Study on children’s involvement in judicial proceedings – contextual overview for civil justice – Portugal

July 2014 (Research carried out between March 2013 and October 2013)
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European Commission – Directorate-General for Justice and Consumers


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Abbreviations

CNPCJR  National Commission for the Protection of Children and Juveniles at Risk
CoE     Council of Europe
CPCJ    Commissions for the Protection of Children and Juveniles
EC      European Commission
EU      European Union
Introduction

Introduction and context

The promotion and protection of the rights of the child is one of the objectives of the EU on which the Treaty of Lisbon has put further emphasis. This report is part of a study ‘to collect data on children’s involvement in judicial proceedings in the EU’ which supports the implementation of the Commission Communication of 15 February 2011 ‘An EU Agenda for the rights of the child’, which identified the lack of reliable, comparable and official data on the situation of children in the Member States (MS). This deficiency is a serious obstacle to the development and implementation of evidence-based policies and is particularly evident in the context of child-friendly justice and the protection of children in vulnerable situations. Making the justice system more child-friendly in Europe is a key action of the EU Agenda. It is an area of high practical relevance where the EU has, under the Treaties, competences to turn the rights of the child into reality by means of EU legislation. Improved data is crucial to the framing of such legislation.

The objective of this study is:

- to establish statistics and collect data based on structural, process and outcome indicators on children involved in civil judicial proceedings for the years 2008-2010 (and 2011 if available) for all 28 EU Member States;
- to provide a narrative overview of children’s involvement in civil judicial proceedings in the EU. The report describes the situation in each Member State as at 1 June 2012.
- This report examines the safeguards in place for children involved in civil judicial proceedings. The Council of Europe Guidelines on child-friendly justice serve as a basis for the analysis of the provisions affecting children in civil judicial proceedings in each Member State.

Structure and scope

This report describes the national civil justice system insofar as children’s involvement is concerned. If, in addition to general rules in civil judicial proceedings, there are specific rules in the fields of family and employment law, the safeguards in place for children involved in judicial proceedings in those two specific sectors will also be described.

Chapter 2 of this report provides an overview of the Member State’s approach to children’s involvement in civil judicial proceedings. It includes a description of the competent authorities and services.

Chapter 3 of this report is divided in sections (3.1, 3.2, etc.) according to the different safeguards examined (e.g. the right to be heard, the right to information, etc.). Each of these sections is divided into subsections describing the different rules applying to children according to the different role they may have in a civil judicial proceeding (plaintiff; defendant; witness; other roles).

The table below summarises the type of judicial proceedings applicable to the fields of family and employment law and the competent courts. For the sake of completeness, the table also indicates which sectors are examined in the overview for administrative justice, i.e. asylum, migration, education, health, placement into care, administrative sanctions, and offences committed by children below the minimum age of criminal responsibility (MACR). In fact, in some countries, civil procedural rules also apply to judicial proceedings in some of these sectors, but in order to ensure a degree of consistency among the overviews on the 29 jurisdictions covered by this study, the breakdown set out in the table below has been applied for each and every country overview.
<table>
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<tr>
<th>Sectors:</th>
<th>Family</th>
<th>Employment</th>
<th>Asylum</th>
<th>Migration</th>
<th>Education</th>
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<th>Placement in care</th>
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<td>Civil (labour) judicial proceedings</td>
<td>Administrative judicial proceedings</td>
<td>Administrative judicial proceedings</td>
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<td>Administrative judicial proceedings</td>
<td>Special judicial proceedings if the family and children courts take decision in the field of child protection. Special judicial proceedings to review the decision of the Commission for the Protection of Children and Juveniles</td>
<td>Criminal judicial proceedings</td>
<td>Special judicial proceedings apply to the child aged between 12 and 16 who commits an offence. If the child committing the offence is below 12 the rules applicable in the sector of placement into care apply.</td>
</tr>
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<td>Competent court(s)</td>
<td>Family and children courts</td>
<td>Labour courts/ general district courts</td>
<td>Administrative and tax courts are competent to review administrative authorities’ decisions</td>
<td>Administrative and tax courts are competent to review administrative authorities’ decisions</td>
<td>Administrative and tax courts are competent to review administrative authorities’ decisions</td>
<td>Family and children courts are competent to review the decision of the Commission for the Protection of Children and Juveniles. Such court is also competent to take decision with regard to child protection</td>
<td>Ordinary criminal courts are competent to review administrative authorities’ decisions</td>
<td>If a child aged between 12 and 16 commits an offence the family and children courts are competent. If the child committing the offence is below 12 the competent court is the one that is competent in the sector of placement into care.</td>
<td></td>
</tr>
</tbody>
</table>

1. This table provides an indicative summary of competent courts and relevant proceedings. However, please check Section 1 for a complete overview of the competent courts or sections/divisions within the competent courts.
2. This study on Children’s involvement in judicial proceedings is composed of three contextual overviews i.e. contextual overview for criminal justice, contextual overview for civil justice, contextual overview for administrative justice. The rules applying to judicial proceedings in the sectors of asylum, migration, education, health, placement into care, administrative sanction and offences committed by children below MACR are described in the contextual overview for administrative justice.
3. (MACR) Minimum Age of Criminal Responsibility – see Table 3.1 of the EU Summary of contextual overviews on children’s involvement in criminal judicial proceedings on MACR in EU28 as at 1 June 2012.
1 Overview of Member State's approach to children in civil judicial proceedings and specialised services dealing with such children

1.1 Brief description of judicial system and institutions

Legislative framework and competent courts

Children can be involved in various civil judicial proceedings. They can be party to 'ordinary' civil proceedings, regarding, e.g. torts, contracts, property issues or inheritance. The general rules of the Civil Procedure Code, which sets the rules for judicial proceedings in civil matters, are applicable to children and adults alike. Meanwhile, a new Civil Procedure Code has been approved and is foreseen to enter into force on the 1st September 2013⁴.

Competent to adjudicate civil law cases are the civil courts or, where not available, the district courts, which have general jurisdiction.

Moreover, children can also participate in family law judicial proceedings. The Civil Code contains the principles and rules regarding parental care, guardianship, divorce, maintenance obligations, and adoption. Family law proceedings are dealt with in the Civil Procedure Code. Nonetheless, some civil judicial proceedings are regulated by the Law on the Organisation of Children’s Guardianship⁵ which regulates various proceedings, besides the mere 'guardianship proceedings', including those aimed at⁶:

- establishing the supervision and administration of the child’s property;
- appointing a person to conclude business on behalf of the child and, appointing a guardian that will represent the child extrajudicially;
- appointing a special guardian to represent the child in any guardianship proceeding;
- concluding adoptions, deciding who gets the child’s guardianship for future adoption purposes and repealing and revising the adoption;
- deciding the exercise of parental responsibility;
- deciding maintenance rights and child support;
- deciding who will be given the responsibility to raise the child;
- authorizing the child’s legal representative to perform specific acts, approving acts which have been carried out without an authorization and arranging the acceptance of donations;
- deciding the surety that parents should provide for children;
- prohibiting totally or partially the exercise of parental care rights and establishing limitations on the exercise of parental authority;
- undertaking proceedings for the recognition of the child’s paternity or motherhood;
- deciding, in case of disagreement between the parents, the name and surname of the child;
- evaluating the administration of the child’s assets by the parents.

⁴ This report describes the situation as at 1 June 2012. The references made in this report to the articles of the Civil Procedure Code concern the current Code in force and the corresponding articles in the New Civil Procedure Code (in brackets).

⁵ Decree-Law n. 314/78 of 27th October, amended several times.

⁶ Article 146 and 147 of the Law on the organisation of children's guardianship.
**Children and Family Courts** are courts with special responsibilities for family and child-related matters. There is, in principle, one children and family court in each district. These courts primarily decide family law issues and all the civil guardianship proceedings mentioned above. Where there are no children and family courts, jurisdiction lies with the general district courts.

Civil proceedings also encompass promotion and protection proceedings, aimed at protecting children deemed to be in danger. Following several recommendations of the United Nations Committee on the Rights of the Child, Portugal adopted the Law on the Protection of Children and Juveniles in Danger[7]. This law is applicable to children who:

- are abandoned or live alone;
- suffer physical or mental mistreatment or are victims of sexual abuse;
- do not receive the care or affection appropriate to their age and personal circumstances;
- are obliged to work in excessive or inappropriate conditions for their age, dignity, personal situation or in a way considered harmful for their education or development;
- are subject, directly or indirectly, to behaviour that seriously affects their safety or their emotional balance;
- behave or indulge in activities or abuse substances that severely affect their health, safety, training, education or development, without their parents, legal representatives or guardians taking the necessary action[8].

Children can also be parties to labour law proceedings. Rules concerning the involvement of children in labour law proceedings are contained in the Labour Procedure Code[9]. Labour courts are competent to enforce labour law and have been established in some districts. Where there are no such courts, general district courts are competent.

Whenever children participate in civil judicial proceedings, the public prosecutor has to be notified and participates in that proceeding. His/her role is to ensure that the best interests of the child will be respected. As a general rule, children are represented by their legal representatives, as explained in Section 2.1. However, in some instances, the representation of the child is undertaken by the public prosecutor[10]. This happens whenever the child’s legal representative does not pursue the child’s rights in court (e.g. when the child’s rights are not exercised due to the absence or inaction of his/her legal representative)[11]. When this is not the case, the role of the public prosecutor is ancillary. Even then, however, the public prosecutor must be notified of any acts and decisions taken in the procedure, as if he/she was an ordinary party, and has the right to plead in favour of the child’s rights or interests, as well as to appeal any decisions, whenever deemed necessary to protect the child’s rights and interests[12]. The public prosecutor’s role in defending children’s rights is particularly reinforced on promotion and protection proceedings[13] and on civil guardianship proceedings[14]. Thus, in principle, the public prosecutor is the authority responsible for guaranteeing that the child’s interests are respected in the course of the civil judicial proceedings.

**Specialist institutions for children in danger**

Children are protected through promotion and protection measures which rely on the active participation of the community. This protection is afforded in the first place by their families and by the public or private entities which deal with children in their daily life. Thus, all entities coming into contact with children who are in danger must immediately undertake measures aimed at providing them with the necessary protection. Schools, health centres, hospitals, local authorities, police forces, cultural associations, sports and recreation facilities, NGOs aimed at supporting children are amongst the authorities that can act in the first place to the benefit of children in danger.

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8. Article 3 of the Law on the Protection of Children and Juveniles in Danger.
10. Article 3 of the Statute of the Public Prosecutor, Law n. 47/86 of 15th October.
11. When parents disagree when representing the child, see Section 2.1.
14. Article 72, n.3 of the Law on the Protection of Children and Juveniles in Danger.
At the second level of intervention, the Commissions for the Protection of Children and Juveniles (‘CPCJs’) are involved. CPCJs are composed of representatives of various social and community areas, including, amongst others, health, education, parents’ associations, municipalities, social security, and security forces. Administrative and police authorities as well as all natural and legal persons have a duty to cooperate with the CPCJs if asked to do so. CPCJs are monitored, supported and assessed by the National Commission for the Protection of Children at Risk (‘CNPCJR’), which is responsible for planning State intervention and for coordinating, monitoring and evaluating the performance of public entities and the community in protecting children in danger. The public prosecutor also monitors the CPCJs’ activity.

The CPCJ, however, can intervene only with the consent of the child’s parents, guardian or legal representative. In the absence of this consent or when the consent is withdrawn, the CPCJ must communicate this to the public prosecutor because, from then on, the intervention will be up to the courts. Courts also intervene directly whenever there are no CPCJs in the area of the child’s residence. Courts will be assisted by multidisciplinary teams of the Social Security Institute. So, at the third level, Children and Family Courts are competent to protect the child. If such courts do not exist in the area of the child’s residence, the district court will be competent. The Portuguese system of promotion and protection is, therefore, a system of shared and subsidiary responsibilities, in a pyramid structure, with successive levels of intervention, starting with the entities closest to the child, then moving to the CPCJ, responsible for implementation measures with the child’s/legal representative’s consent and, ultimately, the courts.

**Coordination of actors working with children who are involved in civil judicial proceedings**

Despite the system explained above, there is no entity coordinating or assessing institutions working with children, except for the CNPCJR. The National Commission coordinates and evaluates the operation of all CPCJs. Nevertheless, there have been several attempts to coordinate stakeholders’ activities. The Public Prosecutor General’s Office – the upper body of the public prosecutor service – has issued two orders aimed at standardizing procedures for cooperation between prosecutors and the CPCJs. It has also issued a Joint Directive with the CNPCJR to standardize procedures in the same matter. In its turn, the CNPCJR signed protocols of cooperation and coordination with the Institute of Legal Medicine (competent to provide expert opinion on personality and mental health issues or sexual crimes) and the Ministry of Health (under a Joint Directive on appointment and duties of health representatives in CPCJs). Furthermore, the CNPCJR has adapted and translated into Portuguese several best practice manuals produced by the Government of the Spanish Autonomy Community of Valencia (Generalitat Valenciana) concerning the protection of children’s rights. These manuals are aimed at the entities which are in the front-line of child protection, such as social security, education, policies and health. They are available on the website of the CNPCJR.

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

Lastly, on April 11th, 2012, the Government established the Task Force for an Agenda for Children, composed of people active in the defence of children’s rights. This Task Force is charged with producing, amongst others, an analysis of obstacles and constraints to the full enjoyment of children’s rights. The results may be used to make changes to the laws on child matters, including when involved in judicial proceedings.

15 Article 17 and 20 of the Law on the Protection of Children and Juveniles in Danger.
16 Created by the Decree-Law n. 98/98 of 18th April.
17 Article 72, n.2 of the Law on the Protection of Children and Juveniles in Danger, Law n.º 147/99 of 1th September.
18 Articles 28-30 of the Law on the Protection of Children and Juveniles in Danger, Law n.º 147/99 of 1th September. The Portuguese judiciary map is currently under review. The new map foresees Children and Family Courts in every judicial district.
Relationship between civil, criminal and administrative proceedings

Whenever a child is a victim of a crime and intends to bring criminal charges against the offender and, at the same time, ask for compensation, he/she is obliged to do so in the criminal judicial proceedings, as a general rule. The parents or legal representatives of the child must be informed of the right to claim for civil damages during the criminal procedure and be notified of the obligation to do it within that procedure. The only cases where the child may bring a case to the criminal court and, at the same time, start a separate civil judicial proceeding, are the following:

- If no accusation against the offender is made in the criminal judicial proceedings, a civil action can be brought in the eight months that follow the acknowledgement of the crime by the authorities;
- If the criminal procedure was filed, suspended or in any way did not reach trial;
- If the criminal procedure depends on filing a complaint or private accusation;
- If, at the time charges are brought, there are no known damages;
- If the value of the claim exceeds € 30,000;
- If the victim was not informed of the right to ask for compensation in the criminal judicial proceedings or was not notified to do this when he/she pressed charges.

When a civil judicial proceeding is running in parallel to a criminal judicial proceeding, the civil court may suspend the civil judicial proceeding and wait for the criminal court’s decision, if the civil decision depends on the criminal court’s judgement.

Promotion and protection proceedings are dealt with as a matter of urgency by the courts. Therefore, acts that take place within this type of proceeding must be executed before acts required under other types of judicial proceedings.

The court must also harmonize decisions taken in promotion and protection proceedings and civil guardianship proceedings, if both are underway for the same child. On the other hand, if any situation of danger for the child is acknowledged in a civil guardianship proceeding, the public prosecutor should communicate it to the CPCJ or, if necessary, ask for the court to apply a promotion and protection measure within the civil guardianship measure.

There are no rules concerning administrative judicial proceedings running in parallel with criminal or civil proceedings, other than the option for the judge to suspend the administrative judicial proceeding whenever the decision on the case depends, totally or partially, on the decision to be taken in the civil or criminal judicial proceeding. In that case, the administrative court will wait for the civil or criminal court to decide – the suspension is withdrawn, though, if the civil or criminal judicial proceeding is delayed for more than 2 months, waiting for action of any of its parties.

Training/vetting of professionals dealing with children

All Portuguese magistrates - judges and prosecutors - receive training on family and child law, during their time at the school for Magistrates (CEJ - Centre for Judicial Studies). Education and awareness-raising on the rights of the child is included in the initial and continuing training of judges and prosecutors. However, there is no specific training on how to deal with children.

Moreover, the placement of judges in Children and Family Courts is not conditional on them having particular experience with children. It is only required that the judge has: at least 10 years of effective experience.

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20 Article 71 of the Criminal Procedure Code.
21 Article 75 of the Criminal Procedure Code.
22 Article 77, n. 2 of the Criminal Procedure Code.
23 Article 72 of the Criminal Procedure Code.
25 Article 102 of the Law on the Protection of Children and Juveniles in Danger.
27 Article 148, n.3 of the Law on the organisation of children's guardianship.
28 Article 15, n.1 of the Administrative Courts’ Procedure Code, Law n.15/2002, of the 22nd February.
29 Article 15, n.2 of the Administrative Courts’ Procedure Code.
Judicia, activity as a judge or prosecutor, and that his/her performance is evaluated as ‘good with distinction’ or higher. Furthermore, all judges and prosecutors are evaluated every four years, to guarantee they remain suitable for the job. If there are no Children and Family Courts, jurisdiction is exercised by the court of general jurisdiction, which may be chaired by a judge in the early stages of his/her career.

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

Training programmes, for social security professionals who participate in CPCJs and members of multidisciplinary teams that support the courts in promotion and protection proceeding and some civil guardianship proceedings, are regularly developed by the Social Security Institute. The National Commission for the Protection of Children and Juveniles at Risk also organises several training sessions, aimed particularly at teachers, police and legal officers and social workers.30

A special law provides measures for assessing the capacity of professionals who work with children. It sets forth that in the recruitment process for both public or private jobs, or activities, whose practice involves regular contact with children, the employer is obliged to ask the applicant to submit a criminal record certificate and to consider the information in the certificate in assessing the candidate’s suitability for the duties.31

1.2 General approach towards children under civil law: definition of child, principle of evolving capacities, best interests of the child, principle of non-discrimination

Under Portuguese law, children are considered persons who are under 18 years old.32

The Civil Procedure Code does not set out the main principles/objectives for children’s involvement in judicial proceedings in ordinary civil law suits. Still, whenever deciding on the child’s representation, the court must take into account the best interests of the child.33

On the contrary, civil judicial proceedings for the promotion and protection of children in danger, and civil guardianship proceedings, which are both aimed at deciding matters specially pertaining to children, must be orientated towards the protection of the child’s interests and rights.34

There are no checklists or protocols in place to determine the child’s best interests, nor are there rules requiring the child’s involvement in assessing what would be his/her best interests. Also, there are no specific rules aimed at ensuring that the relevant authorities take due account of all interests at stake, including the child’s psychological and physical well-being as well as his/her legal, social and economic interests. It is up to the magistrate to decide freely how these interests should be protected, within the general principles stated by law and the international conventions Portugal has signed regarding child protection.35 In any case, whenever the judge or the public prosecutor finds it necessary, they can designate specific professionals to assist them with handling the child during the proceedings, namely through the multidisciplinary teams of the Social Security Institute.

In cases where more than one child is involved in the same proceeding the interests of each child is assessed individually, regardless of the number of children involved in the proceedings.

The Civil Procedure Code also does not set out measures specifically aimed at ensuring that children are treated with dignity and respect in ordinary civil judicial proceedings. The Civil Procedure Code contains general rules on the treatment of all the parties in a proceeding. Such rules require that the participants in the procedure are treated with politeness and courtesy.36 Moreover, parties are

30 Summary Record of 731st Meeting: Portugal. 06/03/2003. CRC/C/SR.731. (Summary Record), para. 5.
31 Law n. 113/2009, of 15th September, Article 2.
32 Article 122 of the Civil Code.
33 Article 12, n. 3 of the Civil Procedure Code (Article 18, n. 3 of the New Civil Procedure Code).
34 Article 4 of the Law on the Protection of Children and Juveniles in Danger and Article 147-A of the Law on the organisation of children’s guardianship.
35 For example, UN Convention on the Rights of the Child, European Convention on the Exercise of Children’s Rights (Council of Europe), European Convention on Child Adoption (Council of Europe), Convention, amongst others.
36 Article 266-B of the Civil Procedure Code (Article 9 of the New Civil Procedure Code).
forbidden to use offensive or disrespectful language³⁷. These rules are applicable both to adults and children, regardless of their role in the proceeding, legal status or capacity.

The Law on the Promotion and Protection of Children and Juveniles in Danger sets out some principles aimed specifically at protecting children involved in civil judicial proceedings. Such principles are applicable both to promotion and protection proceedings and civil guardianship proceedings³⁸ and include the following: the principle of the best interests of the child (the procedure must attend primarily to the best interests of the child), the principle of privacy (according to which the procedure must be carried out with respect for the child’s private life and his/her right to protect his/her personal image), the principle of an early intervention (according to which the interventions must take place as soon as possible), the principle of minimal intervention (according to which the private life of the child must be preserved to the maximum extent possible), the principle of proportionality and adequacy (according to which the State intervention must be necessary and adequate to the situation and must be sufficient to address its objectives), the principle of parental responsibility (according to which any intervention must be carried out in a way that allows the parents to assume their duties towards their children), the principle of prevalence of the family (according to which prevalence should be given to measures that include minors in their respective family), the principle of mandatory information (children, parents, and legal representatives or guardians are entitled to be informed of their rights, about the basis of the State intervention and its process), and hearing and compulsory participation (according to which children, as well as parents, have the right to be heard and to participate in all parts of the procedure including the decision on the measure to be applied). Section 2 of this study elaborates on the way these principles are realised in the Portuguese legal order.

There are no statutory age limits for expressing views as witness, or plaintiff or defendant. The judge can hear every person he/she considers important, irrespective of their age. All those who are physically and mentally sane have the capacity to testify³⁹. However, the judge has the last word regarding who should be allowed to testify. Moreover, judges can freely evaluate the credibility of any testimony⁴⁰. Thus, it is for the judge to assess the child’s evolving capacity, maturity and capacity to express his/her own views.

Non-discrimination

Children are protected against discrimination in the Portuguese legal order. The principle of non-discrimination is enshrined in Article 13 of the Portuguese Constitution. Article 69 of the Constitution specifically sets out the right of children to protection against any form of discrimination by the society or the State.

Children who feel that have been discriminated against have the right to complain to the Commission for the Equality and Against Racial discrimination. However, this institution is only responsible for handling complaints on the grounds of race, colour, nationality or ethnic origin.

To implement non-discrimination on the basis of ethnicity or nationality, the Portuguese Government has established the High Commissioner for Immigration and Ethnic Minorities⁴¹. This Office is responsible for the integration of immigrants. It has a support centre where legal advice can be provided. Therefore, it may advise immigrant children who participate in civil judicial proceedings⁴². The High Commissioner is also responsible for the integration of Roma children, having developed a special program for that purpose (’Choices’ Programme). No further measures aimed at providing special protection and assistance to more vulnerable children (e.g. very young children, Roma children, etc.) involved in civil judicial proceedings have been identified.

³⁷ Article 266-B, n.2 of the Civil Procedure Code (Article 9, n.2 of the New Civil Procedure Code).
⁴⁰ According to Article 394 of the Civil Code.
⁴¹ Decree-Law 3-A/96 of 26th January. Today this institution is called High Commissioner for the Immigration and Intercultural Dialogue.
⁴² Choices Program, which was established by Resolution of the Council of Ministers No. 4 / 2001 of 9 January.
2 Child-friendly justice in civil judicial proceedings

2.1 The child as an actor in civil judicial proceedings

The child as a plaintiff

Children of any age can be party to civil judicial proceedings. However, children lack the proce-
dural capacity, i.e. the ability to stand alone in court. Only those persons who have legal capacity
to conclude contracts, i.e. in principle persons 18 years of age and above, also have the procedural
capacity to appear in court. Thus, the child must be represented by a legal representative in civil
judicial proceedings. Exceptionally, children can act in their own right and, thus, bring the relevant actions in their own
name, with respect to:

- The administration and disposal of assets they have obtained from their employment;
- Common legal transactions made in the course of their daily life which involve only minor
  expenses or disposal of assets with limited value;
- Legal acts taken within the labour/employment activity they have been authorized to exercise.

Emancipated children (i.e. children aged 16 years of age and above who have already been married) have, in principle, the same capacity as adults and are legally treated as such, so they have full procedural capacity to stand alone in court.

No special measures aimed at facilitating children’s exercise of bringing an action to court have been
identified.

When children reach the age of majority during the judicial proceedings they continue the proceed-
ings in their own name.

Children can also intervene in civil judicial proceedings which affect their interests in accordance
with the above mentioned rules. This intervention may be as a plaintiff (in which the child associates
himself/herself to the original plaintiff), as a defendant (in which the child associates himself/herself
to the original defendant) or as a third party (in which the child may pursue a right of his/her own).

Children’s legal representatives

The Civil Code regulates the persons who can act as a child’s legal representative. If the child
does not have a legal representative, the court must designate one. In case of urgency, the court
can designate a provisional curator. The public prosecutor must always be heard before the court makes this designation.

If parental care rights are exercised by both parents, both of them must represent the child in court.
If the parents disagree in the course of the proceedings, any of them can ask the court to decide on
the child’s representation. The court must decide taking into account the best interests of the child.
It can designate as judicial representative one of the parents, a special curator or the public pros-
ecutor. The same happens during any procedure where there is a conflict of interests between the

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43 Article 9 of the Civil Procedure Code.
44 Article 10 of the Civil Procedure Code (Article 16 of the New Civil Procedure Code). Those acts are enumerated
  in Article 127, n.1 of the Civil Code.
45 Article 133 of the Civil Code.
46 Articles 269, 270 and 320 and following of the Civil Procedure Code (Articles 261, 262 and 311 and following
  of the New Civil Procedure Code).
47 Legal representatives should be, in the first place, the parents of the child. Otherwise, a tutor should be
designated, as well as a family council. Articles 124, 1881, 1921 and 1924 of the Civil Code.
49 Article 12 of the Civil Procedure Code (Article 18 of the New Civil Procedure Code). For the public prosecu-
tor’s intervention, whether as representative of the child or when having ancillary intervention, please see
Section 2.2.
child and his/her parents or legal representatives, in which case the court must designate a special curator to represent the child in court.\(^{50}\)

Furthermore, it is the responsibility of the Public Prosecution Service to bring a claim for civil damages on behalf of the State and the people that it is required to represent by law, such as children\(^{51}\) (see \textbf{Section 1.1} for the cases in which the public prosecutor represents the child). Thus, when parents, legal representatives and guardians do not bring a claim for civil damages on behalf of the child, the Public Prosecution Service can do so.

\textbf{Labour law proceedings}

As indicated earlier in this subsection, an exception to children's procedural incapacity concerns labour law proceedings, where a child aged 16 years of age and above may stand alone in court, as long as he/she acts as a plaintiff/complainant\(^{52}\). The purpose of this rule is to be consistent with the age of legal capacity for concluding labour contracts, which is 16\(^{53}\). Although the Labour Code still sets the minimum age to be allowed to work at 16 years of age, it also states that the child may only be permitted to work if he/she has already completed compulsory education.

Nevertheless, children below the age of 18, even without having completed their compulsory education, may be allowed to work, provided that they continue attending school to complete their compulsory education or vocational training to obtain the requisite professional qualifications\(^{54}\). The work must be light and restricted to simple tasks that do not harm the child’s physical integrity, health, security, physical, mental, moral, intellectual and cultural development, nor prevent his/her school attendance or participation in vocational training programmes\(^{55}\).

Regarding children below the age of 16, any employment contract concluded by a child will only be valid under the written authorisation of his/her parents or legal representatives\(^{56}\). Thus, under these conditions it is possible for children aged below 16 years of age to participate in labour proceedings. The same happens when children aged below 16 years of age sign invalid employment contracts: the validity of that contract will be discussed in the labour proceeding.

The Labour Procedure Code also stipulates that children aged below 16 years of age should be represented by the public prosecutor whenever their legal representatives are not acting according to their best interests\(^{57}\). Finally, in labour proceedings, once the child turns 16 years old, he/she can ask for his/her representation to discontinue the proceedings in his/her own right\(^{58}\).

\textbf{Precautionary/interim measures}

There are no specific rules about precautionary and interim measures regarding children, so the above mentioned general rules apply.

\textbf{The child as a defendant}

In principle, any child can be sued in a civil action, provided certain rules are observed. The first limitation regards the child’s capacity to conclude contracts. The second, refers to the civil responsibility resulting from the acts committed by a child.

In proceedings regarding contractual responsibility, since a child does not have general legal capacity to conclude contracts, as discussed above, he/she can only be sued if the responsibility arises within the narrow limits of his/her legal capacity. As such, a child can make ordinary legal transactions deemed appropriate to his/her capacity, provided they involve only minor expenses. Note however that a child aged 16 and above can freely administer the assets he/she has acquired from his/her

\(^{50}\) Article 1881, n.2 of the \textit{Civil Code}.

\(^{51}\) Article 483 of the \textit{Civil Code}.

\(^{52}\) Article 2 of the \textit{Labour Procedure Code}.

\(^{53}\) Article 70, n. 1 of the \textit{Labour Code}.

\(^{54}\) Article 69, n. 1 of the \textit{Labour Code}.

\(^{55}\) Article 68, n. 3 of the \textit{Labour Code}.

\(^{56}\) Article 70, n.2 of the \textit{Labour Code}.

\(^{57}\) Article 2 of the \textit{Labour Procedure Code}.

\(^{58}\) Article 2, n.3 of the \textit{Labour Procedure Code}.
work\textsuperscript{59} and can thus be sued without the need to be represented by his parents/guardian, provided the claim against the child concerns those assets.

Concerning torts or personal injury proceedings, the law presumes that a child aged 7 or less is not responsible for any of his/her acts\textsuperscript{60}. Thus, if the plaintiff wants to sue the child, he/she must prove that the child had the capacity to understand the nature of his/her act and its consequences. As to children aged 7 years of age and above, the plaintiff only has to prove the general conditions for civil responsibility of the child (leaving the child with the burden of proving that he/she did not have the capacity to understand the nature and consequences of his/her act). In both cases, the child must be represented by his/her legal representative.

On the other hand, if the act was perpetrated by children with no responsibility, the plaintiff can sue the parents, legal representatives or any other person who were obliged to supervise them\textsuperscript{61}.

Where the child is acting as a defendant, both of the parents must be notified that the child is being sued\textsuperscript{62}. With respect to their legal representation, the same rules as in the case of child plaintiffs apply.

As said above, children can also intervene in civil judicial proceedings which affect their interests, in which the above mentioned rules apply.

**The child as a witness**

There are no statutory age limits for being a witness, so the court can hear every person that is considered important for the case, irrespective of his/her age. It is at the judge’s discretion who should be admitted to testify. Moreover, it is for the judge to assess the credibility of the testimonies\textsuperscript{63}.

There are no child-specific rules concerning refusal to testify; thus, it is presumed that the same rules apply to children and adults alike. Descendants have the right to refuse testifying in civil judicial proceedings where their ascendants are parties, and vice versa. A married child has the same right when his/her spouse is party to the proceedings\textsuperscript{64}. Otherwise, giving testimony is mandatory and does not depend on the parent’s/guardian’s agreement.

The judge is obliged to inform the witnesses of their right to refuse to testify\textsuperscript{65}. Children under 16 years of age testifying in court are never obliged to take an oath since they are not criminally responsible\textsuperscript{66} and, therefore, cannot be found guilty of perjury.

**The child in any other role**

Besides participating in civil judicial proceedings as plaintiffs, defendants and witnesses, children may also participate in some judicial proceedings aimed at protecting them. Thus, in these proceedings children may participate and be heard.

Promotion and protection proceedings are aimed at protecting children who are considered to be in danger. Any person or entity dealing with the child who becomes aware of a dangerous situation for the child should contact the CPCJ of the region where the child resides. If the CPCJ’s intervention does not defuse the dangerous situation, then the promotion and protection proceedings must take place at court, as explained in Section 1. As also mentioned in Section 1, children have the right to be heard in these proceedings.

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

Children aged 12 and above must always be heard by the CPCJ or by the judge concerning the situation that gave rise to the procedure. They must also be heard when deciding the measure aimed at promoting and protecting their rights, as well as on the revision or termination of the measure.

\textsuperscript{59} Article 127, n.1 of the Civil Code.
\textsuperscript{60} Article 488, n.2 of the Civil Code.
\textsuperscript{61} Article 491 of the Civil Code.
\textsuperscript{62} Article 10 of the Civil Procedure Code (Article 16 of the New Civil Procedure Code).
\textsuperscript{63} Article 616 of the Civil Procedure Code (Article 495 of the New Civil Procedure Code).
\textsuperscript{64} Article 618, n.1, a), c) of the Civil Procedure Code (Article 497, n. 1, a), c) of the New Civil Procedure Code).
\textsuperscript{65} Article 618, n.2 of the Civil Procedure Code (Article 497, n. 2 of the New Civil Procedure Code).
\textsuperscript{66} Article 19 of the Criminal Code.
The CPCJ or the judge will hear the child either alone or in the presence of his/her parents, legal representative, lawyer or person the trusts. If the child is 12 years of age and above, a protection measure can only be applied if the child does not oppose it. The right of opposition can be exercised by the children themselves or together with their parents or a person of their choice. If the child is under 12, his/her opposition is taken into account depending on his/her capacity to understand the aim of the intervention.

The adversarial principle is applicable to promotion and protection proceedings, so the child can offer evidence and ask for investigation measures.

In civil guardianship proceedings, the protection of the child is also the aim of the proceeding. However, unlike promotion and protection proceedings, these proceedings do not require that the child be in danger (See Section 1 for more detailed information on these proceedings). As mentioned in Section 1, children have the right to be heard in these proceedings.

For some civil guardianship proceedings the law expressly requires the child’s hearing, e.g. in cases regarding parental responsibility/custody when there is a disagreement between the two parents. In these cases, before deciding on the relevant issue, the judge must first hear the child.

The judge is also obliged to hear children aged 14 years of age and above before designating a guardian. With respect to adoption proceedings, when the child to be adopted is aged 12 years of age and above, he/she must consent to the adoption. Moreover, the judge must hear the adoptive parents’ other children if they are 12 years of age and above.

On the other hand, there is no obligation to hear the child in divorce proceedings, only when it concerns cases regarding parental responsibility custody.

### 2.2 Provision of information

#### The child as a plaintiff/defendant

No child-specific rules regarding the right to information have been identified. Thus, the general rules applicable to adults are presumed to also apply in cases where a child is the plaintiff/defendant.

It is worth noting that as far as children are concerned, the right to information generally stated in the Law on the Promotion and Protection of Children and Juveniles in Danger should also serve as a guiding principle for dealing with children in civil judicial proceedings. According to this law, when a child is a victim of a crime and a criminal procedure is started, the authorities are obliged to inform the child that he/she can seek civil compensation for damages caused and that the claim must be filed during the criminal proceeding (as stated in Section 1.1). That information, though, should be given to the child’s parents or legal representatives and not the child himself/herself. In all other cases, however, the authorities are not obliged to inform children (or their legal representatives) of their right to bring an action before the court.

In civil judicial proceedings, the court’s clerks are obliged to inform accurately any party and/or lawyer on the status of the procedure. However, this information must always be provided to the child’s legal representatives. They are the ones responsible to provide all relevant information to the children who have an interest in the case, even if the children reside in another Member State. Information is provided indirectly to the child via parents, guardians. There is no alternative method of providing information directly to the child.

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67 This right is specially protected by Articles 35 and 84 of the Law on the execution of promotion and protection measures in natural living environment, Decree-Law nº 12/2008 of 17th January.

68 Article 4 9° and 10° n 1 of the Law on the Protection of Children and Juveniles in Danger.

69 Article 10° n 2 of the Law on the Protection of Children and Juveniles in Danger.

70 Article 104 of the Law on the execution of promotion and protection measures in natural living environment.

71 Article 1901, n.3 of the Civil Code.

72 Article 1931 of the Civil Code.

73 Article 1981, n.1, a) of the Civil Code.

74 Article 1984 of the Civil Code.

75 Information obtained through consultation with stakeholders (judicial authority).

76 Article 167, n.4 of the Civil Procedure Code (Article 163, n.4 of the New Civil Procedure Code).
Besides that, there are no specific rules regarding the type of information with which children should be provided (e.g. on the consequences of the procedure, on the right to seek remedy for possible violations of their rights or on the availability of support services). Also, there is no child-friendly material containing legal information available.

In general, every communication (including the service of court procedural documents, subpoenas, judgements and/or information on the right to appeal) between the authorities and the child is done through his/her parents/legal representatives. As such, only parents/legal representatives can be served with procedural documents and only they will be sanctioned if the child does not show up in court, as it is their duty to assure the child’s presence in court. The child is directly notified by the authorities only in the cases where he/she can stand alone in court, without a legal representative (see Section 2.1).

If the child does not appear in court because his/her parents/legal representatives failed to assure his/her presence, the judge may order the police to ensure that the child appears in court. In these cases, although there are no written rules, the police are instructed to act as informally as possible, taking into consideration the child’s age and maturity77.

Also, there are no specific rules on how, when and by whom children are given the necessary information and explanations about the consequences of participating in civil judicial proceedings and expressing their views or opinions.

Finally, there are no specific measures to ensure that children receive information on the availability of support services (health, psychological, social, interpretation and translation, and other) or organisations which can provide support to them and the means of accessing such services.

The child as a witness

The same rules as in the case of child plaintiffs/defendants apply with respect to the provision of information to child witnesses about the consequences of their participation in civil judicial proceedings, the existence of support mechanisms and child-friendly material as well as the serving of court procedural documents.

The child in any other role

The right to information is one of the paramount principles of the promotion and protection proceedings78.

A child, together with his/her parents, legal representatives or guardians must be informed of his/her rights and about the development of the procedure, in a language which is understandable for the child’s age79. There are no rules regarding the type of information that should be provided to one or the other of these actors.

For rules on court service’s documents and notifications, the same rules applicable to child plaintiffs/defendants/witnesses apply.

Where a placement measure is applied to protect the child, the placement centre must give him/her a welcome guide which contains information on his/her rights and the steps of the procedure.

The same rules applicable to promotion and protection proceedings with respect to access to information (as well as all other general rules stated in the Law on Promotion and Protection of Children and Juveniles in Danger) apply to civil guardianship proceedings too80.

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77 Information obtained through consultation with stakeholders (public prosecutor).
78 Article 4 h) of the Law on the Protection of Children and Juveniles in Danger.
79 Article 86 of the Law on the Protection of Children and Juveniles in Danger.
80 Article 147-A of the Law on the organisation of children’s guardianship.
2.3 Protection of the child’s private and family life

**General procedural rules applicable to children involved in civil judicial proceedings regardless of their role**

**Publicity of trials**

Civil judicial proceedings are in principle held in public. Nevertheless, whenever the publicity of the procedure may harm the dignity, privacy, private life of any party or of his/her family, the public morals, or endanger the effectiveness of the decision to be taken, the judge may restrict third persons’ access to the hearing.

**Protection of the child’s data during the civil judicial proceedings**

The National Commission for the protection of personal data is the entity responsible for the protection of personal data of every citizen, including children. Violations of the law on personal data may amount to administrative offences or even, in some circumstances, to criminal offences.

Regarding data on civil judicial proceedings, though, it is up to the Superior Judicial Council to manage all data of the participants in the proceedings. As there are no special rules for the treatment of children’s data the general rules apply to children and adults alike.

Access to information and personal data gathered in each civil judicial proceeding is restricted, and only the judge can allow access to it, even to the person whose data is being protected. Parties to civil judicial proceedings can have access to the data of other parties and witnesses, but with severe restrictions:

1. only the party’s name and the name of his/her lawyer are accessible to other parties and only for the needs of the proceeding. However, with respect to children, their personal data is never accessible; only their legal representative’s data can be accessed by other parties to the proceeding.

2. in order to access the data, an electronic application must be submitted, for which the user must have a password-protected username in order to assure proper authentication;

3. access to data is electronically registered, saving the identity and type (e.g. magistrate, party, lawyer, and clerk) of the user that accessed the data, the date of access and indicating the data that was consulted.

Any professional (e.g. magistrate, clerk, lawyer or any other person who works at the court or at the facilities where personal data is kept) who comes into contact with the information gathered in a civil judicial proceeding is under the obligation of professional confidentiality. Violation of professional confidentiality is a crime punished with up to 2 years of imprisonment or a fine up to 240 days (which amounts to civil and disciplinary action). Submission of a complaint is not necessary as this criminal offence is examined ex officio, i.e. at the public prosecutor’s own initiative.

Anyone who accesses personal data gathered in a judicial proceeding without authorization commits a crime punished with up to 1 year of imprisonment or a fine up to 120 days.

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81 Law n. 67/98, of 26th October.
82 Articles 3, a), g) and 24, n.1 of the Law on the management of data of the judicial system, Law n.34/2009, of the 14th July.
83 Article 24, n.7 of the Law on the management of data of the judicial system.
84 Articles 29 and 31 of the Law on the management of data of the judicial system.
85 Article 43 of the Law on the management of data of the judicial system.
86 Article 52 of the Law on the management of data of the judicial system. According to the Article 47 of the Portuguese Criminal Code, fines are measured in days, from a minimum of 10 to a maximum of 360 days. The value of each day is measured in money, which the court decides on a case by case basis and which can range from € 5,00 to € 500,00, depending on the defendant’s assets. For example, the court may decide to condemn the defendant to pay a fine of 100 days, for € 5,00 a day (which results in a total amount of € 500,00).
87 Article 50 of the Law on the management of data of the judicial system.
The misuse of personal data gathered in a judicial proceeding is sanctioned with up to 2 years of imprisonment or fine up to 240 days.

**Protection of the child’s identity in the media**

Besides the legal regime laid down in the Law on the management of data of the judicial system, the violation of privacy may also constitute the offence of violation of private life, regardless of whether the victim is a child or an adult. In particular, the Article 192, n.2 of the Criminal Code states that the disclosure of facts pertaining to the private life of anyone, without his/her consent, is a crime, except when that disclosure takes place in order to serve the public interest. As such, disclosure of the child’s identity, or his/her family, names, addresses and other personal information, as well as the video or audio recording of such information, when the hearing takes place behind closed doors, is prohibited.

These rules apply also when court judgements are published in the media (journals, online, etc.), since protection of the confidentiality of the child’s identity is a general rule, as stated above.

The Portuguese Journalist’s Code of Conduct states that journalists must not identify, directly or indirectly, sex crime victims or child suspects. The same Code of Conduct forbids journalists to identify their confidential sources and requires them to respect peoples’ privacy (although journalists may interfere with one’s privacy if he/she puts the public interest at stake or he/she has violated the principles the journalists must defend). However, no specific reference is made to children involved in civil judicial proceedings. The Portuguese media regulatory authority is a supervisory body and can impose sanctions.

**The child as a witness**

Apart from the general rules described above for child plaintiffs/defendant, to prevent any adverse consequences civil judicial proceedings could have in the child’s family relations, Portuguese legislation provides that witnesses can refuse to testify against their ascendants (for more information please see Section 2.1).

**The child in any other role**

**Promotion and protection proceedings**

In promotion and protection procedures and in civil guardianship procedures, the protection of children’s privacy and the right to protect their image and private life are considered guiding principles of paramount importance.

As such, the first bodies called upon to protect children are those who least intrude their privacy – such as schools, hospitals and day-care centres. The CPCJs and courts only intervene at the second and at the third level (for more detailed information please see Section 1). Portuguese courts have also stressed that interventions aimed at protecting children in danger must be reduced to the extent strictly necessary to avoid unnecessary interference with the child’s family and private life.

Promotion and protection procedures are confidential. Only the members of the CPCJ and the child’s parents, legal representatives or guardian may have access to the files. During the execution of the promotion and protection measure, the child can have access to his/her files through his/her lawyer. Furthermore, the judge can authorise personal access for the child to his/her file, after taking into account his or her level of maturity. Other interested persons can examine the files if so authorised.

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88 Article 47 of the Law on the management of data of the judicial system.
89 Article 192 of the Criminal Code.
90 Article 7 of the Portuguese Journalists’ Code of Conduct.
91 Article 6 of the Portuguese Journalists’ Code of Conduct.
92 Article 9 of the Portuguese Journalists’ Code of Conduct.
93 Article 4 b) of the Law on the Protection of Children and Juveniles in Danger.
94 According to the subsidiary principle, foreseen in Articles 4 j), 6, 7 and 8 of the Law on the Protection of Children and Juveniles in Danger and also Articles 4, 7, 8 and 11 of the Law on the Protection of the Victims of Domestic Violence, Law n.º 112/2009.
95 Ruling of the Appeal Court of Lisbon dated 09/06/2011.
96 Article 88 of the Law on the Protection of Children and Juveniles in Danger.
by the judge or by the president of the CPCJ. Files are destroyed when the child turns 18\textsuperscript{97}. The files can also be examined for research purposes. Where that is the case, all those involved must not reveal the identity of the child or others participating in the case.

The media cannot broadcast the identity of children who are being subject to a promotion and protection procedure. If a child is interviewed, the media are strictly forbidden from providing any information which may lead to the disclosure of the child’s identity\textsuperscript{98}.

**Civil guardianship proceedings**

Besides the application of the general principles enshrined in the Law on the Promotion and Protection of Children and Juvenile in Danger as discussed above and in Section 1, some specific rules apply. In recognition of paternity or maternity proceedings, the relevant investigating acts must be conducted in a way that does not harm public morals or personal dignity\textsuperscript{99}. Moreover, all adoption proceedings are secret\textsuperscript{100}. The violation of the confidentiality of adoption amounts to a crime, punished by up to one year of imprisonment or a fine\textsuperscript{101}.

In adoption proceedings, anyone who should be heard by the court (including the child to be adopted) is examined separately, to guarantee the secrecy of identity\textsuperscript{102}.

Finally, the Civil Procedure Code provides that the public is excluded, as a general rule, from trials in divorce proceedings\textsuperscript{103}.

### 2.4 Protection from harm and ensuring a child-friendly process

**The child as a plaintiff/defendant**

**Avoiding undue delays**

Besides general precautionary and interim measures, there are no measures in place aimed at ensuring that the commencement and relevant decisions in ordinary and labour civil judicial proceedings take place without undue delays in cases involving children.

**Child-friendly environment**

There are no specific rules for ordinary civil and labour judicial proceedings aimed at protecting children from harm and ensuring a child-friendly process.

In any civil judicial proceeding, besides the intervention of the public prosecutor (as a representative of the child or when acting in an ancillary role), it is up to the judge to guarantee that the child is treated properly in court and to order the clerks to provide the child with the comfort he/she needs within the court’s capacities. Thus, measures regarding the premises and places where children are involved in proceedings, psychological, practical and other support, protection of children during the proceedings from images or information that can be harmful to their welfare, waiving the child’s presence, issues pertaining to the organisation and timing of the court sessions and other actions during the civil judicial proceeding, are freely decided by the judge, whether by request of the public prosecutor or of the child, who is supported, whenever necessary by professionals, such as psychologists and social workers belonging to the multidisciplinary teams that support the courts.

**Provisional orders**

Besides promotion and protection or educational guardianship proceedings (see below under ‘the child in any other role’), there are no special rules on provisional orders regarding children, so the

\textsuperscript{97} Article 88 of the Law on the Protection of Children and Juveniles in Danger.

\textsuperscript{98} Article 90 of the Law on the Protection of Children and Juveniles in Danger.

\textsuperscript{99} Article 203, n. 1 of the Law on the organisation of children’s guardianship.

\textsuperscript{100} Article 173 of the Law on the organisation of children’s guardianship.

\textsuperscript{101} Article 173 b) of the Law on the organisation of children’s guardianship.

\textsuperscript{102} Article 170, n. 3 of the Law on the organisation of children’s guardianship.

\textsuperscript{103} Articles 168 and 656 of the Civil Procedure Code (Articles 164 and 606 of the New Civil Procedure Code).
general rules apply. As such, in general, any person can ask for a provisional decision from the court when there is a justified fear of serious and irreparable harm being done, so the court can act urgently to avoid that harm from occurring.\textsuperscript{104} The relevant request is submitted by the child’s parents/legal representatives, in accordance with the general rules indicated in Section 2.1. These proceedings must be decided within two months or, if the opposing party is not heard before the decision (which may happen whenever that hearing risks the effectiveness of the provisional decision\textsuperscript{105}), within 15 days\textsuperscript{106}.

The child as a witness

With respect to the protection of child witnesses from harm and the existence of child friendly measures, the same rules as in the case of child plaintiffs/defendants apply to child witnesses too.

The child in any other role

Promotion and protection and civil guardianship proceedings

For children who constitute the ‘subject’ of a dispute, this study identified very few Portuguese legal rules for protecting children from harm and ensuring a child friendly process.

Promotion and protection proceedings are dealt with as a matter of urgency by the courts\textsuperscript{107}. Therefore, acts that take place within this type of proceeding must be executed before acts required under other types of judicial proceedings. Similarly, these proceedings are not suspended during judicial holidays, Saturdays or other holidays. The same is true also for civil guardianship proceedings, whenever the delay of the procedure may harm the child’s interests\textsuperscript{108} and, especially, in adoption proceedings\textsuperscript{109}.

When there is a clear and present danger to the security or life of the child, the judge – upon the public prosecutor’s request – must take urgent measures within 48 hours. The consent of the child’s parents, legal representatives or guardian is not required. The measures that can be ordered by the court are either one of those explicitly mentioned in the law or any other measure that the court deems necessary and sufficient to guarantee the child’s safety\textsuperscript{110}.

The measures set by the law on the Protection of Children and Juveniles in Danger are the following:

- Provision of support to the parents (providing them with the necessary skills and tools to be responsible parents such as psychological, or economic and social support)\textsuperscript{111};
- Provision of support to another family member (when another family member has the child’s guardianship)\textsuperscript{112};
- Foster care, i.e. placement of the child in the care of a suitable person (normally with whoever maintains a close relationship with the child)\textsuperscript{113};
- Family foster care\textsuperscript{114} (where a family takes care of the child);
- Placement of the child in the foster care of the person selected to adopt the child;
- Placement of the child in an institution\textsuperscript{115} (the institution has to be a permanent institution with all the necessary structures and professionals to provide support and care for children, in particular, with respect to his/her education and well-being);

\textsuperscript{104} Article 381 of the Civil Procedure Code (Article 362 of the New Civil Procedure Code).
\textsuperscript{105} Article 385 of the Civil Procedure Code (Article 366 of the New Civil Procedure Code).
\textsuperscript{106} Article 382 of the Civil Procedure Code (Article 363 of the New Civil Procedure Code).
\textsuperscript{107} Article 102 of the Law on the Protection of Children and Juveniles in Danger.
\textsuperscript{108} Article 160 of the Law on the organisation of children’s guardianship.
\textsuperscript{109} Article 173-D of the Law on the organisation of children’s guardianship.
\textsuperscript{110} Article 92 of the Law on the Protection of Children and Juveniles in Danger.
\textsuperscript{111} Article 39 of the Law on the Protection of Children and Juveniles in Danger.
\textsuperscript{112} Article 40 of the Law on the Protection of Children and Juveniles in Danger.
\textsuperscript{113} Article 43 of the Law on the Protection of Children and Juveniles in Danger.
\textsuperscript{114} Article 46 of the Law on the Protection of Children and Juveniles in Danger.
\textsuperscript{115} Article 49 of the Law on the Protection of Children and Juveniles in Danger.
Placement of the child in an institution for adoption purposes. 

Likewise, in civil guardianship proceedings, the court may decide the adoption of provisional measures at any moment. Such measures might be, for example, provisional alimony/child support, guardianship or foster care.

Children who are considered to be in danger can be assisted during the procedure by doctors, psychologists or other experts or by persons they trust. The child can only be subject to medical examinations that embarrass him/her if this is strictly necessary and if their interests so require. They must be accompanied by their parents, or by someone they trust. Medical examinations must be conducted by specialised doctors. Moreover, psychological support must be provided for the child, both during and after the examination.

2.5 Protecting the child during interviews and when giving testimony

The child as a plaintiff/defendant/witness

There are no specific rules for children's examination in civil judicial proceedings. However, the law allows the judge to take any measure necessary to guarantee the safety and tranquillity of all those involved in the trial.

As stated in Section 1 and Section 2.1, it is at the judge's discretion who should be allowed to testify. Furthermore, the value of each testimony is freely evaluated by the judge. Thus, it is at the judge's discretion to decide, taking into consideration the age and/or maturity of the child whether the hearing will take place out of the court room, in a more child-friendly place (e.g., the judge's office) where judges, lawyers and clerks will not be wearing their official garments.

Although the civil procedure law does not specifically provide it, the judge may also decide that a professional who is specially trained to deal with children should also be present during the child's examination if this is considered necessary for the comfort and/or health of the child.

As with adults, children (whether parties or witnesses) residing outside the court's district may be examined by video-conference. In cases of children whose health does not allow their examination at the courtroom or via audio-visual means, judges can designate another place of examination after hearing the opinion of the child's doctor. If the doctors confirm that the witness (child or adult) cannot testify, the judge will not allow his/her examination.

There are no special or dedicated facilities to accommodate children when awaiting their turn to be questioned at court. Nevertheless, depending on the child's age, health and/or maturity, the judge (or even the court's clerks), may arrange a suitable room within the court's facilities where the child will be more comfortable. This decision, though, is at the judge's or clerk's discretion based on his/her knowledge of the child's situation and there is no legal provision in this respect.

While there are no specific rules regarding the child's hearing, according to the general rules the judge may decide to exclude the public from the trial sessions, if this is considered necessary to protect public morals or the dignity of the parties and/or witnesses involved (see also Section 2.4).

In civil judicial proceedings, witnesses are questioned by the lawyers. If deemed necessary to ensure the witness' tranquillity, the examination can be undertaken by the judge. In any case, lawyers retain

116 Article 157 of the Law on the organisation of children's guardianship.
117 Article 86 of the Law on the Protection of Children and Juveniles in Danger.
118 Article 87 of the Law on the Protection of Children and Juveniles in Danger.
119 Articles 650 and 638, n.3 and 5 of the Civil Procedure Code (Articles 602 and 516, n.3 and 5 of the New Civil Procedure Code).
120 Information obtained through consultation with stakeholders (judicial authority).
121 Article 623 of the Civil Procedure Code (Article 502 of the New Civil Procedure Code) and Articles 456, n.2 and 466, n.2 of the New Civil Procedure Code.
122 Articles 557, n.2 and 627 of the Civil Procedure Code (Article 457, n.2 of the New Civil Procedure Code).
123 Information obtained through consultation with stakeholders (judicial authority).
the right to ask questions through the judge. When heard as parties (plaintiffs or defendants), though, children are always questioned by the judge. Only then can lawyers ask for additional clarifications.

No legal provisions exist for the preparation of the child before the examination.

In civil law judicial proceeding, confession from children – whether as plaintiffs/complainants or defendants – is not accepted, except if they are emancipated. However, in labour law procedures, since a child aged 16 and above has procedural capacity as a plaintiff/complainant in the proceeding, confession is allowed.

While giving testimony, no person is allowed to stand next to the witness. The same applies if the child is examined as a party. Nevertheless, if the judge considers it necessary, a parent or a person whom the child trusts (provided that he/she does not have any interest in the case) may be allowed to stand next to him/her during the testimony. The accompanying person is not allowed to speak to the child during the interrogation.

It is also up to the judge, while directing the court session, to guarantee that the examination of any witness, child or adult, is not too lengthy, repetitive or inappropriate. Although there is no similar provision for the parties heard in court, the judge – as stated above – should guarantee the safety and tranquillity of all those involved in the trial. Furthermore, no measures are in place to ensure that the number of interviews is as limited as possible and that their length is adapted to the child’s age and attention span.

With respect to the right of the child to refuse to give testimony under certain circumstances please see Section 2.1.

The child in any other role

There are no special rules for the examination of children in the civil guardianship proceedings thus the above mentioned rules of the Civil Procedure Code apply.

Nevertheless, in adoption proceedings, each person (including the child to be adopted, who should be heard according to his/her age and maturity) is examined separately.

In promotion and protection proceedings, children are examined separately and may, but not necessarily, be accompanied by their parents, legal representatives, lawyer or a person of trust of the child.

The judge (or the CPCJs, when these hear the child) may conclude that the child should be assisted by doctors, psychologists or other specialists or persons whom the child trusts whenever examining the child, or determine that the examination takes place using technological means that better ensure the safety and comfort of the child. As with all the phases of the proceeding, hearings must take place in a way the child fully understands, depending on his/her age and intellectual and psychological development. Any medical exams are only ordered if absolutely necessary and if in the child’s interest, and must be carried out in the presence of the parents or a person whom the child trusts (except if the child does not want to be accompanied or it is in his/her best interest). Medical exams ordered in promotion and protection proceedings are urgent and must be carried out within 30 days.

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125 Article 638 of the Civil Procedure Code (Article 516 of the New Civil Procedure Code).
126 Article 560 of the Civil Procedure Code (Article 460 of the New Civil Procedure Code).
129 Articles 650 and 638, n.3 and 5 of the Civil Procedure Code (Articles 602 and 516, n.3 and 5 of the New Civil Procedure Code).
130 Article 170, n.2 of the Law on the organisation of children’s guardianship.
131 Article 170, n.3 of the Law on the organisation of children’s guardianship.
132 Article 86, n. 2 of the Law on the Protection of Children and Juveniles in Danger.
133 Article 86, n. 1 of the Law on the Protection of Children and Juveniles in Danger.
134 Article 87, n. 1 of the Law on the Protection of Children and Juveniles in Danger.
135 Article 87, n.4 of the Law on the Protection of Children and Juveniles in Danger.
2.6 Right to be heard and to participate in civil judicial proceedings

The child as a plaintiff/defendant

In ordinary civil proceedings, the court is not obliged to hear the child, even if he/she is a plaintiff/defendant. As already discussed in Section 2.1, child parties are in principle represented by their parents/guardians in civil judicial proceedings. However, any party to a civil judicial proceeding has the right to ask for the other party to testify, even if the other party is a child, and the latter cannot refuse to testify, regardless his/her age. The New Civil Procedure Code also lays down the right of plaintiffs/defendants to ask to be heard by the court.

Even if not requested by the other party, the judge may decide to examine him/her, regardless of whether he/she is a child or an adult. Where the judge decides to hear the child or the hearing has been requested by one of the parties, the judge must guarantee that the child is treated appropriately in court. However, children are not consulted on the manner in which they wish to be heard.

Children can also intervene in civil judicial proceedings which affect their interests, as analysed in Section 2.1.

As already mentioned in Section 2.1, when the child is heard as party to the civil judicial proceedings, the judge freely evaluates the child's statements, according to his/her maturity and capacity. Concerning the way such an examination takes place please see Section 2.4 and Section 2.5.

There are no special rules on how court rulings should be communicated to children, so the general rules apply, i.e. they are communicated to their lawyers and legal representatives. Also, there are no special provisions regarding how the child is informed about the consequences of participating in civil judicial proceedings and expressing his/her views or opinions.

Concerning the information a child plaintiff/defendant is provided with before, during and after the civil judicial proceedings (please see Section 2.2). With respect to the legal assistance a child may be provided with in order to effectively exercise its right to access the courts please see Section 2.7 and regarding legal costs see Section 2.10.

Rules on limitation periods

In general, people can pursue their claims up to twenty years after the date of the event giving rise to the claim.

However, for certain types of claims other limitation periods are set. For example, where child plaintiffs are concerned, there is a limitation of five years to claim rents, make financial claims and request payments for child support.

Nonetheless, limitation periods for children do not lapse until one year after the child who has the claim obtains full legal capacity to act, i.e. not until the child turns 17 (if the child is emancipated) or 19 in other cases.

Furthermore, limitation periods do not start running if the child has no legal representative or curator of their assets (except if the child has already legal capacity and, as such, does not need representation or a curator – see Section 2.1).

The child as a witness

Children can be examined as witnesses as described in Section 2.1 and Section 2.5. The rules applicable to child plaintiffs/defendants with respect to their right to be heard and participate in civil judicial proceedings are applicable to child witnesses too.

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136 Article 553, n. 3 of the Civil Procedure Code (Article 453, n.2 of the New Civil Procedure Code).
137 Article 466, n. 1 of the New Civil Procedure Code.
139 Article 309 of the Civil Code.
140 Article 310 of the Civil Code.
141 Article 320 of the Civil Code.
The child in any other role

Promotion and protection proceedings

With respect to the right of children to be heard in promotion and protection proceedings as well as in civil judicial proceedings where children participate as the ‘subject’ of the dispute please see Section 2.1.

Concerning the way children are examined in promotion and protection proceedings (e.g. the provision of information to the child, the communication techniques etc.) please see Section 2.4 and Section 2.5.

Civil guardianship proceedings

As stated above, the general principles set in the Law on the Promotion and Protection of Children and Juvenile in Danger, are applicable to civil guardianship proceedings.

With respect to the right of children to be heard in civil guardianship proceedings please see Section 2.1.

Concerning the way children are examined in civil guardianship proceedings (e.g. the provision of information to the child, the communication techniques etc.) please see Section 2.4 and Section 2.5.

2.7 Right to legal counsel, legal assistance and representation

The child as a plaintiff/defendant

Besides the special provisions regarding children’s representation and the public prosecutor’s intervention (see Section 2.1), there are no other specific rules as to what legal assistance child plaintiffs/defendants can be afforded. Thus, the general rules on representation by a legal counsel apply to children and adults alike.

Similarly to adults, children must be assisted by a lawyer when the procedure concerns a matter for which the law lays down a regular appeal (i.e. when the claim exceeds € 5,000) as well as in cases where a regular appeal is always possible, irrespective of the value of the claim. Assistance by a lawyer is also mandatory in inheritance proceedings, if legal issues are to be discussed (i.e. assistance by a lawyer is not mandatory when only the facts of a case are discussed).

In judicial labour law proceedings, parties (children or adults) have to be assisted by a lawyer whenever submitting written pleadings. When affiliated to a labour union, the child can be represented, for free, by the labour union legal service, provided that the internal rules of the union so provide. With respect to the legal costs, please see Section 2.10.

It is up to the child’s parents/legal representatives to choose the legal counsel on behalf of the child. If the child’s parents do not appoint a legal counsel for a child plaintiff, the court notifies the legal representatives to do so in due time, under the penalty of ending the proceedings if no lawyer is constituted. If the child is the defendant in a civil judicial proceeding and no plea is made, the public prosecutor is notified to make the plea on behalf of the child. If the public prosecutor acts

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142 Article 32 of the Civil Procedure Code (Article 40 of the New Civil Procedure Code). Article 678, n.2 and 3 of the same Code (Article 628, n.2 and 3 of the New Civil Procedure Code) enumerates the cases where appeal is always possible irrespective of the value of the claim. These include cases when the decision violates the rules of international competence of the court; decisions taken against uniform jurisprudence of the Supreme Court of Justice; or proceedings where the validity or termination of lease contracts is discussed. On the other hand, Article 79 of the Labour Procedure Code also foresees labour cases where an appeal can always be brought: when the rank or grade of the worker is in discussion; when the worker has been fired; when the validity of the labour contract is discussed; and in proceedings regarding accidents at work or professional diseases.

143 Article 98-B of the Labour Procedure Code.

144 Article 33 of the Civil Procedure Code (Article 41 of the New Civil Procedure Code).

as the plaintiff (or represents one) against a child defendant, the court must designate a lawyer to assist the child defendant\textsuperscript{146}.

In view of the above, there are no specific provisions to ensure that children are considered as fully-fledged clients with their own rights as they do not actively choose their lawyers. Furthermore, whenever legal assistance is not mandatory, the child alone cannot waive the right to legal assistance, as that right must be exercised by parents/legal representatives.

See Section 1 and Section 2.1 for other considerations on the child's representation, the public prosecutor's intervention, as well as the procedure followed in cases there is a conflict between the interests of the child and his/her parents.

Legal assistance (which includes legal consultation and legal aid) is available to children with insufficient financial resources. Whenever a child is obliged to pay legal costs (see Section 2.10 on legal costs), if he/she does not have sufficient financial resources, he/she may apply to the social security services for judicial support. In this case, provided the child proves his/her poor finances, the social security will support the child with his/her legal costs\textsuperscript{147} including: the court’s fee; free legal advice from a lawyer (prior to the judicial proceedings or in any extra-judicial procedure); the designation of a lawyer (or trainee lawyer) who will be appointed by the Portuguese Bar Association; the payment of the fees due to the mandated lawyer; and the costs due to the other party in case of defeat\textsuperscript{148}. In order to grant this support, social security services take into account the income and property of the child and his/her family.

Legal protection is only provided to Portuguese citizens and non-Portuguese persons who are nationals of an EU Member State or who have a valid residence permit in an EU Member State. Other aliens will have the right to legal aid if Portuguese citizens have the same right in their country of origin. Thus, immigrant children are excluded from legal aid where they do not reside legally in Portugal\textsuperscript{149} and their country of origin does not offer legal aid to Portuguese citizens. Nevertheless, asylum-seeking children must always have access to legal aid\textsuperscript{150}. Moreover, administrative authorities dealing with asylum-seeking or refugee children who are victims of crimes should give children appropriate psychological support and, if necessary, take them to the competent authorities for promotion and protection proceedings\textsuperscript{151}. 

The child as a witness

Child witnesses do not have the right to a legal counsel.

The child in any other role

Promotion and protection proceedings

In promotion and protection proceedings, the child’s parents, legal representatives and guardians must be assisted by a lawyer. The child has the right to hire independently a lawyer in cases where his/her rights are in conflict with the rights of his/her parents\textsuperscript{152}. The child can also ask the court for a lawyer when he/she is sufficiently mature to do so. The child must always be assisted by a lawyer during this type of judicial proceedings.

Civil guardianship proceedings

As explained above in Section 2.1, children participate in civil guardianship proceedings but they are not considered as being a party to them. Contrary to promotion and protection proceedings where children are essentially the subject of the proceedings, in civil guardianship proceedings, their role is not as active. Therefore, they do not have the right to a lawyer.

\textsuperscript{146} Article 15, n.2 of the Civil Procedure Code (Article 21, n.2 of the New Civil Procedure Code).
\textsuperscript{147} Law on Judiciary Support (Law n.34/2004, of the 29th July).
\textsuperscript{148} Articles 16 and following of the Law on Judiciary Support.
\textsuperscript{149} Law on the access to Justice and to Courts, Law n. 34/2004, of 29th July.
\textsuperscript{150} Article 49, n.1, d) of the Law on conditions and procedure for granting asylum, subsidiary protection or refugee status, Law n. 27/2008, of 30 June.
\textsuperscript{151} Article 78 of the Law on conditions and procedure for granting asylum, subsidiary protection or refugee status.
\textsuperscript{152} Article 103 of the Law on the execution of promotion and protection measures in natural living environment.
2.8 Alternatives to judicial proceedings

The child as a plaintiff/defendant

Arbitration and mediation proceedings in the peace courts

Children cannot access arbitration in their own right, since they do not have legal capacity to conclude contracts (see Section 2.1), and consequently arbitration agreements.

Moreover, children cannot access in their own right ‘peace courts’ which provide mediation services. Even though called ‘courts’, the logic behind peace courts is different from that of traditional courts. Peace courts are competent to decide on claims not exceeding €5,000 concerning assets, contracts or compensation matters. They intervene upon the parties’ request. However, as children do not have the procedural capacity they cannot have recourse to these courts, even when represented by their parents/legal representatives or where they can validly conclude contracts.

This incapacity to access arbitration or peace courts is due to the key role of the public prosecutor in the defence of children’s rights and interests (see Section 1). The public prosecutor can act only in judicial proceedings. Since there is no intervention of the public prosecutor in peace courts or arbitration proceedings, and no similar entity is responsible for protecting children’s rights, children are barred from resorting to arbitration or mediation before the peace courts.

Mediation in civil and commercial matters

Although the Portuguese Civil Procedure Code provides for the possibility of suspending the judicial proceeding so the parties can access mediation and, therefore, reach an agreement, there was until now no specific regulation for mediation services in civil matters. Law n.29/2013, of the 19th April, though, which approved the General Principles for Civil and Commercial Mediation, lays down mediation procedures in civil and commercial matters.

Mediation is an alternative dispute resolution mechanism which aims at the promotion of an amicable settlement of disputes, through the intervention of a mediator (which can be a public or private entity). It can take place prior or during the judicial proceedings.

If an agreement is reached during a judicial proceeding, it must be submitted for approval to the judge. If the mediation takes place before a judicial proceeding, the parties may also submit the agreement for approval to the competent court.

Since the law on mediation entered into force on the 20th of May 2013, it is still unclear what the public prosecutor’s attitude will be towards civil mediation where children are parties to a proceeding. When the public prosecutor represents the child, recourse to mediation would mean that the prosecutor would also have to attend the mediation proceedings. Since, however, these proceedings take place outside the court, it is unlikely that the public prosecutor will attend them. On the other hand, when the public prosecutor has an ancillary role and the child is represented by his/her parents/legal representatives, it would seem that recourse to mediation would be possible, provided that the public prosecutor is heard before the approval of the agreement by the judge.

Neither arbitration nor mediation is laid down for labour law cases arising from individual employment contracts. The law only provides for the possibility of mediation in collective labour disputes. Thus, children also do not have access to alternatives to labour law judicial proceedings.

The child as a witness

Child witnesses are not involved in mediation or arbitration proceedings in Portugal and thus no relevant rules have been identified.

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153 Article 37 of the Law 78/2001 of 13th July.
154 Information obtained through consultation with stakeholders (judicial authorities).
156 Articles 14 and 45 of the General Principles for Civil and Commercial Mediation Law.
157 Article 14 of the General Principles for Civil and Commercial Mediation Law.
158 Information obtained through consultation with stakeholders (public prosecutor).
159 Articles 492, n.2, f), 508, n.º1, a) and 526 of the Labour Code (approved by the Law 7/2009, of 12th February).
The child in any other role

Mediation in family matters

In family law cases, namely in cases of divorce, custody disputes, reconciliation and alimony, adults may resort to mediation. With regards to family mediation, during a custody case the judge may decide that the parties should have recourse to mediation if they agree to do so and if they actually ask for that intervention. However, mediation cannot be imposed by the court without the parties’ consent. Currently, this type of mediation is carried out within the peace courts where children have no access to in their own right, as stated above. The General-Directon on mediation is also a central governmental institution responsible for regulating mediation and provides three public systems of mediation: family mediation system, labour mediation system and criminal mediation system.

Promotion and protection proceedings

As stated in Section 1, the intervention of the court only takes place when all other alternatives have been exhausted. Judicial intervention within the promotion and protection proceeding is the last resort.

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

The child as a plaintiff/defendant

With respect to the filing of appeals, no child-specific provisions have been identified; thus, the general rules apply to both adults and children.

In the Portuguese legal order, appeals can be brought in principle against decisions where the value of the claim exceeds € 5,000. However, as referred to in Section 2.7 in some instances an appeal can be brought irrespective of the value of the claim. The same is also true with respect to labour law proceedings.

The rules examined in previous sections of this report on children’s representation (Section 2.1) and the right to legal counsel (Section 2.7) are applicable to appeal procedures too. The lawyer representing the child and/or his/her legal representatives are responsible for explaining the decision to the child. The child’s parents/legal representatives can bring an appeal without the consent of the child.

As to compensation for the violation of the child’s rights by State bodies, there are no specific rules regarding children, so the general rules apply. If the rights of the child plaintiff/defendant are violated during a judicial proceeding, he or she has the right to claim compensation, for which he/she should file a claim against the State in the administrative courts. The child also has the right to appeal to higher courts, and the right to appeal to the European Court of Human Rights once all domestic remedies have been exhausted.

Rules on limitation periods

In general, people can pursue their claims up to twenty years after the date of the event giving rise to the claim.

However, for certain types of claims other limitation periods are set. For example, where child plaintiffs are concerned, there is a limitation of five years to claim rents, make financial claims and request payments for child support.

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160 Article 147-D of the Law on the organisation of children’s guardianship.
161 Law on the general principles applicable to mediation conducted in Portugal, as well as the legal regimes of civil and commercial mediation, of mediators and of public mediation.
162 Article 11 of the Law on the execution of promotion and protection measures in natural living environment.
163 Article 678, ns. 2 and 3 of the Civil Procedure Code.
164 Law on Civil Responsibility of the State and other Public Entities.
165 Article 309 of the Civil Code.
166 Article 310 of the Civil Code.
Nonetheless, limitation periods for children do not lapse until one year after the child who has the claim obtains full legal capacity to act\textsuperscript{167}, i.e. not until the child turns 17 (if the child is emancipated) or 19 in other cases.

Furthermore, limitation periods do not start running if the child has no legal representative or curator of their assets (except if the child has already legal capacity and, as such, does not need representation or a curator – see \textbf{Section 2.1}).

\textbf{The child as a witness}

Child witnesses cannot challenge court decisions; therefore no relevant rules exist in Portugal.

\textbf{The child in any other role}

\textit{Promotion and protection proceedings and civil guardianship proceedings}

Decisions on promotion and protection measures and on civil guardianship proceedings can be appealed against to superior courts, up to the Supreme Court of Justice. The child in his/her own right, his/her parents, legal representatives, guardian and the public prosecutor can appeal such decisions\textsuperscript{168}. It is worth noting that the parents, legal representatives, guardians or the public prosecutor can bring such appeals without the consent of the child. Child care authorities can appeal decisions issued in promotion and protection proceedings and civil guardianship proceedings when they have the child’s guardianship.

There are no specific provisions on the support that can be provided to the child to bring an appeal in his/her own right.

\section{2.10 Legal costs}

\textbf{The child as a plaintiff/defendant}

In civil judicial proceedings, as a general rule, children – like adults – are obliged to pay the relevant legal costs except when they are represented by the public prosecutor (see \textbf{Section 1} and \textbf{Section 2.1}). Legal costs comprise of the court fees, the charges for the judicial proceedings and the costs of each party\textsuperscript{169}. Payment of court fees is a prerequisite for accessing the courts and the amount varies, depending on the value of the claim, as laid down in the \textit{Judicial Costs Regulation}. The charges for the proceeding are the expenses made during the civil judicial proceedings (e.g. compensation to witnesses; expertise reports; transportation costs, when the court has to proceed to acts outside the court facilities)\textsuperscript{170}. Finally, as party costs are defined the costs that the opposing party has been subject to during the proceedings and that it may ask for if he/she wins\textsuperscript{171}.

In labour law judicial proceedings, workers (children or adults) and their families are exempt from paying legal costs when represented by the public prosecutor or by the legal service of their labour union (whenever these services are provided for free, which depends on the labour unions’ internal rules). However, this exemption applies to workers whose annual income does not exceed a fixed amount – currently set at € 20,400\textsuperscript{172}.

Even when exempt from paying legal costs, the losing child party is obliged to pay the winning party’s costs, if the other party requires so.

Finally, stamp duty is due when the parties reach an agreement to end the dispute within the judicial proceeding (that is, when parties agree in court, not in mediation), even if the parties benefit from legal aid. Currently, for such an agreement, €10 of stamp duty is due (divided between the parties)\textsuperscript{173}.

\textsuperscript{167} Article 320 of the \textit{Civil Code}.
\textsuperscript{168} Article 123 of the \textit{Law on the Protection of Children and Juveniles in Danger}.
\textsuperscript{169} Article 3, n. 1 of the \textit{Judicial Costs Regulation}, Decree Law n.34/2008, of the 26\textsuperscript{th} February.
\textsuperscript{170} Article 16 of the \textit{Judicial Costs Regulation}.
\textsuperscript{171} Article, 4, n.7 of the \textit{Judicial Costs Regulation}.
\textsuperscript{172} Article 4, n.1, h) of the \textit{Judicial Costs Regulation}.
\textsuperscript{173} Article 3 of the \textit{Stamp Duty Law}, Decree-Law n. 286/2003, of the 12\textsuperscript{th} November.
With respect to legal aid available to child plaintiffs/defendants, please see Section 2.7.

The child as a witness

Child witnesses are not required to pay any legal costs.

The child in any other role

Children or their legal representatives, who file appeals on the application, change or withdrawal of guardianship measures imposed during promotion and protection proceedings, are exempted from paying legal costs.\[174\]. Similarly, no costs are due in proceedings concerning the placement of a child in foster care; child, guardianship; adoption; placement in the care of a suitable person or any other similar proceeding.\[175\].

2.11 Enforcement of civil court judgements

The child as a plaintiff

There are no general rules on how the child should be informed of the decision of the civil court and on the enforcement of such decision. The decision is sent by the court to the child’s legal counsel and legal representatives, and it is up to them to inform the child. Moreover, there are no requirements as to what language should be used in the decision.

No measures are in place to ensure that decisions which concern children are immediately or directly enforceable; thus, the general rules apply in these instances too.

Any court decision is enforceable only after it becomes final, i.e. when it is no longer appealable, or when, even though it can be subject to appeal, the appeal does not suspend execution of the judgement.\[176\]. In principle, the filing of an appeal does not have a suspensive effect on the execution of the decision.\[177\]. This is also true in labour law judicial proceedings.\[178\].

The decision to enforce a court judgement is up to the legal representatives of the child or the public prosecutor, in the same exact terms as explained in Section 2.1.

Currently, although enforcement proceedings take place in civil courts, judges get involved only when a controversial legal question arises. Otherwise, enforcement is carried by execution solicitors.\[179\]. This means that enforcement proceedings are carried out not by the court’s clerks, but by lawyers who have undergone special formation in order to execute civil courts’ decisions and who are called ‘execution solicitors’. Barristers may also act as execution solicitors. Judges in execution proceedings control/monitor the legality of the acts carried out by the execution solicitors.

According to the New Civil Procedure Code, when enforcement of a court judgement is sought by the public prosecutor (e.g. when representing a child), enforcement acts will be carried through by the court’s clerks.\[180\].

The child as a defendant

Whenever a decision has been issued against a child defendant, the enforcement should take place against the child’s property, if there is any. If the child has no property, the only way to obtain compensation for damages is to file a claim against the child’s parents or legal representatives for violating their duty to supervise their child (which implies that parents or legal representatives did not

\[174\] Article 4, n.1, l) of the Judicial Costs Regulation.
\[175\] Article 4, n.1, a) of the Judicial Costs Regulation.
\[176\] Article 47 of the Civil Procedure Code (Article 704 of the New Civil Procedure Code).
\[178\] Article 83 of the Labour Procedure Code.
\[179\] Articles 808 and 809 of the Civil Procedure Code (Articles 719, 720 and 723 of the New Civil Procedure Code).
\[180\] Article 720 of the New Civil Procedure Code.
rightly exercise their duty to watch over the child, so that the damages he/she caused are imputed to the them). For more information please see Section 2.1.

Personal detention is not a means of enforcing civil judgements in Portugal.

**The child as a witness**

Child and adult witnesses are not involved in the execution of civil court judgements.

**The child in any other role**

In civil judicial proceedings about personal status\(^{181}\) (e.g. divorce, disagreement on the choice of the family’s residence) the filing of an appeal suspends the execution of the judgement.

**Civil guardianship proceedings**

Special rules are in place for the execution of judgements rendered in civil guardianship proceedings. Thus, the execution of the court’s decision on custody proceedings against the parent who does not comply with the court’s original judgement may be reinforced with the imposition of a fine to the offender (up to €250) and compensation to the child, the other parent or to both\(^ {182}\).

It is up to the judge to decide whether the appeal of a final decision will have a suspensive effect or not\(^ {183}\). In custody proceedings, though, the law states that appeals do not suspend the effects of the court’s decision\(^ {184}\).

**Promotion and protection proceedings**

When there is a judicial promotion and protection proceeding, it is up to the judge to decide whether or not a decision reached in promotion and protection proceedings will be immediately enforced. This is because the judge has the power to decide whether or not appeals suspend the enforcement of the decisions\(^ {185}\). Besides that, the judge has the power to order any provisional measures he/she considers necessary at any stage of the proceedings.

The judge designates an authority – the Institute for Social Security, or other similar institutes that will be responsible to monitor the enforcement of the protection measure. The measure will be reviewed periodically. The decision sets the time-limit for such review, which cannot be longer than six months\(^ {186}\).

During the enforcement of a decision in promotion and protection proceedings, the child has the right to be informed, as well as his/her parents, legal representatives and guardians, on the execution of the measure\(^ {187}\).

Finally, in judicial promotion and protection and in civil guardianship proceedings, it is up to the court to decide whether or not the filing of an appeal will suspend enforceability of the decision\(^ {188}\).

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\(^{181}\) Article 692, n.3, a) of the Civil Procedure Code (Articles 647, n.3, a) of the New Civil Procedure Code).

\(^{182}\) Article 181 of the Law on the organisation of children’s guardianship.

\(^{183}\) Article 159 of the Law on the organisation of children’s guardianship.

\(^{184}\) Article 188, n.4 of the Law on the organisation of children's guardianship.

\(^{185}\) Article 124 of the Law on the Protection of Children and Juveniles in Danger.

\(^{186}\) Article 59 of the Law on the Protection of Children and Juveniles in Danger.

\(^{187}\) Article 22 of the Law on the execution of promotion and protection measures in natural living environment, Decree-Law nº 12/2008 of 17th January.

\(^{188}\) Article 124 of the Law on the Protection of Children and Juveniles in Danger.
Conclusions

Institutional and legal framework

Children can be involved in civil judicial proceedings as plaintiffs, defendants, witnesses, or as the ‘subject’ of the relevant proceeding, the latter term referring to cases where the proceeding is mainly aimed at deciding his/her rights/status.

The provisions of the Civil Procedure Code, which regulates the way civil judicial proceedings are conducted, are applicable to children and adults alike. Family law proceedings are also dealt with in the Civil Procedure Code. Nonetheless, some civil judicial proceedings are regulated by the Law on the Organisation of Children’s Guardianship which is applicable to various proceedings, besides the mere ‘guardianship proceedings’, including proceedings on adoptions, child support, recognition of parentage, etc.

Competent to adjudicate civil law cases are the civil courts or, where not available, the district courts, which have general jurisdiction. Children and Family Courts have special competence in family and children-related matters.

Children can also be parties to labour law proceedings. Rules concerning the involvement of children in labour law proceedings are contained in the Labour Procedure Code. Labour courts are competent to enforce labour law and have been established in some districts.

In Portugal the public prosecutor represents and pursues the best interests of children involved in judicial proceedings.

Outside the courts, there are specific institutions which care for children in danger, namely, the Commissions for the Protection of Children and Juveniles, which intervenes at the second level in the System of the Promotion and Protection of the Rights of the Child.

All Portuguese magistrates - judges and prosecutors - receive training on family and child law, during their time at the school for Magistrates.

General approach towards children under civil law

Under Portuguese law, as children are considered persons who are under 18 years old The Civil Procedure Code does not contain main principles/objectives for children’s involvement in ordinary civil judicial proceedings (i.e. in proceedings where the child acts as the plaintiff/defendant or witness). The Law on the Protection of Children and Juveniles in Danger sets out certain principles aimed at protecting children involved in promotion and protection proceedings and civil guardianship proceedings.

Judges can freely evaluate the credibility of any testimony. Thus it is for the judge to assess the child’s evolving capacity, maturity and capacity to express his/her own views.

A child as an actor in civil judicial proceedings

Children of any age can be parties to civil judicial proceedings, acting as plaintiffs/complainants, defendants or witnesses.

Child plaintiffs/defendants must always be represented in court by a legal representative. If there is no such representative, the court must designate a one. When parents, legal representatives and guardians do not bring a claim for civil damages on behalf of the child, the Public Prosecution Service can do so.

Exceptionally, child plaintiffs can act in their own right, and thus bring the relevant actions in their own name, with respect to some proceedings.

Emancipated children (i.e. children aged 16 years of age and above who have already been married) have, in principle, the same legal capacity as adults, so they have full procedural capacity to stand alone in court. Another exception to children’s lack of procedural capacity concerns labour law
proceedings, where a child aged above 16 years old may stand alone in court, as long as he/she acts as a plaintiff/complainant.

There are no statutory age limits for being a witness, so the court can hear every person that is considered important for the case, irrespective of his/her age.

Children can also participate in civil judicial proceedings where they constitute the ‘subject’ of the proceeding. Children aged 12 and above must always be heard by the Commissions for the Protection of Children and Juveniles or by the judge on the situation that gave rise to the promotion and protection proceeding.

**Provision of information to children**

No child-specific rules regarding the right to information have been identified. Also, there is no child-friendly material containing legal information. Thus, the same rules apply to children and adults alike. The right to information as enshrined in the **Law on the Promotion and Protection of Children and Juveniles in Danger** should serve as a guiding principle when dealing with children in civil judicial proceedings. However, every communication between the authorities and the child is normally done through his/her legal representatives. Finally, there are no concrete measures to ensure that children receive information on the availability of support services (health, psychological, social, interpretation and translation, and other) or organisations which can provide support to them and the means of accessing such services.

In particular in promotion and protection proceedings (as well as in civil guardianship proceedings) where the child constitutes the ‘subject’ of the dispute, he/she, together with his/her parents, legal representatives or guardians must be informed of his/her rights and about the development of the procedure, in a language which is understandable to him/her.

**Protection of the child’s personal and family life**

As there are no special rules for the treatment of children’s data, the general rules apply to children and adults alike. Violations of the law on personal data may amount to administrative offences or even, in some circumstances, to criminal offences. Disclosure of any elements which may lead to the identification of the child (e.g. in the media or when court judgements are published in legal journals) is also prohibited when court proceedings take place behind closed doors.

Apart from these general rules applicable to child plaintiffs, defendants and witnesses, in certain cases the parties’ privacy is protected to a larger degree.

**Protection from harm and ensuring a child friendly process**

There are no specific rules in ordinary civil and labour judicial proceedings aimed at protecting children from harm and ensuring a child-friendly process.

In any civil judicial proceeding, besides the intervention of the public prosecutor, it is up to the judge to guarantee that the child is treated properly in court and to order the clerks to provide the child with the comfort he/she needs within the court’s capacities, whether upon the public prosecutor’s request or the child’s.

Except for promotion and protection proceedings and civil guardianship proceedings, there are no special rules on provisional orders regarding children, so the general rules apply to children and adults alike.

With respect to the protection of child witnesses from harm and ensuring a child friendly process, the same rules apply as in the case of child plaintiffs/defendants.

Likewise, in civil guardianship proceedings, the court may decide the adoption of provisional measures at any moment. Such measures might be, for example, provisional alimony/child support, guardianship or foster care.

Finally, children who are considered to be in danger can be assisted during the procedure by doctors, psychologists or other experts or by persons they trust.
Protecting the child during interviews

With the exception of labour law judicial proceedings, in civil judicial proceedings, testimony from children – whether as plaintiffs/complainants or defendants – is not accepted, except if they are emancipated. When heard as parties (plaintiff or defendants), children are always questioned by the judge. There are no specific rules on how the child (plaintiff/defendant/witness) should be examined. The judge can also decide that the hearing should take place out of the courtroom, in a more child-friendly place where judges, lawyers and clerks will not be wearing their official garments. Furthermore, the judge may hold that a professional from the multidisciplinary teams that assist courts and who are specially trained to deal with children should also be present during the child’s examination.

There are no special rules for the examination of children in civil guardianship proceedings thus the above mentioned rules also apply.

Right to be heard and participate in civil judicial proceedings

With regard to the child’s capacity to represent himself/herself in civil judicial proceedings, the general rules as described above apply. In ordinary civil proceedings, the court is not obliged to hear the child, even if he/she is the plaintiff/defendant. However, any party to a civil judicial proceeding has the right to ask for the other party to testify (even if the other party is a child), in which case the child cannot refuse to do so.

Children also have the right to be heard in civil judicial proceedings as witnesses. The right of children who constitute the ‘subject’ of the dispute to be heard is strongly protected in promotion and protection proceedings and in civil guardianship proceedings.

Right to legal counsel, legal assistance and representation

Similarly to adults, child plaintiffs/defendants must be assisted by a lawyer in certain civil judicial proceedings. When affiliated to a labour union, the child can be represented, for free, by the labour union legal service, provided that the internal rules of the union so provide. Legal assistance (which includes legal consultation and legal aid) is available to children with insufficient financial resources.

Alternatives to judicial proceedings

Children cannot access arbitration or mediation conducted by the peace courts because the public prosecutor (who guarantees protection of children’s rights) cannot participate in them. It is still unclear what will be the public prosecutor’s attitude towards mediation in civil and commercial matters under the law transposing the Mediation Directive. In family law cases, it is at the parties’ discretion to decide whether they will resort to mediation.

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

Child plaintiffs/defendants have the right to file appeals against court judgements through their parents/legal representatives. The child’s parents/legal representatives can bring an appeal without the consent of the child. If the rights of the child plaintiff/defendant are violated during the civil judicial proceeding, he or she has the right to claim compensation, for which he/she should file a claim against the State, in the administrative courts.

Decisions on promotion and protection measures and on civil guardianship proceedings, where the child constitutes the ‘subject’ of the dispute, can be appealed against to superior courts, up to the Supreme Court of Justice. The child in his/her own right, his/her parents, legal representatives, guardian and the public prosecutor can appeal such decisions.
Legal costs

In civil judicial proceedings, as a general rule, children – like adults – are obliged to pay the legal costs except when they are represented by the public prosecutor. Legal aid is available to child plaintiffs/defendants, provided they meet the conditions set out in the legislation. Note that even when exempt from paying legal costs, the defeated child party is obliged to pay the winning party’s costs, if the other party so requires. In some promotion and protection proceedings and civil guardianship proceedings, where children constitute the subject of the dispute, no legal costs are due.

Enforcement in civil court judgements

There are no general rules on how the child should be informed of the decision of the civil court and on the enforcement of such decision.

Whenever a decision has been issued against a child defendant, the enforcement should take place against the child’s property, if there is any. If the child has no property, the only way to obtain compensation for damages is to file a claim against the child’s parents or legal representatives for violating their duty to supervise their child.

In promotion and protection proceedings, the judge designates an authority – such as the Institute for Social Security which will be responsible for monitoring the enforcement of the protection measure.

Strengths and gaps

As a general conclusion, the Portuguese legal system relies in great part on the public prosecutor and on judges’ discretion to protect the interests of children involved in civil judicial proceedings. The public prosecutor has the power to make suggestions to the judge for the protection of the child. The judge, in his/her turn, has a wide margin of discretion when deciding how to treat children in the course of the proceedings.

Promotion and protection proceedings and civil guardianship proceedings lay down several mechanisms, e.g. the right to be informed, that provide children with additional protection.

However, in other situations, it seems that the child is left alone at the hands of their legal representatives/lawyers. For example, in ordinary civil and labour law judicial proceedings, there are no specific rules on how children should be informed of their rights and of the conduct of the proceeding. Also, there is no child-friendly material containing legal information available to children.

No provisions have been identified concerning the conduct of civil judicial proceedings in a child-friendly environment. Premises and places where children come across in the course of the civil judicial proceedings are far from being non-intimidating and child-friendly. Almost everything is left to the discretion of each individual judge, including decisions regarding psychological, practical and other support, protection during the proceedings from images or information that can be harmful to the child’s welfare, measures to avoid the need for the child’s presence, etc.

Since children participate in family law proceedings, as well as in labour law proceedings, the relevant codes should also contain general provisions for the treatment of children.
List of legislation

- Law 41/2013, New Civil Procedure Code, 1 September 2013
- Law 29/2013, of the General Principles for Civil and Commercial Mediation, 19 April 2013
- Decree-Law 176/2012, 3 August 2012
- Decree-Law 121/2010, Legal Regulation of the Civil Sponsorship (Civil), 27 October 2010
- Law 34/2009, on the management of data of the judicial system, 14 July 2009
- Law 27/2008, on conditions and procedure for granting asylum, subsidiary protection or refugee status, 30 June 2008
- Decree-Law 34/2008, Judicial Costs regulation, 26 February 2008
- Decree-Law 11/2008, Regulation of the Family Foster Care Measure, 14 September 2008
- Law 61/2008, Amendment to the legal discipline of the Divorce, 31 October 2008
- Law 67/2007, on Civil Responsibility of the State and other Public Entities, 31 December 2007
- Law 34/2004, on the access to Justice and to Courts, 29 July 2004
- Law 31/2003, Amendment to the Civil Code, to the Law on Promotion and Protection of Children and Juveniles in Danger
- Decree-Law 185/93, the Civil Guardianship Law and the Legal Discipline of the Adoptions, 22 August 2003
- Law 15/2002, Administrative Courts’ Procedure Code, 1 January 2004
- Decree-Law 286/2003, Stamp Duty Law, 12 November 2003
- Law 78/2001, on Organisation, competence and functioning of the Courts of Peace, 13 July 2001
- Decree-Law 480/99 Labour Procedure Code, 1 January 2000
- Law 147/99, Law on the Promotion and Protection of Children and Juvenile in Danger, 1 September 1999
- Law 67/98, on Personal Data, 26 October 1998
- Decree-Law 98/98, 18 April 1998
- Decree-Law 3-A/96, 26 January 1996
- Portuguese Journalists’ Code of Conduct, 4 May 1993
Decree-Law 78/87, Criminal Procedure Code, 1 June 1987
Law 47/86 Statute of the Public Prosecutor, 15 October 1986
Decree-Law 314/78, Law on the Organisation of Children's Guardianship, 27 October 1978
Constitution, 25 April 1976
Decree-Law 47344/66, Civil Code, 1 June 1967
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