to</p>

²³⁷ Decree-Law 3/2008 'Specialized Supports for Inclusive Education (Apoios especializados a prestar na educação pré -escolar e nos ensinos básico e secundário)', Official Gazette of 7 January 2008, available at: http://legislacao.min-edu.pt/np4/np3content/?newsId=1530&fileName=decreto_lei_3_2008.pdf.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>j)...</p> <p>Article 9 Consent The intervention of the Children and Youth Protection Commissions depend on the express consent of his/her parents, legal representative or guardian.</p> <hr/> <p>Article 10 Non-opposition on the part of the child or young person</p> <ol style="list-style-type: none"> 1. The intervention of the entities mentioned in articles 7 and 8 depends on the non-opposition by the child or young person aged 12 or more. 2. The opposition of the child aged 12 or less is considered relevant, in accordance to his/her ability to understand the meaning of the intervention. <hr/> <p>Article 84 Hearing of the child or young person</p> <ol style="list-style-type: none"> 1. Children or youth aged 12 or over, or aged younger whenever their ability to understand advises it, are heard by the protection commission or by the judge on the situations that originated the intervention and regarding the application, reassessment or termination of specific promotion and protection measures. 2. The child or young person is entitled to be heard individually or accompanied by his/her parents, legal representative, an appointed attorney or one of his/her choice or any person of his/her trust. 	<p>consult the child, in clear violation of the participation principle, as established both in the CRC and CRPD.</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Article 86 Information and assistance</p> <ol style="list-style-type: none"> 1. The proceedings must take place in a form that is understandable to the child or young person, considering his/her age and degree of intellectual and psychological development. 2. ... <p>Article 91 Emergency procedures in the absence of consent</p> <ol style="list-style-type: none"> 1. In situations of current or eminent risk to the life or well-being of the child or young person where there is an opposition on the part of the holders of parental responsibility or legal guardians, any of the entities mentioned in article 7 or the protection commissions will take adequate measures to ensure their immediate protection and request court or police intervention. <p><u>LAW 112/2009</u> <u>Prevention of domestic violence</u></p> <p>Article 9 Consent principle</p> <ol style="list-style-type: none"> 1. Without prejudice of the established by the Penal Code, any intervention of support to the victim should be performed after he/she gives his/her free and informed consent. 2. Specific support intervention to youth victim of domestic violence, aged 16 or more, should 	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>depend solely on his/her consent, according to the present law.</p> <p>3. Specific support intervention to children or youth victims of domestic violence aged 12 to 16 depends on the consent of their legal representative, or in the absence of this representative or whenever he/she is the agent of the crime, of the legally appointed representing entity and of the children or youth, if aged 12 or more.</p> <p>4. The consent of children or youth aged 12 to 16 is enough to legitimize specific support intervention, according to the present law, whenever the circumstances prevent the timely reception of the informed consent declaration signed by the legal representative, or in the absence of this representative or whenever he/she is the agent of the crime, of the legally appointed representing entity.</p> <p>5. The child or youth victim of domestic violence aged less than 12 has the right to express his/her views about the specific support measures, according to his/her age and degree of maturity.</p> <p>6. The victim can, in any given moment, freely reverse his/her consent.</p> <p>7. The provisions of the present article shall be without prejudice to the emergency procedures foreseen in article 91 and 92 of the Law of Protection of Endangered Children and Youth, approved by the Law 147/99 from September 1st.</p> <p>Article 10 Protection of the victim deemed legally unable of consent</p> <p>1. Outside the scope of legal proceedings, any support intervention directed at a victim deemed</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>legally unable of consent could only be performed to his/her direct benefit.</p> <p>2. ...</p> <p>3. The victim should always, as far as possible, take part in the authorization procedures.</p> <p>Law 166/99 <u>EDUCATIONAL GUARDIANSHIP LAW</u></p> <p>Article 45 Rights of the minor</p> <p>2. In any stage of the process the minor is especially entitled to:</p> <p>a) Be heard, on his/her own initiative or whenever he/she requires, by the judicial authorities;</p> <p>b), c), d), e), f), g) ...</p> <p>h) Being informed of the rights that assist his/her;</p> <p>i) ...</p> <p>4. The rights mentioned in points f) and h) of number 2, can be exercised, on behalf of the minor, by the parents, legal representative, person with their legal custody or defender.</p> <p><u>DECREE-LAW 11/2008</u> <u>Foster care system</u></p> <p>Article 24 Rights and duties of the child or young person</p> <p>1. The child or young person aged 12 or more or aged younger, but with a degree of maturity which allows him/her to understand the sense of the intervention, is entitled</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>to:</p> <ul style="list-style-type: none"> a) Be heard by the framing institution within the process of selecting a foster family; b) Be heard by the framing institution within the process of development and implementation of the intervention plan; <p>2. Throughout the measure implementation, the child or young person is entitled to respect for his/her intimacy and private life and, according to his/her degree of maturity, the right to be heard and take part, collaborating in the execution of the intervention plan.</p> <p><u>DECREE-LAW 12/2008</u> <u>Protection in natural environment</u> Article 22 Rights of the child or young person</p> <p>1. The child or young person subjected to a measure of support for the parents or other family members or reliable person is entitled to:</p> <ul style="list-style-type: none"> a) Be heard and take part in all actions related to the measure fulfillment, in accordance to his/her ability to understand the sense of the intervention; b) Be heard by the protection commission or by the court that applied the measure, whenever he/she requires and his/her degree of maturity allows it, with the possibility of being accompanied by his/her parents, legal representative or guardian or another person of his/her trust; c) Receiving protection and education which guarantee the full development of his/her personality and potential, having assured access to healthcare, school, vocational and 	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>professional training and the participation in cultural, sports and leisure activities, according to his/her motivations and interests.</p> <p>d) e) ...</p> <p><u>LAW 38/2004</u> <u>General basis of the regime of prevention, habilitation and rehabilitation of the person with disabilities (Disability Act)</u></p> <p>Article 9 Participation principle The person with disabilities has the right and duty to participate in the planning, development and monitoring of the policies of prevention, habilitation, rehabilitation and participation of persons with disabilities.</p> <p>Article 40 Participation Participation is construed of the specific measures necessary to assure the participation of persons with disabilities, or their representative organisations, namely in the drafting of disability laws, the execution and evaluation of the policies mentioned in this diploma, in order to guarantee their involvement in every life situation and of society in general.</p> <p><u>DECREE-LAW 3/2008</u> <u>Specialized Supports for Inclusive Education</u></p> <p>Article 10 Construction of the individual educational program 1. In pre-school education and in the first cycle of education, the individual educational program is constructed, together and on a mandatory basis, by the responsible teacher, the special education teacher, the legal representative and, whenever necessary, by the services included in point a) from number 1 and 2 of article 6, being submitted to the approval of the pedagogic</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>council and the executive council.</p> <p>2. In the second and third cycles and in secondary education and in all organisational arrangements with more than one teacher, the individual educational program is prepared by the class-director, the special education teacher, the legal representative and, whenever necessary, by the services included in point a) from number 1 and 2 of article 6, being submitted to the approval of the pedagogic council and the executive council.</p> <p>3. In the case of deaf students with bilingual teaching, the construction of the program must also include a deaf teacher of Portuguese sign language.</p> <p>(Note: The right of the child to be heard is completely absent from this diploma)</p>	
Right to be free from violence	
<p><u>PORTUGUESE CONSTITUTION</u> Article 69 Childhood</p> <p>2. Children are entitled to protection from the society and the State, in order to achieve their full development, especially against all forms of abandonment, discrimination and oppression and against the abuse of authority within the family and other institutions.</p> <p><u>PENAL CODE</u> Article 152 Domestic Violence</p> <p>1. Whoever, on a repeated or non-repeated basis, inflicts physical or psychological damages, including corporal punishment, freedom deprivation and sexual offenses to:</p> <p>a) b), c) ... d) particularly helpless persons, due to their age, disability, sickness, pregnancy or economic dependency with whom they live;</p> <p>is punished with a prison sentence of one to five years, if not with a heavier penalty, resulting from other legal provisions.</p>	<p>Incomplete implementation</p> <p>Portugal clearly acknowledges the right of the child to be free from violence, through a number of legal provisions. Yet, important shortcomings in the implementation of the existing legislation have been reported. Moreover, the existing legal framework does not reflect the additional vulnerability faced by girls and children with disabilities.</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>2. In the cases foreseen in the previous number, if the victim is a minor, the offender is punished with a prison sentence of two to eight years.</p> <p>3. If from the facts foreseen in number 1 results:</p> <p>a) A serious offence to the physical integrity of the victim, the offender is punished with a prison sentence of two to eight years;</p> <p>b) Death, the offender is punished with a prison sentence of three to ten years.</p> <p>4. ...</p> <p>5. ...</p> <p>6. Whoever is condemned within the legal framework of this article can, in due consideration of the seriousness of the offense and its connection to the offender, be inhibited from exercising parental rights, custody or guardianship for a period of one to ten years.</p> <p>Article 152-A Mistreatment</p> <p>1. Whoever, having entrusted to his/her care or custody the responsibility for the guidance, education or work of a minor or particularly defenceless individual, in reason of his/her age, disability, sickness or pregnancy and;</p> <p>a) Inflicts upon him/her, on a repeated or non-repeated basis, physical or psychological damages, including corporal punishment, freedom deprivation and sexual offenses, or cruel treatment;</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>b) Employs him/her in dangerous, inhuman or forbidden activities; or</p> <p>c) Overloads him/her with excessive work;</p> <p>is punished with a prison sentence of one to five years, if not with a heavier penalty, resulting from other legal provisions.</p> <p>2. If from the facts foreseen in the previous number results:</p> <p>a) A serious offence to the physical integrity of the victim, the offender is punished with a prison sentence of two to eight years;</p> <p>b) Death, the offender is punished with a prison sentence of three to ten years.</p> <p><u>LAW 112/2009</u> <u>PREVENTION OF DOMESTIC VIOLENCE</u></p> <p>Article 5 Equality principle Any victim, regardless of his/her descent, nationality, social condition, sex, ethnic group, language, religion, disability, political or ideological views, sexual orientation, culture and educational level will benefit from the fundamental rights inherent to the dignity of the human person, being assured an equal chance to live without violence and preserve his/her mental and psychic health.</p> <p>Article 9</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Consent principle</p> <p>8. Without prejudice of the established by the Penal Code, any intervention of support to the victim should be performed after he/she gives his/her free and informed consent.</p> <p>9. Specific support intervention to youth victim of domestic violence, aged 16 or more, should depend solely on his/her consent, according to the present law.</p> <p>10. Specific support intervention to children or youth victims of domestic violence aged 12 to 16 depends on the consent of their legal representative, or in the absence of this representative or whenever he/she is the agent of the crime, of the legally appointed representing entity and of the children or youth, if aged 12 or more.</p> <p>11. The consent of children or youth aged 12 to 16 is enough to legitimize specific support intervention, according to the present law, whenever the circumstances prevent the timely reception of the informed consent declaration signed by the legal representative, or in the absence of this representative or whenever he/she is the agent of the crime, of the legally appointed representing entity.</p> <p>12. The child or youth victim of domestic violence aged less than 12 has the right to express his/her views about the specific support measures, according to his/her age and degree of maturity.</p> <p>13. The victim can, in any given moment, freely reverse his/her consent.</p> <p>14. ...</p> <p>Article 15</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Right to information</p> <p>1. The victim should have assured, since the first contact with the responsible authorities, access to the following information:</p> <ul style="list-style-type: none"> a) The services and organizations to which he/she can turn for support; b) What kind of support he/she can receive; c) Where and how to file a complaint; d) What are the procedures that follow a complaint and his/her role in that process; e) How and on what terms he/she can receive protection f) In what measure and under which conditions he/she might have access to: <ul style="list-style-type: none"> i) Legal counselling; or ii) Legal support; or iii) Other forms of counselling g) How he/she might be entitled to compensation; h) What are the defence mechanisms available, if he/she lives in another State. <p>2. Whenever the victim requests it before the competent authorities and without prejudice of the secrecy of judicial inquiries, he/she should have access to information about:</p> <ul style="list-style-type: none"> a) The procedures that followed the complaint; b) Any relevant information which allows him/her to be kept informed of the process, after the 	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>decision to formally charge or indict has been made, excluding exceptional circumstances, where that information might jeopardize the smooth running of the process.</p> <p>Article 16</p> <p>Right to be heard and to present evidence</p> <ol style="list-style-type: none"> 1. The victim which constitutes himself/herself as an assistant will cooperate with the Public Persecutor's Office in accordance with the status of the assistant in criminal proceedings. 2. Authorities should inquiry the victim only as strictly necessary for the purpose of the criminal proceedings. <p><u>LAW 166/99</u> <u>EDUCATIONAL GUARDIANSHIP LAW</u></p> <p>Article 188</p> <p>Respect for the physical and psychic health and dignity of the minor</p> <ol style="list-style-type: none"> 1. The application of measures that translate in cruel, inhuman or degrading treatment of the minor or which may compromise the minor's physical or psychic health are forbidden. 2. The application of the disciplinary measure cannot, in any case, directly or indirectly, translate itself in corporal punishment, deprivation of food or visitation rights, not forbidden by the court, parents or legal representative. 3. No disciplinary sanction can be performed in violation of the minor's right to dignity. <p><u>LAW 113/2009</u> <u>PROTECTION OF MINORS AGAINST SEXUAL ABUSE AND EXPLOITATION</u></p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Article 2 Non-discrimination principle The implementation of the following Convention by its Parties, in particular of the measures designed to protect the rights of the victims, should be assured without prejudice of sex, race, colour, language, religion, political or other views, national or social origin, belonging to a national minority, wealth, birth or any other situation. (<u>No reference to disability</u>)</p> <p><u>LAW 147/99</u> <u>PROTECTION OF CHILDREN AND YOUTH AT RISK</u></p> <p>Article 1 Object The present diploma aims to assure the promotion and protection of the rights of children and youth at risk, thus ensuring their well-being and full development.</p> <p>Article 3 Legitimacy of the intervention 1. Any intervention to assure the promotion and protection of the rights of children and youth at risk has place when the parents, the legal representative or other person to whom the child is, de facto, entrusted to, endanger his/her security, health, training, education or development, or when from that danger results from the action or omission by third parties or by the child or young person himself/herself, namely under the following circumstances:</p> <p>a) They are abandoned or left to their own devices;</p> <p>b) They are subject to physical or psychic mistreatment or sexual abuse;</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>c) They don't receive care and affection appropriate to their age and personal situation;</p> <p>d) They are forced to activities or work that are excessive or inadequate to their age, dignity and personal situation and prejudicial to their development;</p> <p>e) They are subject, directly or indirectly, to behaviour that seriously affects their security and emotional balance;</p> <p>f) They assume behaviours, activities or consumptions that seriously compromise their health, security, training, education and development without an adequate opposition of the parents, legal representative or other person to whom the child is, de facto, entrusted to, in order to remove the child or young person from that situation.</p> <p>Article 4 Guiding principles of intervention The intervention designed to promote and protect the rights of the child or young person at risk must obey the following principles:</p> <p>a) Best interest of the child or young person – interventions shall attend first and foremost to the interests and rights of the child and the youth, without failing to consider other legitimate interests, present among the plurality of interests evident in each specific case;</p> <p>b) Privacy – the promotion of rights and protection of the child and young person must respect their intimacy and safeguard their privacy;</p> <p>c) Early intervention – intervention must take place as soon as the situation of risk is</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>reported;</p> <p>d) Minimal intervention - the intervention should be implemented only by the entities and institutions strictly necessary to promote the rights and protect the child and young person;</p> <p>e) Proportionality and actuality – the intervention must be necessary and adequate to the risk situation faced by the child and young person on the moment the decision is taken and should only interfere with his/her life and family as much as strictly necessary.</p> <p>f) Parental responsibility – the intervention must promote parental responsibility towards the child and young person;</p> <p>g) Prevalence of the family – when protecting and promoting the child or young person's rights, prevalence should be given to measures which promote the integration in the family or adoption;</p> <p>h) Obligation to inform – the child and young person, the parents, legal representative or the person with their de facto custody, are entitled to be informed of their rights, of the reasons that led to the intervention and of the specific intervention procedures;</p> <p>i) Mandatory hearing and participation – the child and young person, separately or accompanied of his/her parents or person of his/her choice, as well as the parents, legal representative or person to which the child or young person is entrusted to, are entitled to be heard and to participate in the proceedings and decision-making regarding the measures aimed at promoting and protecting their rights;</p> <p>j) Subsidiarity – the intervention should be put in place successively by the competent entities in matters of infancy and youth, by the children and youth protection commissions</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>or, as a last resort, by the courts.</p> <p>Article 7 Intervention of the competent organizations in matters of children and youth The intervention of the competent organizations in matters of children and youth takes place on a consensual basis with the parents, legal representatives or the person with their de facto custody, as states by the present diploma.</p> <p>Article 8 Intervention of the children and youth protection commissions The intervention of the children and youth protection commissions has place whenever the previously mentioned organizations cannot act in an adequate and sufficient way, in order to remove them from the situation of danger.</p> <p>Article 9 Consent The intervention of the children and youth protection commissions depends on the express consent of the parents, legal representatives or of the person with their de facto custody.</p> <p>Article 10 Non-opposition on the part of the child or young person 3. The intervention of the organisations mentioned in articles 7 and 8 depends on the non-opposition by the child or young person aged 12 or over.</p> <p>4. The opposition of the child younger than 12 is considered relevant, according to his/her ability to understand the meaning of the intervention.</p> <p>Article 11</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Judicial intervention</p> <p>A judicial intervention takes place when:</p> <ol style="list-style-type: none"> There is no children and youth protection commission within the jurisdiction of the municipality or local parish or when the commission isn't entitled, according to the terms of the law, to put in place the adequate promotion and protection measures; It isn't possible to obtain consent, when this consent is removed or when the promotion and protection agreement is repeatedly breached; The child or young person opposes the intervention, in accordance with article 10; The protection commission doesn't obtain the resources necessary to put in place an adequate measure, namely due to the opposition of a service or organisation; Six months after the initial referral, the protection commission hasn't made any decision; The Public Prosecutor's Office deems the decision of the protection commission illegal or unsuited to the promote and protect the rights of the child or young person; The court decides to append the process of the protection commission to the judicial process, in accordance to number 2 of article 81. <p>Section II Children and Youth Protection Commissions</p> <p>Subsection I General provisions</p> <p>Article 12 Nature</p> <ol style="list-style-type: none"> Children and Youth Protection Commissions, hereby designated as protection commissions, are official non-judicial authorities with functional autonomy which aim to promote the rights of children and youth and to prevent or cease any situations that might endanger their security, health, training, education and full development. Protection commissions exert their attributions in accordance to the law and decide with 	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>impartiality and independence.</p> <p>3. Protection commissions are installed by joint dispatch from the Ministry of Justice and the Ministry of Work and Solidarity.</p> <p>Chapter III Measures of rights promotion and protection Section I Of the measures</p> <p>Article 34 Aim</p> <p>1. Measures to promote and protect the rights of children and youth at risk, hereby designated as promotion and protection measures, aim to:</p> <p>a) Avert the danger to which they are exposed;</p> <p>b) Provide them the necessary conditions to protect and promote their safety, health, training, education, well-being and full development;</p> <p>c) Guarantee the physical and psychological recovery of children and youth exposed to any form of exploitation or abuse.</p> <p>Article 35 Measures</p> <p>1. The measures of promotion and protection are the following:</p> <p>a) Support to the parents;</p> <p>b) Support to other family members;</p> <p>c) Entrusting to a reliable individual;</p> <p>d) Support to life autonomy;</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>e) Foster care;</p> <p>f) Institutional care;</p> <p>g) Entrustment to a reliable individual or institution with a view to future adoption.</p> <p>2. (...)</p> <p>Section V Protection and promotion agreement and measure implementation</p> <p>Article 55 Protection and promotion agreement</p> <p>1. The protection and promotion agreement must contain:</p> <p>a) The identification of the member of the protection commission or professional responsible for the case;</p> <p>b) The deadline of the agreement and when it should be revised;</p> <p>c) The necessary consent and non-opposition forms;</p> <p>2. The agreement cannot contain clauses that are abusive or which introduce limitations to family functioning, other than those strictly necessary to avert the situation of danger.</p> <p>Chapter IV Communications</p> <p>Article 64 Communication of the risk situations by police or judicial authorities</p> <p>1. Police and judicial authorities will communicate to the protection commissions any situations of</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>children and youth at risk they become aware of during the exercise of their duties.</p> <p>2. Without prejudice of the previous provision, judicial authorities must adopt all necessary civic guardianship procedures.</p> <p>Article 65 Communication of the risk situations by competent organizations in matters of children and youth</p> <p>1. Organizations competent in matters of children and youth will communicate to the protection commissions any situations of children and youth at risk they become aware of during the exercise of their duties, whenever they are not able to assure, by their own means and on a timely manner, sufficient protection considering the specific circumstances of the case.</p> <p>2. Whenever there isn't a protection commission within their jurisdiction or when it doesn't dispose of the competence necessary to apply the measure, namely when the parents express their will with regards to consent and non-opposition to future adoption, the case must be directly referred to the Public Prosecutor's Office.</p> <p>3. Institutional care facilities must communicate to the Public Prosecutor's Office any situations of children and youth within their care without the need for previous judicial or protection commissions' decisions.</p> <p>Article 66 Communication of the risk situations by any person</p> <p>1. Any person who becomes aware of the situations foreseen in article 3 can communicate them to the competent entities in matters of children and youth, to the police authorities, protection commissions or judicial authorities.</p> <p>2. This communication is mandatory for any person who becomes aware of situations which might</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>compromise the life, physical or psychological integrity or freedom of the child or young person.</p> <p>3. ...</p> <p>Article 84 Hearing of the child or young person</p> <p>3. Children or youth aged 12 or over, or aged younger whenever their ability to understand advises it, are heard by the protection commission or by the judge on the situations that originated the intervention and regarding the application, reassessment or termination of specific promotion and protection measures.</p> <p>4. The child or young person is entitled to be heard individually or accompanied by his/her parents, legal representative, an appointed attorney or one of his/her choice or any person of his/her trust.</p> <p>Article 86 Information and assistance</p> <p>3. The proceedings must take place in a form that is understandable to the child or young person, considering his/her age and degree of intellectual and psychological development.</p> <p>4. When hearing the child or young person, as well as in other procedures or due diligences, the protection commission or the judge can determine the intervention or assistance of doctors, psychologists or other professionals or a person of the child or young person's choice, or determine the use of the technical media they find more appropriate.</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Chapter VII Emergency procedures</p> <p>Article 91 Emergency procedures in the absence of consent</p> <p>2. In situations of current or eminent risk to the life or well-being of the child or young person where there is an opposition on the part of the holders of parental responsibility or legal guardians, any of the entities mentioned in article 7 or the protection commissions will take adequate measures to ensure their immediate protection and request court or police intervention.</p> <p>3. (...)</p>	
Right to family life	
<p><u>PORTUGUESE CONSTITUTION</u></p> <p>Article 36 Family, marriage and filiation</p> <ol style="list-style-type: none"> 1. ... 2. ... 3. ... 4. Children born out of the wedlock cannot, for that reason, be subject to any discrimination and the law or official departments cannot use discriminatory designations relative to filiation. 5. Parents have the right and the duty of upbringing and maintaining their children. 6. Children cannot be separated from their parents, except if parents do not fulfill 	<p>Effective implementation</p> <p>The standard is effectively translated at national level, both in the general legal framework as well as in disability-specific legislation.</p> <p>Implementation at ground level, however, is often problematic:</p> <ul style="list-style-type: none"> • The number of children considered endangered, who are removed from the family

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>their fundamental duties towards their children in which case a court decision is required.</p> <p>7. Adoption is regulated and protected under the law, which shall ensure expeditious ways to conduct adoption processes.</p> <p><u>CIVIL CODE</u> Article 1887-A Conviviality with siblings and ascendants Parents cannot unreasonably deprive the child of contact with siblings and ascendants. Article 1776-A Agreement on the exercise of parental responsibilities</p> <p>3. When an agreement is submitted on the exercise of parental responsibilities in relation to children who are minor, the process is sent to the Prosecutor, so that he/she assesses the agreement within 30 days.</p> <p>4. If the Prosecutor considers that the agreement does not duly protect the best interest of the child, applicants may amend the agreement in compliance or submit a new agreement, which should be re-assessed by the Prosecutor.</p> <p>Article 1901 Parental responsibilities within marriage</p> <p>4. Within marriage, parental responsibilities belong to both parents.</p> <p>5. Parents shall exercise parental responsibilities by mutual agreement. If agreement fails, on matters of particular importance, any of them may apply to the court which will attempt conciliation.</p> <p>6. If conciliation is not achieved, the court will hear the child before issuing a decision, unless when circumstances strongly advise the opposite.</p> <p>Article 1906 Parental responsibilities in case of divorce, judicial separation of persons and properties, declaration of nullity of the marriage</p>	<p>and institutionalised, remains very high;</p> <ul style="list-style-type: none"> The creation of 'reference schools' for deaf and blind children requires these children to travel far every day to attend school (especially in rural areas) which may violate their right to maintain emotional ties with siblings and family members.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>5. The court shall decide, in the best interests of the child, the place of residence and the visiting rights, taking into account all relevant circumstances, notably the eventual agreement of the parents and the availability shown by each of them to promote the relationship of the child with the other parent.</p> <p>6. ...</p> <p>7. The court shall always decide in the best interests of the child, including to maintain a relationship of great proximity with both parents, promote and accept agreements and to favour opportunities of contact with both parents and the sharing of responsibilities among them.</p> <p>Article 1919 Exercise of parental responsibilities while the special measures last</p> <p>4. If the minor is entrusted to a third person or to an institution of education or social assistance, a visiting regime is established, unless it is against the best interest of the child.</p> <p>Article 1978 Entrustment of the child aiming at future adoption</p> <p>3. The court may entrust the child to a couple, a single person or an institution aiming at future adoption when the parents-child emotional ties are inexistent or are seriously compromised due to one of the following situations:</p> <ul style="list-style-type: none"> f) Parents are dead or are unknown; g) Consent has been given for adoption of the child; h) Parents have abandoned the child; i) If parents, by action or omission, even if by incapacity due to mental illness, have put at serious risk the security, health, formation and education or the development of the child; j) If the parents of the minor entrusted to a person or to an institution show no interest for the child, and compromise seriously the quality and continuity of the relationship, for at least, the 3 months before the request of entrustment. 	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>4. In the assessment of the situations described above, the court must attend first and foremost to the rights and best interest of the child.</p> <p><u>LAW 147/99</u> <u>Protection of Children and Youth at Risk</u></p> <p>Article 4 Guiding principles of the intervention Interventions aimed at the promotion and protection of children and youth at risk are guided by the following principles:</p> <ul style="list-style-type: none"> c) The best interest of the child and the youth – interventions shall attend first and foremost to the interests and rights of the child and the youth, without failing to consider other legitimate interests, present among the plurality of interests evident in each specific case; d) c) d) e) f) g) h) ... j) Compulsory audition and participation – the child and the youth, separately or accompanied by the parents or by any person the child or youth chooses, as well as the parents, legal advocates, or person to which the child is de facto entrusted to, have the right to be heard and participate in the proceedings and decision-making regarding the measures aimed at promoting and protecting their rights. <p><u>LAW 38/2004</u> <u>Defines the general basis of the regime of prevention, habilitation and rehabilitation of the person with disabilities (Disability Act)</u></p> <p>Article 22 Support to the family It is the duty of the State to implement measures that provide supports to families of persons with disabilities to enable their full participation.</p> <p>Article 27 Family and work balance</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>It is the duty of the State to implement specific measures to ensure the right to family and work balance to persons with disabilities as well as to family members who are caring for persons with disabilities.</p> <p><u>Decree-Law 281/2009</u> <u>Creates the National System of Early Intervention (SNIPI)</u></p> <p>Article 2 Scope SNIPI is directed to children aged 0-6 years old with functional and structural impairments that limit their ability to participate in activities typical for their age and social context, or presenting a serious risk of developmental delay, as well as to their families.</p> <p><u>Decree-Law 3/2008</u> <u>Specialized Supports for Inclusive Education</u></p> <p>Article 3 Participation of parents and guardians</p> <ol style="list-style-type: none"> 1. Parents and guardians have the right and the duty to actively participate, exercising parental authority under the terms of the law in all matters related to the special education provided to their child and, for that purpose, the right to access all the information available in the student's file. 	
Right to assistance	
<p>CONSTITUTION Article 71 Citizens with disabilities</p> <ol style="list-style-type: none"> 1. ... 2. The State shall develop a national policy of prevention and treatment, rehabilitation and integration of citizens with disabilities and support their 	<p>Effective implementation</p> <p>The standard is effectively translated at national level in the Constitution and in disability-specific legislation.</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>families, raise awareness in society about the duties of respect and solidarity with them and bear the costs of an effective realization of their rights, without prejudice to the rights and duties of parents and guardians.</p> <p>3. ...</p> <p><u>LAW 38/2004</u> <u>Defines the general basis of the regime of prevention, habilitation and rehabilitation of the person with disabilities (Disability Act)</u></p> <p>Article 3 Aims This law aims at the implementation of an holistic, integrated and transversal policy of prevention, habilitation, rehabilitation and participation of persons with disabilities, notably through:</p> <ol style="list-style-type: none"> a) Promoting equality of opportunities so that persons with disabilities are ensured the means that enable their full participation; b) Promoting opportunities of education, training, and work throughout life; c) Promoting access to support services; d) Promoting a society for all through the elimination of barriers and the implementation of measures aiming at the full participation of persons with disabilities. <p>Article 25 Habilitation and Rehabilitation Habilitation and rehabilitation are translated in measures notably in the domains of employment, work and training, consumer protection, social security, health, housing and urbanism, transportation, education, culture and science, fiscal system, sports and leisure, which aim at the learning process and skills development, autonomy and quality of life of persons with disabilities.</p> <p>Article 26 Right to employment, work and training 1. It is the duty of the State to implement specific measures to ensure the right to access</p>	<p>Practical implementation, however, is fraught with gaps mainly due to:</p> <ul style="list-style-type: none"> • Stringent conditions of eligibility, • Low levels of financial benefits provided, • Austerity measures in place that have had a negative impact on the provision of services and resources.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>employment, work, vocational training, vocational habilitation and rehabilitation and the adjustment of working conditions of persons with disabilities.</p> <p>2. ...</p> <p>Article 30 Right to social security It is the duty of the State to implement specific measures to ensure the social protection of persons with disabilities, notably through social benefits and in-kind contributions that aim at promoting personal autonomy and an adequate social and vocational integration.</p> <p>Article 31 Right to health It is the duty of the State to implement specific measures to ensure the provision of care in order to promote and monitor health, early stimulation, treatment, and the clinical and functional habilitation and rehabilitation of persons with disabilities as well as the supply, adaptation, maintenance or renewal of appropriate assistive devices.</p> <p>Article 32 Right to housing and urbanism It is the duty of the State to implement, through the elaboration of a national accessibility plan, that takes into account the principles of universal design:</p> <ol style="list-style-type: none"> a. specific measures to ensure the right to housing of persons with disabilities, in coordination with the municipalities; b. specific measures to ensure access of persons with disabilities to in-doors and out-doors spaces, through the elimination of architectural barriers in new and renovated buildings. <p>Article 34 Right to education It is the duty of the State to implement specific measures to ensure the right of persons with disabilities to education and inclusive education, notably through the provision of resources and</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>tools adequate to learning and communication.</p> <p>Article 38 Right to sports and leisure It is the duty of the State to implement specific measures to ensure the right of persons with disabilities to the practice of sports and the fruition of leisure activities, notably through the creation of appropriate infrastructures and the provision of social support.</p> <p><u>Decree-Law 281/2009</u> <u>Creates the National System of Early Intervention (SNIPI)</u></p> <p>Article 1 Aims 1. This decree-law creates the National System of Early Intervention (SNIPI), which consists of a set of coordinated entities, of institutional and familial nature, aiming at ensuring the development of children with bodily functions and structures that limit their personal and social growth and their participation in activities considered typical for their age, as well as children with severe risk of developmental delay.</p> <p><u>Decree-Law 3/2008</u> <u>Specialized Supports for Inclusive Education</u></p> <p>Article 1 Aims and scope 1. This decree-law defines the specialized supports that shall be provided in pre-school, elementary and secondary school, in the public, private and cooperative sectors, in order to create the necessary conditions to adjust the educational process to students with significant activity and participation limitations in one or several domains of life in consequence of permanent functional and structural alterations, which result in continuing difficulties in communication, learning skills, mobility, autonomy and interpersonal relationships as well as social participation.</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>2. Inclusive education aims to promote social and educational inclusion, access to education and educational success, autonomy, emotional stability, as well as equal opportunities and the preparation for post-secondary studies or for an adequate transition from school to the labour market for children and youth with special education needs, as described above.</p> <p><u>Decree-Law 133/97</u> <u>Family Benefits</u></p> <p>Article 4 Types of benefits 1 – Social protection for families is ensured through the provision of the following benefits: a) Child and youth benefit; b) Special education benefit; c) ...; d) Benefit for assistance by third person;</p> <p>Article 6 Child and youth benefit 1 – The child and youth benefit is a monthly benefit that aims at compensating family expenses incurred with the child's education and upbringing. 2 – The child benefit can be subjected to a supplement to compensate the costs incurred with a situation of disability, under the terms of next article.</p> <p>Article 7 Disability supplement to the child and youth benefit The disability supplement to the child and youth benefit aims to compensate the increase in expenses incurred by families as a result of a situation of a child with a physical, organic, sensorial or mental disability, which requires therapeutic or pedagogical support.</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Article 8 Special education benefit The special education benefit is a monthly benefit that aims to compensate for the costs that result directly from the implementation of special education measures to a child or youth with disabilities implying the attendance of a private for profit school or cooperative, or specific educational support provided by a for profit specialized entity.</p> <p>Article 10 Benefit for assistance by third person The benefit for assistance by third persons is a monthly benefit that aims to compensate the increase of family expenses due to a situation of dependence of a child who is also benefitting from the disability supplement to the child and youth benefit, or the monthly life disability benefit [for adults over 24 years old], and who require permanent assistance of a third person.</p> <p>Article 31 Amount of the child and youth benefit 1- The amount of the child and youth benefit is determined on a means-tested basis, taking into account the family income, the number of children entitled to the benefit, and their age. 2- ...</p> <p><u>Ordinance 511/2009</u> <u>Establishes the amounts of the child and youth with disabilities benefits</u></p> <p>Article 5 Disability and dependence benefits 1 — The monthly amounts of the benefits to be provided, in accordance with Decree-law 133-B/97 of 30 May, as amended by Decree-laws 341/99, of 25 August and 250/2001, of 21 September, and within the general regime of social security and the regime of social security of the public servants, are the following: a) Disability Supplement to the Child and Youth Benefit: € 59,48, for children up to 14</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>years old; € 86,62, for children 14 to 18 years old; € 115,96, for youth 18 -24 years old;</p> <p>b) ...</p> <p>c) Benefit for Assistance by Third Person: € 88,37.</p> <p><u>Decree-Law 290/2009</u> <u>Creates the employment and support to qualification of persons with disabilities programme</u></p> <p>Article 1 Aims 1 — This decree-law creates_the employment and support to qualification of persons with disabilities programme and defines the regime of technical and financial support of employment and support to the qualification of persons with disabilities policy, which comprises the following measures:</p> <p>a) Support to qualification;</p> <p>b) Supports to integration, maintenance and reintegration in the labour market;</p> <p>c) Supported employment;</p> <p>d) Merit Award;</p>	
Right to education (including inclusive education)	
<p><u>CONSTITUTION</u></p> <p>Article 73 Education, culture and science 1. Everyone is entitled to education and culture. ...</p> <p>Article 74 Education</p>	<p>Effective implementation</p> <p>Portuguese law acknowledges the right to education and inclusive education of children with disabilities; it is the duty of the State to provide human resources and means to ensure access to education.</p>

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>1. Everyone is entitled to education and to equal opportunities of access and educational success.</p> <p>2. When putting in place educational policies, it is the role of the State to:</p> <p>a) b) c) d) e) f)</p> <p>g) To promote and support the access of citizens with disabilities to education and to support special education, whenever necessary;</p> <p>h) To protect and value Portuguese sign language, as a cultural expression and an instrument of access to education and equal opportunities;</p> <p>...</p> <p><u>LAW 38/2004</u> <u>Defines the general basis of the regime of prevention, habilitation and rehabilitation of the person with disabilities (Disability Act)</u></p> <p>Article 34 Right to education It is the duty of the State to implement specific measures to ensure the right of persons with disabilities to education and inclusive education, notably through the provision of resources and tools adequate to learning and communication.</p> <p><u>Law 46/2006</u> <u>Anti-discrimination Law</u></p> <p>Article 4 Discriminatory practices Discriminatory practices against persons with disabilities are considered to be the actions or omissions, intentional or negligent, which violate the principle of equality, namely:</p> <p>a) b) c) d) e) f) g)</p> <p>h) Refusal or restraint of access to educational facilities, public or private, as well as any</p>	<p>The recently passed Law of Inclusive Education (Decree-Law 3/2008, amended by Law 21/2008 of 12th May), led to the closure of special education schools and to the placement of children with disabilities in mainstream regular education schools.</p> <p>According to the law in force, registration in special education institutions constitutes a last instance resource, to be activated only when the inclusion in a regular school is not possible, due to the severity of the child's needs or the lack of adequate support on the part of the regular school.</p> <p>Despite these advancements in inclusive education law, considerable problems in its implementation subsist, namely:</p> <ul style="list-style-type: none"> • Insufficiency of human resources, specialised services (including school transportation services) and material,

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>means of support/compensation in accordance with the specific needs of students with disabilities;</p> <p>i) Constitution of classes or adoption of other internal organization measures in public or private educational facilities, in accordance with the criteria of discrimination on the grounds of disability, except if these criteria are justified by the goals mentioned in number 2 of article 2.</p> <p>...</p> <p><u>LAW 49/2005</u> Basic Law of Education</p> <p>Article 2 General principles 1— Every Portuguese is entitled to education and culture, according to the terms of the Constitution.</p> <p>...</p> <p>2— It is a special responsibility of the State to promote the democratization of education, guaranteeing access to fair and effective equality of opportunities in access and school success.</p> <p>Article 5 Pre-school education 1— Pre-school education aims to:</p> <p>....</p> <p>h) Screen maladaptation, disabilities or precarious situations and promote the best guidance and counselling of the child.</p> <p>Article 7 Goals</p>	<p>necessary in order to promote the effective integration of children with disabilities in regular schools;</p> <ul style="list-style-type: none"> • Concentration of resources and specialised supports in the reference school, creating new forms of exclusion to some children with disabilities; • Problems resulting from the use of the ICF as a reference for evaluating the students' needs, leading to an inadequate allocation of supports and to the reduction of the number of students who benefit from these supports.

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Basic education aims to: a) b) c) d) f) g) h) i) j) Provide children with special education needs, namely due to mental or physical disabilities, with adequate conditions for their development and best use of their capacities; ... Article 20 Scope and goals of special education 1— Special education aims to promote the recovery and socio-educational integration of individuals with special education needs, due to physical and mental disabilities. 2—... 3—Within the scope of the educational system, special education should concern itself on a priority basis with: a) Developing the physical and intellectual potential; b) Supporting the acquisition of emotional stability; c) Developing communication possibilities; d) Reducing the limitations caused by the disability; e) Supporting family, school and social inclusion of disabled children and youth; f) Developing their independence at all possible levels; g) Preparing for an adequate vocational training and integration in active life.</p> <p>Article 21 Special education organisation 1— Special education organises itself, on a priority basis, according to diversified models of integration in regular school facilities, bearing in due consideration the needs for specific support and the help of specialized teachers. 2— Special education also takes place in specialized facilities, when the type and degree of the student's disability specifically demand it.</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>3— Special educational programmes for the professional integration of the disabled person will also be developed.</p> <p>4— Basic education for disabled children and youth should have in place curricula and programmes adapted to the type and degree of disability, as well as methods of evaluation suited for their specific needs.</p> <p>5— It is a duty of the State to promote and support special education for disabled persons.</p> <p>...</p> <p>Article 28 Support to students with special education needs Basic education facilities must assure the existence of positively differentiated educational support activities for students with special education needs.</p> <p>Article 42 School buildings ...</p> <p>4—When developing the buildings and selecting equipment, the special needs of disabled persons must be taken into account.</p> <p>...</p> <p><u>Law 85/2009</u> <u>Establishes the scheme of compulsory education for children and youth of school age and enshrines the universality of pre-school education for children aged 5 or older</u></p> <p>Article 1 Object 1 — This law establishes the scheme of compulsory education for children and youth of school age. 2 — This law also enshrines the universality of pre-school education for children aged 5 or older.</p> <p>Article 2</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Scope of compulsory education</p> <p>1 — For the purpose of number 1 from the previous article, children and youth aged 6 to 18, are considered to be of school age.</p> <p>2 — The provisions stated in the previous number are also applicable to students covered by the provisions of Decree-Law 3/2008 from January 7th, altered by Law 21/2008 from May 12th [Inclusive Education Law].</p> <p>...</p> <p>Article 3 Universality and freedom of charge</p> <p>1 — Within the scope of compulsory education, teaching is universal and free of charge.</p> <p>2 — The freedom of charge foreseen in the previous number covers tuition, fees and payments related to registration, school attendance and certificates of completion and the students will also benefit from support within the scope of social services, in accordance with the applicable regulations.</p> <p>3 — The students covered by this law, in situations of economic deprivation, will benefit from financial supports, in the form of scholarships, to be regulated by a specific diploma.</p> <p>Article 4 Pre-school education</p> <p>1 — Pre-school education is universal for all children from the moment they reach the age of 5.</p> <p>2 — This universality implies, for the State, the duty to assure the existence of a pre-school education network available to all covered children and to assure that the attendance of the educational activities are free of charge.</p> <p><u>Decree-Law 3/2008</u> <u>Specialized Supports for Inclusive Education (rectified by Law 21/2008 of 12 May)</u></p> <p>Article 1 Aims and scope</p> <p>1. This decree-law defines the specialized supports that shall be provided in pre-school,</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>elementary and secondary school, in the public, private and cooperative sectors, in order to create the necessary conditions to adjust the educational process to students with significant activity and participation limitations in one or several domains of life in consequence of permanent functional and structural alterations, which result in continuing difficulties in communication, learning skills, mobility, autonomy and interpersonal relationships as well as social participation.</p> <p>2. Special education aims to promote educational and social inclusion, access and school success, autonomy, emotional stability, as well as equal opportunities, preparation for continuity of studies or for an adequate after-school or professional life.</p> <p>Article 2 Guiding Principles</p> <p>1 — Special education will follow, on a permanent basis, the principles of justice and social solidarity, non-discrimination and fight against social exclusion, equality of opportunities in access and school success, participation of the parents and confidentiality of information.</p> <p>2 — In accordance with the previous number, schools or school groupings, private educational facilities with parallel teaching, professional school, directly or indirectly funded by the Ministry of Education (ME), cannot reject the application or enrolment of any child or young person on the grounds of their incapacity or special education needs.</p> <p>3 — Children and youth with permanent special education needs should enjoy priority in the matriculation process, being entitled, according to this Decree-Law, to attend kindergarten or school on the same terms as any other child.</p> <p>4 — Children and youth with permanent special education needs are entitled to recognition of their uniqueness and to the provision of adequate educational responses.</p> <p>...</p> <p>Article 4 Organisation</p> <p>...</p> <p>3 — To support the adjustment of the teaching and learning process, the school or school grouping</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>can develop special differentiated responses for students with autistic spectrum disorders or multiple disability, namely through the creation of:</p> <ul style="list-style-type: none"> a) Structured teaching facilities for students with autistic spectrum disorders; b) Specialized support units for the education of students with multiple disabilities or congenital deaf-blindness; 4) 5)... 6) Special education is organised according to diversified models of integration in regular inclusive school facilities, guaranteeing the use of environments as non-restrictive as possible, as long as from this integration doesn't result any kind of segregation or exclusion of the child or young person with special education needs. <p>7 — Whenever the application of the previously mentioned measures reveals itself insufficient due to the type and severity of the disability of the student, the persons involved in the referral and evaluation process can propose the attendance of a special education school.</p> <p>8 — The parents or guardians may request a change in the school attended by the student, in accordance with number 3 from article 3.</p> <p>...</p> <p>Article 4-A Special education facilities</p> <p>1 — Special education facilities have the mission to promote the schooling of children and youth with special education needs who require specialized and differentiated interventions, with significant adaptations of their educational, teaching and learning process, proven to be impossible of fulfilling in an adequate manner within other educational facilities.</p> <p>2 — Special education facilities should aim to promote compulsory education, integration in active life and to promote the best possible development of each child and young person's learning skills, competencies, aptitudes and abilities, according to their limitations or incapacities.</p> <p>...</p> <p>Article 8</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Individual educational programme</p> <p>1 — The individual educational programme is the document that states and supports the educational responses and their methods of evaluation.</p> <p>2 — The individual educational programme documents the special education needs of the child or young person, based on observation and evaluation in class-setting and on the additional information provided by everyone who takes part in this process.</p> <p>3 — The individual educational program is integrated in the personal file of the student.</p> <p>Article 16</p> <p>Adjustment of the teaching and learning process</p> <p>1 — The adjustment of the teaching and learning process should include measures to promote learning and participation of students with permanent special education needs.</p> <p>2 — The previously mentioned educational measures are:</p> <ul style="list-style-type: none"> a) Personalized pedagogic support; b) Individual adaptations of the school curricula; c) Adjustments of the enrolment procedures; d) Adjustments of the evaluation procedures; e) Specific individualized curriculum; f) Assistive technologies <p>...</p> <p>Article 20</p> <p>Adjustments of the evaluation procedures</p> <p>1 — Adjustments to the evaluation procedures can consist of changes to the nature of the examination procedures, to the evaluation and certification instruments, as well as to the conditions of the evaluation procedures, in regards, among other aspects, to the forms and means of communication and the frequency, duration and location where it takes place.</p> <p>...</p> <p>Article 23</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>Bilingual education of deaf students</p> <p>1 — The education of deaf children and youth must be done in bilingual environments which facilitate the command of PSL, the command of Portuguese writing and, eventually, oral, being the duty of the school to contribute to the linguistic growth of deaf students, adjustment of access to the curriculum and school and social inclusion.</p> <p>...</p> <p>23 — Reference school for the bilingual education of deaf students should be equipped with all necessary means to respond to the specific needs of the deaf population.</p> <p>24 — Essential equipment at school and class level include: computers with cameras, programs for image and video editing, printer and scanner; television and video, digital video and photo cameras, overhead projector, multimedia projector, interactive board, light signs for every sound sign, telephone with short message service (sms), video-conference system, educational software, books and dictionaries to support written Portuguese learning, multimedia support materials for learning and developing PSL and the culture of the deaf community, made available in different formats; specific means and equipment for speech therapy intervention.</p> <p>...</p> <p>Article 24</p> <p>Education of blind or low vision students</p> <p>1 — Reference schools for the education of blind or low vision students should concentrate children and youth of one or more municipalities, attending to their location and to the existing transport network.</p> <p>...</p> <p>5 — Reference school for the education of blind or low vision students should be equipped with adequate digital and pedagogical equipment, adjusted to the needs of the population they serve.</p> <p>6 — Adequate pedagogical equipment include: large print materials, in Braille, in digital form, in audio and in high relief.</p> <p>7 — Adequate digital equipment include: computers equipped with voice screen readers in Portuguese and Braille output, Braille printers, laser printers for preparing documents and reliefs; scanner; relief production machine, Braille machines; electronic calculators; hand magnifying glasses; TV magnifying glasses; font amplification software; software for Braille transcriptions;</p>	

Analysis of the legal implementation of CRPD and CRC rights and principles	
National legislation (translated in English)	Comments/assessment on the implementation
<p>suited digital recorders and Internet access supports. ...</p> <p>Article 25 Structured education facilities for students with autistic spectrum disorders 1 — Structured education facilities for students with autistic spectrum disorders constitute a specialized educational response, developed in school or school groupings with concentrations of students with this type of disorders. ... 7 — School or school groupings with structured education units must be equipped with the furniture and equipment necessary to attend to the needs of students with autism spectrum disorders and introduce the necessary arrangements to the spaces and resources, in accordance with their model of education.</p> <p>Article 26 Specialized support units for the education of students with multiple disabilities and congenital deaf-blindness 1 — Specialized support units for the education of students with multiple disabilities and congenital deaf-blindness constitute a specialized educational response developed in school or school groupings with concentrations of students with this type of disorders. ... 7 — School or school groupings with specialized support units must be equipped with the equipment necessary to attend to the needs of students with multiple disability or congenital deaf-blindness and introduce the necessary arrangements to the spaces and resources, in accordance with the selected methodologies and techniques. ... 7 — School or school groupings with specialized support units must be equipped with the equipment necessary to attend to the needs of students with multiple disability or congenital deaf-blindness and introduce the necessary arrangements to the spaces and resources, in accordance with the selected methodologies and techniques. ...</p>	

ANNEX 2 – STATISTICAL INFORMATION

Number of violation	Violence	Gender Discrimination	Other discrimination	Criminal suspects
Year				
2009	CPCJ ²³⁸ : 0,9% (n=602) of all cases involving situations of violence, abuse or mistreatment concerned children and youths with some kind of disability.	There were no specific complaints concerning gender-based discrimination or violence affecting children with disabilities.	INR ²³⁹ : Total number of complaints related to disability-based discrimination (n=47). There is no specific indication of how many of these complaints relate to children and youths with disabilities, but n=6 relate to disability-based discrimination in education (4 presented directly to the INR and 2 to the General-Inspection of Education).	
2010	CPCJ ²⁴⁰ : 1,6% (n=1068) of all 68421 cases involving situations of violence, abuse or mistreatment	There were no specific complaints concerning gender-based discrimination or violence	INR ²⁴¹ : Total number of complaints related to disability-based discrimination (n=47). There is no specific indication of how	

²³⁸ CNPCJR 'Annual Evaluation Report of the CPCJs, 2009' (Relatório anual de avaliação da atividade das CPCJ no ano de 2009).

²³⁹ INR 'Annual Report on the Implementation of the Anti-Discrimination Law, 2009' (Relatório Anual – 2009 sobre A Prática de Atos Discriminatórios em Razão da deficiência e do Risco Agravado de Saúde).

²⁴⁰ CNPCJR 'Annual Evaluation Report of the CPCJs, 2010' (Relatório anual de avaliação da atividade das CPCJ no ano de 2010).

²⁴¹ INR 'Annual Report on the Implementation of the Anti-Discrimination Law, 2010' (Relatório Anual – 2010 sobre A Prática de Atos Discriminatórios em Razão da deficiência e do Risco Agravado de Saúde).

Number of violation Year	Violence	Gender Discrimination	Other discrimination	Criminal suspects
	concerned children and youths with some kind of disability.	affecting children with disabilities.	many of these complaints relate to children and youths with disabilities, but n=4 complaints relate to disability-based discrimination in education (2 presented directly to the INR and 2 to the General-Inspection of Education). The complaints presented to the General-Inspection of Education were archived. There is no available information on the status of the other cases.	
2011	CPCJ ²⁴² : 1,2% (n=824) of all 67941 cases involving situations of violence, abuse or mistreatment concerned children and youths with some kind of disability.	There were no specific complaints concerning gender-based discrimination or violence affecting children with disabilities.	INR ²⁴³ : Total number of complaints related to disability-based discrimination (n=54). There is no specific indication of how many of these complaints relate to children and youths with disabilities, but n=6 complaints relate to disability-based	

²⁴² CNPCJR 'Annual Evaluation Report of the CPCJs, 2011' (Relatório anual de avaliação da atividade das CPCJ no ano de 2011).

²⁴³ INR 'Annual Report on the Implementation of the Anti-Discrimination Law, 2011' (Relatório Anual – 2011 sobre A Prática de Atos Discriminatórios em Razão da deficiência e do Risco Agravado de Saúde).

Number of violation Year	Violence	Gender Discrimination	Other discrimination	Criminal suspects
			discrimination in education (2 presented directly to the INR, 3 to the General-Inspection of Education and 1 to the Ombudsman). The 3 complaints presented to the General-Inspection of Education were archived. There is no available information on the status of the other cases.	
2012	CPCJ ²⁴⁴ : 1,4% (n=990) of all 69007 cases involving situations of violence, abuse or mistreatment concerned children and youths with some kind of disability.	There were no specific complaints concerning gender-based discrimination or violence affecting children with disabilities.	INR ²⁴⁵ : Total number of complaints related to disability-based discrimination (n=131). There is no specific indication of how many of these complaints relate to children and youths with disabilities, but n=18 complaints relate to disability-based discrimination in education (9 presented	

²⁴⁴ CNPCJR 'Annual Evaluation Report of the CPCJs, 2012' (Relatório anual de avaliação da atividade das CPCJ no ano de 2012)

²⁴⁵ INR 'Annual Report on the Implementation of the Anti-Discrimination Law, 2012' (Relatório Anual – 2012 sobre A Prática de Atos Discriminatórios em Razão da deficiência e do Risco Agravado de Saúde).

Number of violation Year	Violence	Gender Discrimination	Other discrimination	Criminal suspects
			<p>directly to the INR, 2 to the General-Inspection of Education and 7 to the Ombudsman). 2 of the complaints presented to the General-Inspection of Education were archived. There is no available information on the status of the other cases.</p> <p>Ombudsman²⁴⁶: 6 calls concerning children and youths with disabilities through the special phone line.</p>	
2013	CPCJ ²⁴⁷ : 1,4% (n=992) of all 71567 cases involving situations of violence, abuse or mistreatment concerned children and youths with	There were no specific complaints concerning gender-based discrimination or violence affecting children with disabilities.	Ombudsman ²⁴⁸ : 32 calls concerning children and youths through the special phone line. In all, 39 complaints were registered	

²⁴⁶ Information collected through consultation with national stakeholders (Ombudsman).

²⁴⁷ CNPCJR 'Annual Evaluation Report of the CPCJs, 2013' (Relatório anual de avaliação da atividade das CPCJ no ano de 2013).

²⁴⁸ Information collected through consultation with national stakeholders (Ombudsman).

Number of violation Year	Violence	Gender Discrimination	Other discrimination	Criminal suspects
	some kind of disability.		concerning special education benefits (by phone, email or other procedures). The INR 2013 report has not been made public as of 21/11/2014.	

ANNEX 3 – STUDY ON MEMBER STATES’ POLICIES FOR CHILDREN WITH DISABILITIES - EXECUTIVE SUMMARY

There are about 100 million children in the European Union and about 80 million European persons with disabilities. While the number of children and the number of persons with disabilities is well documented, the same cannot be said of children with disabilities. Children with disabilities combine different factors of vulnerability. As children the protection of their rights requires the adoption of special measures that are recognised by the UN Convention on the Rights of the Child (CRC). As individuals with disabilities, they are particularly vulnerable EU citizens who deserve specific safeguards and protection as acknowledged by the UN Convention on the Rights of Persons with Disabilities (CRPD).

Children with disabilities and their families face on a daily basis specific problems such as the lack of assistance and support for their inclusion in schools, experiences of violence and the lack of proper tools for reporting them, difficulties in accessing buildings or services or troubles in being heard and participating in decisions affecting their lives.

The Conventions include provisions addressing these concerns and providing protection to the right to enjoy all human rights and freedoms with no discrimination ensuring

- equality of opportunities and accessibility,
- the best interests of the child as a consideration in all actions concerning them,
- the evolving capacities of children with disabilities as a consideration in decisions affecting them,
- the right to be heard in proceedings and decision-making processes affecting the child and the right to a full and effective participation,
- the right to family life,
- the right to effective access to education and inclusive education,
- the right to health care,
- the right to assistance, and
- freedom from violence.

This study is structured to mirror the requirements of both conventions reflecting the main rights of children with disabilities to be implemented generally in the EU due to the high rate of ratification by EU Member States. Moreover, in December 2010, the European Union became a party to the CRPD. In doing so, the EU recognised the challenges persons with disabilities face in securing the fulfilment of their rights and assumed the responsibility for its implementation alongside Member States. The EU’s responsibility towards the implementation of the CRC is of a different scale. Despite the lack of ratification by the EU, the CRC rights and principles guide the EU policies and action since the Treaty recognizes the rights of the child as an EU objective.

This study assesses the current situation with respect to the rights of children with disabilities in the EU and the need for EU legislation or for other measures. The options to act at EU level are framed within the extent of the competences conferred by the Treaties, which can be exclusive, shared or supporting competences (Article 2 TFEU).

The current EU legislative and policy framework give recognition to the Conventions’ rights and principles applicable to children with disabilities and a certain degree of implementation. However, the existing EU legislation relevant to this area is mainly sectoral (i.e., employment or immigration). The legislation addresses the situation of persons with disabilities separately from the rights of the child, whereas there is a need to consider children with disabilities as they face multiple discrimination, on the basis of age as well as disability, and to tailor measures to ensure that their rights are respected.

A. Comparative analysis of national legal frameworks

The comparative analysis of the national legal frameworks on children with disabilities' rights in 18 Member States²⁴⁹ is based on a set of criteria developed to enable an assessment of comparable data reported in each national study. The criteria are based on the requirements within each right and principles identified as pertinent to the situation of children with disabilities.²⁵⁰ The criteria are derived from the text of both conventions and the CRC General Comments on their interpretation.

Overall, the 18 Member States have in place comprehensive legal frameworks reflecting the main aspects of the rights and principles identified under the CRPD and CRC. While it may be stated that the rights of children with disabilities are broadly recognised under national legal systems either through general or specific legislation, their practical implementation revealed to be problematic in most Member States.

Consideration of the principle of best interests of the child is generally recognised under national laws. However, implementation is mostly limited to family and social protection decisions affecting children and the specific needs of children with disabilities are not recognised. The country studies found a lack of understanding of what the principle entails, along with insufficient development of the concept through law or jurisprudence and an overall lack of implementing rules.

The right to non-discrimination based on disability or age is reflected in national legislations, however, the implementation of the right is generally only partial and the reasonable accommodation measures are generally insufficient to guarantee the right. In practice, accessibility remains a key problem in most Member States. Reference to the multi-discrimination factors faced by children with disabilities or girls with disabilities is rarely acknowledged. There is a lack of monitoring results and of data on cases of right's violations that could help define more effective measures.

Most countries partially take account of the evolving capacities of the child mainly on the basis of considerations of age, maturity and development of the child. However, the situation of children with disabilities is not specifically acknowledged. The implementation is limited to a certain type of decisions and Member States tend to primarily take into consideration the child's age, which for children with disabilities may not be relevant and which can effectively exclude them from decision making processes that affect them.

The rights to participation and to be heard in decision making processes affecting children with disabilities are recognised under the legislation of the 18 Member States. However, their implementation is often limited to some sectoral procedures mostly regarding family law and at a certain extent in education. In practice, children with disabilities are not systematically involved and do not get to participate in public and private life at the same level than their able-peers.

²⁴⁹ For the first phase of this study, 18 selected Member States legal frameworks have been analysed: Belgium, Czech Republic, Estonia, Finland, France, Austria, Greece, Hungary, Italy, Ireland, the Netherlands, Malta, Poland, Romania, Slovenia, Spain, Sweden and the United Kingdom. Those countries have been selected by the European Parliament in the Terms of Specifications of this study.

²⁵⁰ 8 rights and principles have been identified as most relevant to the situation of children with disabilities: the best interests of the child, the right to non-discrimination, the consideration of evolving capacities, the right to participation/to be heard, the right to be free from violence, the right to family life, the right to assistance and the right to education.

In general freedom from violence is recognised by Member States' legislation. However, abuse against children with disabilities is a key problem acknowledged in all country reports. Violence occurring in institutions is of particular concern. The lack of systematic data and the difficulty for victims to report abuses do not allow an overview of the situation needed for the adoption of appropriate policies and measures.

The right to family life is widely recognised in the laws of the selected Member States. However, insufficient guidance and support to families for the integration of the child with disabilities and for helping them in their day to day lives is a key problem in most of the 18 Member States. Without proper assistance, families with difficulties might give up on their responsibility leading to a situation where alternative options are unlikely and institutionalisation is the only response available.

Overall the right to various forms of assistance (financial, social, health care, etc.) both for children with disabilities and for their families is recognised in legislation or regulatory rules. However, again in most cases assistance is sectoral (mainly social and health) and insufficient (financially and human assistance). The economic crisis is contributing to the removal and reduction of assistance in most Member States. Access to assistance is often perceived not as an instrument enabling protection of rights but rather as a discretionary measure subject to budget constraints.

All Member States recognise the right to education in their Constitutions or legal frameworks; however, the ability to access the school of choice for children with disabilities remains very challenging in practice. Mainstream schools remain largely inaccessible to children with disabilities in many Member States, while in other countries schools have insufficient resources and support for the child with disabilities is scarce. In addition, teachers in mainstream schools lack training and awareness on the needs of children with disabilities and programmes are not systematically adapted to them.

Compliance mechanisms are weak and lack adaptation to the situation of children with disabilities. Lack of information and guidance to families with children with disabilities on their rights, procedures and competent authorities decreases their ability to access these tools.

On the basis of these findings, the study sets forth conclusions and recommendations for EU action, taking into account the competence of the EU conferred by the Treaties on a range of policy areas, including disability and children's rights.

B.1 The role of the European Union

The EU has no explicit competence on children with disabilities. However the EU framework contains provisions recognising the EU's role to promote the protection of the rights of the child as an EU objective as well as its competence to combat discrimination based on disability. Furthermore, the Charter of Fundamental Rights of the European Union, with similar legal value as the Treaties, recognises the right to non-discrimination on ground of disability in Article 21 and the rights of the child under its Article 24. This recognition, while important, cannot extend the competences of the EU as conferred by the Treaties.

The EU, together with Member States in areas of shared competence or national competence, is bound by the CRPD obligations and is required to take the necessary measures to combat discrimination on the grounds of disability within the framework of Article 19 TFEU or in other matters falling within EU competence. Article 19(1) TFEU provides the legal basis for EU action (see among others the proposal for equal treatment

Directive of 2008²⁵¹) but the unanimity requirement makes achieving agreement under this legal base difficult. Article 19(2) provides the possibility for the EU to adopt basic principles and incentive measures to support Member States' action to combat discrimination through the ordinary legislative procedure.

Neither the above mentioned proposal for an equal treatment Directive nor any other EU measures provide for a definition of disability. Prior to the adoption of the CRPD, in a judgment in July 2006, the Court of Justice of the European Union (CJEU) defined disability in the same sense as the CRPD within the context of employment policy as 'a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life'.²⁵² Recently, the CJEU has further developed this concept²⁵³ stating that disability results from barriers hindering the full and effective participation of the person concerned in professional life on an equal basis with other workers and calling on the employer to take reasonable accommodation measures.

EU action is also possible when linked to other policy areas of EU competence. Several issues related to the rights of the child with disabilities are linked to EU policies such as social policy, economic, social and territorial cohesion, transport, freedom, security and justice all of which are shared competence. In addition, the EU has the option to take action to support Member States policies in a number of areas affecting children with disabilities such as education, sports, youth or health.

B. 2 Existing relevant EU secondary legislation

The best interests of the child as primary consideration in actions relating to children is a fundamental requirement recognised in EU legislation. Article 7 of the Mediation Directive 2008/52²⁵⁴ requires the mediator to take into account the best interests of the child when deciding whether the child can give evidence in judicial proceedings. The Family Reunification Directive²⁵⁵ requires Member States' authorities to consider the best interests of children when examining an application for family reunification (Article 5)²⁵⁶. The protection of the best interests of the child is explicitly mentioned in Council Directive 2004/81/EC²⁵⁷ on victims of trafficking in human beings.

Non-discrimination at EU level is currently addressed by four EU Directives to combat discrimination on the basis of protected grounds such as sex, racial or ethnic origin, religion or belief, age and sexual orientation, most of them restricted to the area of employment.²⁵⁸

²⁵¹ Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0426:en:NOT> (last accessed 6.5.13).

²⁵² Judgment C-13/05 of the Court (Grand Chamber) of 11 July 2006, Sonia Chacón Navas v Eurest Colectividades, pt 43.

²⁵³ Judgment of the Court, Joint cases C-335/11 and C-337/11 of 11 April 2013, HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab (C-335/11) and HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening acting on behalf of Pro Display A/S (C-337/11), pt 47.

²⁵⁴ Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.

²⁵⁵ Council Directive 2003/86/EC on the right to family reunification.

²⁵⁶ 'Developing indicators for the protection, respect and promotion of the rights of the child in the European Union' FRA, March 2009, available at http://fra.europa.eu/sites/default/files/fra_uploads/358-RightsofChild_summary-report_en.pdf.

²⁵⁷ Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who has been the subject of an action to facilitate illegal immigration.

²⁵⁸ Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast directive); Directive 2004/113/EC on the principle of equal treatment between women and men in the access to and supply of goods and services; Directive

They lay down rules 'for combating discrimination (...) with a view to putting into effect in the Member States the principle of equal treatment'.²⁵⁹ Disability is recognised as grounds for discrimination under Directive 2000/78/EC and, furthermore, protection of equality between men and women in matters of employment and occupation under Directive 2006/54/EC applies to persons with disabilities. Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin does not include disability as a protected ground. Directive 2004/113/EC on equal treatment between women and men in access to supply of goods and services refers to discrimination on grounds of sex but not on age or disability.

The European Commission has acknowledged the differences of protection provided across the various grounds and published a proposal for a Directive in 2008 aiming at completing the legal framework on anti-discrimination law and providing for a more equal level of protection across the grounds²⁶⁰.

Other measures in policy areas such as the internal market or transport have an impact on children with disabilities' access to services with no-discrimination. For example, Directive 2001/85/EC on the carriage of passengers, requires accessibility features for persons with reduced mobility and visually impaired persons. Other instruments cover rights of persons with disabilities when travelling by air, accessibility to lifts, in carrying out public procurement or in measures for telecommunication²⁶¹.

Within the remit of its competences, the EU's action to combat discrimination is complemented with activities by the EU Institutions to improve knowledge about discrimination (e.g. by raising awareness), support intermediary actors (e.g. NGOs, social partners and equality bodies) to improve their capacity to combat discrimination and to encourage the exchange of national good practices.

The consideration of children's evolving capacities is recognised in the Brussels IIbis Regulation 2201/2003 which requires courts to hear the view of the child according to his/her age or degree of maturity. The same formulation is found in EU legislation concerning immigration and asylum in relation to unaccompanied minors.

Children's right to participation is recognised in some Commission strategic documents including the 2005 'European policies concerning youth', the 2006 'EU strategy on the rights of the child', the Youth in Action Programme and the EU Agenda for the Rights of the child of 2011. EU legislation on immigration and asylum recognise the right of the child to be heard during proceedings under the Brussels IIbis Regulation 2201/2003.

The EU has adopted a number of measures on the protection of children from violence²⁶² relating to child trafficking, to the sexual exploitation of children and to the

2000/43/EC on the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

²⁵⁹ Article 1 Directive 2000/43/EC.

²⁶⁰ Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426). It is currently blocked in the Council.

²⁶¹ 'Study on challenges and good practices in the implementation of the UN Convention on the Rights of Persons with Disabilities VC/2008/1214', European Commission, Brussels, 2010, Executive Summary available at http://www.efc.be/programmes_services/resources/Documents/UN_Convention_Summary_EN.pdf.

²⁶² Framework Decision 2002/629/JHA on combating trafficking in human beings; Council Directive 2004/81/EC on the residence permit issued to third-country nationals victims of trafficking in human beings; Council Framework Decision 2004/68/JHA on combating sexual exploitation of children and child pornography; Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings; Council Resolution 2001/C 283/01 on

protection of victims including several Directives²⁶³ that have been adopted to replace some of these instruments. For example, the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, focus on the protection of children which are more vulnerable than adults and establishes more severe Criminalities when the offence is committed against vulnerable persons such as children and persons with disabilities.

The Directive 2012/29/EU establishing minimum standards on the rights, support and protection of the victims of crime recognises that a victim of crime should be treated without discrimination based on any ground including age and disability. Lastly, Directive 2011/92/EU on combating sexual abuse, the sexual exploitation of children and child pornography²⁶⁴ provides the need for specific protection of children with disabilities.

The right to family life and the maintenance of the child in family context is at the heart of Council Regulation 2201/2003 Brussels IIbis (EC)²⁶⁵. In the field of immigration policies, the right of the child to family life is ensured by the rules on family reunification²⁶⁶ and the provisions of the Directives on asylum²⁶⁷ regarding unaccompanied minors and the respect for the family unit.

The principle of maximum inclusion in society of children with disabilities is reflected in strategy documents such as the Disability Strategy 2010-2020²⁶⁸ and the EU 2020 Programme in relation to education and training²⁶⁹. The 2003 Council Resolution on equal opportunities for Pupils and Students with Disabilities²⁷⁰ addressed the problem of access to education by children with disabilities. In 2010, the Resolution of the European Parliament on mobility and inclusion of children with disabilities²⁷¹ stressed the need to ensure full respect for the rights of the child, including the right to education and the right to participate in community life of children with disabilities. The EU Institutions also support the European Agency for Development in Special Needs Education, the independent

the contribution of civil society in finding missing or sexually exploited children. Decision No 1351/2008/EC establishing Safer Internet Programme 2009-2013.

²⁶³ Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA, Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

²⁶⁴ Article 1 Directive 2011/92/EU.

²⁶⁵ Council Regulation (EC) No 2201/2003, concerning jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.

²⁶⁶ Council Directive 2003/86/EC on the right to family reunification; Council Regulation (EC) No 343/2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national; Council Directive 2004/83/EC of on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who need international protection; Directive 2008/115/EC, on common standards and procedures in Member States for returning illegally staying third-country nationals.

²⁶⁷ Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons; Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers; Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals, stateless persons or refugees as persons who otherwise need international protection; Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting or withdrawing refugee status.

²⁶⁸ Area of action 5 of the Commission Communication European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe COM(2010) 636 final.

²⁶⁹ Council Conclusions of 12 May 2009 on a strategic framework for European cooperation in education and training ('ET 2020'), 2009/C 119/02, OJ C 119/2, of 28 May 2005.

²⁷⁰ Council Resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training, 2003/C 134/04.

²⁷¹ European Parliament Resolution of 25 October 2011 on mobility and inclusion of people with disabilities and the European Disability Strategy 2010-2020 (2010/2272(INI)).

organisation acting as a platform for collaboration on special educational needs and the promotion of full participation within mainstream education and training²⁷².

C. Recommendations for EU action

When evaluating the need for specific recommendations aimed at improving the situation of children with disabilities, it is important to highlight that children with disabilities are first and foremost children with the same needs as any other children and who should be beneficiaries of all rights recognised by the CRC. Their intrinsic difference with their peers needs to be recognised for designing appropriate legislative and policy measures.

Horizontal issues

- As a first and general recommendation, all EU Member States which have not already done so should ratify the two conventions referred to in this study and implement their provisions by adopting national legislation and ensuring its practice.
- The European Commission, liaising with the UN Secretariat for the CRPD and the UN Secretariat for the CRC, should ensure Member States understanding and implementation of several definitions of the Conventions that are cornerstones for the implementation of the rights of children with disabilities, namely the definition of “disability”, the “best interests of the child” and the “evolving capacities of the child”. They should lead the development of initiatives to ensure that the specificities of children with disabilities are taken into account.

To that end, it is recommended that the Commission takes the initiative to provide clarification at EU level of the CRDP definition of “disability” as it is considered to be too broad in practice and its implementation at national level is therefore difficult. The development of guidance documents, exchange of best practices and promotion of existing manuals are recommended.

- The European Commission should take action to promote that children with disabilities are considered in existing mainstreaming initiatives for non-discrimination and equal treatment.
- The EP, the Council and the Commission should promote the development of national information tools to assist families with children with disabilities to understand the legal frameworks applicable to them, including access to assistance measures, competent authorities, procedures and compliance mechanisms. Specific tools addressed to these families could include an EU web portal which could be linked, where possible, to national portals providing full information on rights, requirements, criteria for implementation, competent authorities, and coordination systems. This initiative could bring citizens closer to the EU.
- The EU Institutions should take a leading role in promoting awareness-raising on issues concerning the rights of children with disabilities, their interests and specific needs in order to promote the full implementation of the principle of best interests of children with disabilities. The EP and the Council could also use their budgetary powers to provide for financing of awareness-raising campaigns.

Best interests of the child

²⁷² European Agency for Development in Special Needs Education website available at <http://www.europeanagency.org/about-us>.

- While most countries have legislation recognising the principle of best interests of the child, only few Member States contain in their legislation a general requirement for its systematic consideration in all decisions affecting children. Some Member States (such as Sweden and the UK) have introduced child impact assessments of proposed legislation. It is recommended that the European Commission promotes the exchange of these initiatives and develops a guide on methodologies for carrying out these child impact assessments implementing the best interests of the child principle.

Right to non-discrimination

- The concept of reasonable accommodation in relation to the specific situation of children with disabilities needs clarification and further development to define the boundaries for the use of disproportionate burden. The EU, through the Commission, could support this through exchange of best practices at national level on the implementation of reasonable accommodation covering different situations. This would help defining the baselines from which the respect of the right requires public authorities' action and prevents it from being subject to arguments of disproportionate costs.
- The 2008 Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, if adopted, has the potential of addressing the situation of children with disabilities. Amendment 37 introduced by the European Parliament refers to multiple discrimination. Within this context, clarification could be introduced in the recitals of the proposed Directive in order to ensure that the situation of children with disabilities is considered as a part of its scope.
- The European Commission's draft for an upcoming European Accessibility Act should explicitly cover children with disabilities' access to goods and services, at least with a reference to multiple discrimination cases.

Evolving capacities of children with disabilities

- The EP should consider ways to raise awareness and promote taking into account the evolving capacities of children, including children with disabilities, with the aim to have the principle applied in all decision making processes affecting them.
- Any new legislation on child-friendly justice should include consideration of the ability of the child with disabilities to be heard in judicial proceedings affecting them. The Commission should ensure that these provisions are included in the anticipated EU law on special safeguards for suspected or accused persons who are vulnerable, including children, or the anticipated EU law for the recognition and enforcement of decisions on parental responsibility.

Furthermore, it is recommended that the European Commission, the Council and the EP promote the use of the Council of Europe Guidelines on child-friendly justice and support training for the relevant professionals at all levels.

Right of participation of children with disabilities

- The anticipated European Accessibility Act could provide for the development of tools to ensure the participation of children with disabilities in the consultation processes of the legislative and policy initiatives affecting them.

- The EP should explore ways to raise awareness on the requirements needed to ensure the right of participation of children with disabilities through concrete measures such as simulation of plenary meetings in the EP involving children with disabilities, guaranteeing physical access to the EP buildings or designing tools to ensure nonphysical participation.

Right to be heard of children with disabilities

- In order to enable effective implementation of the right to be heard by children with disabilities, changes in the attitudes of judicial, administrative and enforcement officers are needed. To that end, the EP, the Council and the Commission should encourage Member States to develop awareness-raising actions and training addressed at public authorities.
- The Commission in preparing legislation on child-friendly justice, should ensure that adequate steps are taken to identify the ability of the child to express his/her views in judicial proceedings affecting them, enabling a climate of trust between the child and the judicial and enforcement officers and providing reasonable accommodation to ensure the effective right to be heard of children with disabilities.

Freedom from violence

- It is recommended that the EP, the Council and the Commission promote the development of statistical information on the situation of violence affecting children, and in particular children with disabilities. Furthermore, they should promote the development of indicators (such as disability, children, girls, family environment) to be mainstreamed in other policy or general surveys so as to provide systematic data on the situation of children with disabilities.
- The European Commission and the EP should promote FRA to examine the situation of violence against children, particularly in institutions, including children with disabilities as they are particularly vulnerable. The necessary funding should be proposed to the budgetary authority.
- The European Commission should consider in particular the need for measures at EU level aimed at reducing the number of cases of violence against children, especially children with disabilities, in Member States (both in a domestic context and in public institutions). The Commission could start preparatory work by organising working groups with Member States experts to consider:
 - proposals for ensuring that Member States set up preventive measures and proper monitoring systems to detect cases of violence and abuse against children,
 - the set up of control mechanisms and regular inspections,
 - peer reviews or the Open Method of Coordination for implementation of proposals,
 - access to information and communication services targeted at improving the system of complaints concerning children's right to freedom from violence.
- The Commission could promote the organisation of specialised EU-wide training and workshops amongst professionals to share knowledge on complaint procedures, reporting measures and accessibility of communication services for

children with disabilities, especially for children with severe disabilities or intellectual impairments. The budgetary authority should provide adequate funding for these activities.

Right to family life of children with disabilities

- The Commission, the Council and the EP should encourage Member States to set up appropriate support structures for families with children with disabilities in order to reduce the risks of the child losing family life while safeguarding the best interests of children with disabilities.
- Within the Open Method of Coordination, the Commission should develop Guidelines on minimum requirements of residential institutions with regards to children with disabilities. The Guidelines would aim at ensuring that residential care centres have a small number of users and the capacity to host children with autism or with intellectual disabilities.
- The Commission should propose to the budgetary authority the use of EU funds for the protection of children's right to family life, prioritising funds for families while ensuring that the good quality of the institutions is maintained.

Access to assistance

- A special single national body (with regional offices) responsible for the management of services, budget and assistance of children and their families should be established in order to ensure consistency, coordination, effectiveness, increase accessibility and better guidance for families on the funding support available.
- The EP should continue to lead actions on children with disabilities to inform Member States on the negative impacts of budget cuts on implementation of their rights, especially in the field of education, social protection and health care.
- Within the European Semester process, the Commission should provide appropriate recommendations to Member States on how to use existing resources effectively instead of just cutting the necessary assistance for children with disabilities who belong to the most vulnerable citizens.

Access to inclusive education

- The Commission should develop actions to support Member States in improving education systems for children with disabilities through the Open Method of Coordination or peer review while respecting their general competence for matters related to education. Action at EU level could include:
 - Development of best practice guides and recommendations on the minimum type of resources needed in mainstreaming schools, and on the role of parents and children with disabilities in decision-making processes affecting children with disabilities or the development of education objectives;
 - Promotion of training for teachers on better understanding of children with disabilities' needs and evolving capacities, teaching methodologies and handling of children with specific disabilities in a class together with their able-peers;
 - Promotion of teaching tools that help the inclusion of children with disabilities in schools and outside of schools such as the Council of

Europe's COMPASS manual;

- Promotion of anti-bullying and anti-stigmatisation initiatives, including awarenessraising campaigns promoting inclusion of children with disabilities; and
- Development of quality objectives for education offered to children with disabilities and the promotion of initiatives to maintain the support for higher education.

EU Funding

- The EP, the Council and the Commission should promote among Member States the use of the Structural Funds to foster the development of quality social services provided for children with disabilities, while facilitating the implementation of the Voluntary European Quality Framework for Social Services;
- The EP, the Council and the Commission should promote the development of family and community-based alternatives with the purpose of de-institutionalisation.

The EP, the Council and the Commission should encourage the use of structural funds for improving accessibility and inclusive education.

ANNEX 4 - OVERVIEW OF RELATED STUDIES

Name of the Study	PE number	ISBN number
Study on Member States' Policies for Children with Disabilities	PE 474.416	978-92-823-4548-1
Country Report on Belgium for the Study on Member States' Policies for Children with Disabilities	PE 474.417	978-92-823-4542-9
Country Report on the Czech Republic for the Study on Member States' Policies for Children with Disabilities	PE 474.418	978-92-823-4549-8
Country Report on Estonia for the Study on Member States' Policies for Children with Disabilities	PE 474.419	978-92-823-4561-0
Country Report on Finland for the Study on Member States' Policies for Children with Disabilities	PE 474.420	978-92-823-4552-8
Country Report on France for the Study on Member States' Policies for Children with Disabilities	PE 474.421	978-92-823-4562-7
Country Report on Germany for the Study on Member States' Policies for Children with Disabilities	PE 474.422	978-92-823-4553-5
Country Report on Greece for the Study on Member States' Policies for Children with Disabilities	PE 474.423	978-92-823-4563-4
Country Report on Hungary for the Study on Member States' Policies for Children with Disabilities	PE 474.424	978-92-823-4554-2
Country Report on Ireland for the Study on Member States' Policies for Children with Disabilities	PE 474.425	978-92-823-4564-1
Country Report on Italy for the Study on Member States' Policies for Children with Disabilities	PE 474.426	978-92-823-4555-9
Country Report on Malta for the Study on Member States' Policies for Children with Disabilities	PE 474.427	978-92-823-4565-8
Country Report on the Netherlands for the Study on Member States' Policies for Children with Disabilities	PE 474.428	978-92-823-4556-6
Country Report on Poland for the Study on Member States' Policies for Children with Disabilities	PE 474.429	978-92-823-4566-5
Country Report on Romania for the Study on Member States' Policies for Children with Disabilities	PE 474.430	978-92-823-4567-2
Country Report on Slovenia for the Study on Member States' Policies for Children with Disabilities	PE 474.431	978-92-823-4557-3
Country Report on Spain for the Study on Member States' Policies for Children with Disabilities	PE 474.432	978-92-823-4558-0

Country Report on Sweden for the Study on Member States' Policies for Children with Disabilities	PE 474.433	978-92-823-4568-9
Country Report on England, Wales and Northern Ireland for the Study on Member States' Policies for Children with Disabilities	PE 474.434	978-92-823-4559-7
Country Report on Austria for the Study on Member States' Policies for Children with Disabilities	PE 519.195	978-92-823-6950-0
Country Report on Bulgaria for the Study on Member States' Policies for Children with Disabilities	PE 519.196	978-92-823-6971-5
Country Report on Croatia for the Study on Member States' Policies for Children with Disabilities	PE 519.197	978-92-823-6977-7
Country Report on Cyprus for the Study on Member States' Policies for Children with Disabilities	PE 519.198	978-92-823-6981-4
Country Report on Denmark for the Study on Member States' Policies for Children with Disabilities	PE 519.199	978-92-823-6985-2
Country Report on Latvia for the Study on Member States' Policies for Children with Disabilities	PE 519.200	978-92-823-6989-0
Country Report on Lithuania for the Study on Member States' Policies for Children with Disabilities	PE 519.201	978-92-823-6950-0
Country Report on Luxembourg for the Study on Member States' Policies for Children with Disabilities	PE 519.202	978-92-823-6954-8
Country Report on Portugal for the Study on Member States' Policies for Children with Disabilities	PE 519.203	978-92-823-6957-9
Country Report on Scotland for the Study on Member States' Policies for Children with Disabilities	PE 519.204	978-92-823-6961-6
Country Report on Slovakia for the Study on Member States' Policies for Children with Disabilities	PE 519.205	978-92-823-6965-4

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS **C**

Role

Policy departments are research units that provide specialised advice to committees, inter-parliamentary delegations and other parliamentary bodies.

Policy Areas

- Constitutional Affairs
- Justice, Freedom and Security
- Gender Equality
- Legal and Parliamentary Affairs
- Petitions

Documents

Visit the European Parliament website: <http://www.europarl.europa.eu/studies>

© 2014 DG JRC. All rights reserved.



ISBN: 978 92 823 6060 9
DOI: 10.2861/734400