



# Convention on the Rights of the Child

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## Committee on the Rights of the Child

### Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Initial reports of States parties due in 2005

**Portugal\***

[5 August 2011]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

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## Abbreviations

APAV	Portuguese Association for Victim Support
CIG	Commission for Citizenship and Gender Equality
IAC	Child Support Institute
ISS	Social Security Institute
MJ	Ministry of Justice
MAI	Ministry of Internal Administration
MTSS	Ministry of Labour and Social Solidarity
SEF	Foreigners and Borders Service

## I. Introduction

1. Portugal ratified the Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution and child pornography (OPCRCS) on March 5<sup>th</sup> 2003 without reservations. The instrument of ratification was deposited with the UN Secretary-General on May 16<sup>th</sup> 2003 and the protocol came into force on June 16<sup>th</sup> of the same year. Once approved for ratification by the Assembly of the Republic and ratified by the President of the Republic, the Optional Protocol has gained the force of law in the internal legal order.
2. Pursuant to the provisions of article 12.1 of the Protocol, Portugal is now submitting its report on the measures taken to implement the protocol related to the period between May 16<sup>th</sup> 2003 and September 2008.
3. This report has been drafted by the Office for Documentation and Comparative Law of the Prosecutor General, on the basis of written contributions received from the Ministries of Justice, Labour and Social Solidarity and Home Affairs, as well as from the National Institute for Statistics.
4. The Convention on the Rights of the Child (CRC) and the OPCRCSC are an important basis for government policy on child rights. The OPCRCSC has also influenced the creation and work of the recent First National Plan Against Trafficking in Human Beings (2007 - 2010) as well as the Working Group on the Prevention of sexual abuse and sexual exploitation of institutionalized children.
5. Policy on children's rights, including overall responsibility for the implementation of the Optional Protocol is part of the task of the Ministries of Justice, Labor, Solidarity and Social Security and Internal Affairs.
6. The nature of the crimes related to this Convention is very difficult to tackle given the complexity of the issues involved; it's very obscure character and global scale, increased by the ever growing reach of internet. In Portugal, the phenomenon of human trafficking, let alone trafficking of children, is still much unknown. On the other hand, sexual abuse of children has overwhelmingly taken place within the family or family relations, which makes this crime more hidden, since victims often trust and are dependent on their offenders, not seeking a way out.
7. The first National Plan Against Trafficking in Human Beings began in 2007 and in 2008 the Government created the Observatory for Traffic of Human Beings with the mission to collect, produce, analyze and disseminate information and knowledge related to the phenomenon of trafficking in human beings, including children, to better understand this reality within Portugal as a country of origin, transit and destiny.
8. Another challenge to the implementation of this protocol is that the crime of child pornography has increased enormously. The use of information technologies and its commercial use have created several problems for investigators. That is why the Working Group on the Prevention of sexual abuse and sexual exploitation of institutionalized children (*Grupo de Prevenção do Abuso e do Comércio Sexual de Crianças Institucionalizadas*) has divided the approach to sexual abuse and exploitation of institutionalized children and pornography into two dimensions: the traditional aggression, perpetrated within the family or familiar surroundings; and a new type of aggression that deals with the commercial exploitation, giving special attention to the latter.
9. In late 2002, a highly publicized case (*Casa Pia*) broke out regarding an alleged pedophile network acting on a Public Social institution which prompted accusations of sexual abuse of children, child pornography and prostitution. This case involved high

profile figures and has since been taken to court where the proceedings are still taking place. Therefore, during the time covered by this report there were major changes in Portuguese policy and intervention by police authorities regarding the issues covered by this protocol. Furthermore and also very importantly, this also influenced the perception of Portuguese society and the media towards these crimes, breaking the taboo and creating a much bigger awareness. If this awareness by civil society and relevant public actors created difficulties for perpetrators of crimes related to child prostitution and pornography, it also pushed it to underground levels, making it less visible and therefore much more difficult to tackle.

## **II. General measures of implementation**

### **A. Laws, decrees and regulations adopted by the State to give effect to the Protocol**

10. Generally the information provided in the second and third reports of Portugal on the application of the Convention on the Rights of the Child still applies. We draw special attention to the 2007 amendment to the Penal Code by Law 59/2007, of 4<sup>th</sup> September. Changes were introduced on the provisions regarding sexual exploitation and sexual abuse of minors, as well as on the provisions criminalizing trafficking in human beings. These amendments reflect the concerns stressed in international legal binding instruments and particularly in the Council Framework Decision 2002/629/JHA, of 19 July 2002, on combating trafficking in human beings, in the Council Framework Decision 2004/68/JHA, of 22 December, on combating the sexual exploitation of children and child pornography and in the Council of Europe Convention on Action against Trafficking in Human Beings, signed on 16 May 2005. Other laws were changed or adopted and they will be described below:

#### **1. Criminal Code, maxime articles 160, 175 and 176**

11. The most relevant legislative measure adopted for the protection of children against all forms of sexual exploitation is undoubtedly Law 59/2007 of 4<sup>th</sup> September which amended the Portuguese Criminal Code in order to comply with the current Optional Protocol. Articles 160 (trafficking in human beings), 175 (child sexual exploitation) and 176 (child pornography) were amended in order to comply with Portugal's international obligations.

12. Article 160 is especially relevant in that, apart from punishing, it also intends to send a clear message of collective responsibility to the society, denying any permissive behavior towards any situations of trafficking in human beings.

13. The article foresees five separate crimes: trafficking in adults; trafficking in children aged under 18; the sale of minors; the use of victims of trafficking and the theft of documents from a victim of trafficking.

14. Regarding article 175, the legal interest protected by the criminalization is the sexual self-determination, and this crime punishes those who the promote or facilitate the exercise of prostitution by a minor of 18 years.

15. Article 176 of the Portuguese Criminal Code is inspired by the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. The provision includes four separate crimes: the use of minor in shows, photos, films or tapes of pornographic nature; the production, distribution, exportation, exhibition and the transfer of pornographic materials; the acquisition or possession of

pornographic materials in order to distribute, import, export, advertise, display or transfer such materials; and the acquisition or possession of pornographic materials.

16. Article 179 of the Portuguese Criminal Code allows for the imposition of accessory penalties in cases of conviction for crimes against sexual freedom and self-determination (including sexual exploitation of minors and child pornography) that may involve disqualifications of parental power and professional activities that imply having minors under one's responsibility, education, treatment or vigilance.

## **2. Criminal Procedure Legislation**

17. Law 93/99, of 14th July, on the Protection of Witnesses in Criminal Proceedings. Law 144/99, of 31st August on International Judiciary Cooperation.

## **3. Legislation related to the adoption process**

18. Decree Law 185/93, of 22<sup>nd</sup> May, approves the new legal framework for adoption. Regulatory Decree 17/98, of 14<sup>th</sup> August, regards the intervention of certain private social solidarity institutions during the adoption process and the intervention of intermediaries during the international adoption process.

## **4. Legislation related to children's rights**

19. Law 147/99, of 1<sup>st</sup> September, aims to promote and defend children's rights as well as their global welfare and development.

## **5. Legislation related to corporal punishment and sexual abuse of minors**

20. Assembly of the Republic's Resolution 20/2001, 6<sup>th</sup> March 2001, regarding the combat against corporal punishment and sexual abuse of minors enhanced the protection measures applicable to the protection of children and youngsters.

## **6. Law on Protection of Children and Young People in Danger**

21. Decree-Law 12/2008, of 17 January, regulating Law 147/99, of 17 January (on Protection of Children and Young People in Danger) refers to the promotion and protection measures in a normal life environment, namely: a) Parent support; b) Support of other family members; c) Confidence in a competent person; d) Support towards an autonomous life aiming at keeping the child or young person in his / her environment by providing them with the adequate conditions to their full development through psycho pedagogical and social support and, when necessary give economic support.

## **7. New legislation**

22. It is worth noting that Portugal is currently drafting new legislation on disqualifications arising from convictions for crimes against sexual freedom and self-determination in order to comply with new obligations arising from the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

23. As a European Union Member State, Portugal is bound by the Council Framework Decision 2004/68/JHA on Combating the Sexual Exploitation of Children and Child Pornography, 22<sup>nd</sup> December 2003; Council Framework Decision 2000/375/JHA, 29<sup>th</sup> May 2000 to combat child pornography on the Internet; Council Framework Decision 2002/584/JHA, 13<sup>th</sup> June 2002 on the European Arrest Warrant; Council Framework Decision 2005/222/JHA, 24<sup>th</sup> February 2005 on attacks against information systems.

24. Portugal has also signed the Council of Europe Convention on Cybercrime (ETS No.185) on 23<sup>rd</sup> of November of 2001. The process of ratification is almost completed, and

a Proposal for the amendment of Portuguese Law on Cybercrime (Law 109/91, of 17<sup>th</sup> of August) has been drafted in order to fully adapt Portuguese legal framework to all the provisions of the Convention.

25. More recently, in the 25<sup>th</sup> October of 2007, Portugal has signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No.: 201) – “*Lanzarote Convention*”. The process of ratification is currently being prepared with the drafting of new legislation to fully meet the obligations of the Convention. Article 20 of this Convention explicitly addresses offences concerning child pornography and imposes the obligation to criminalize intentional access, through information and communication technologies, to child pornography (article 20/1/f).

26. As a complement, it must be noted that, right now, the Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA, is under negotiation.

## **B. Government departments or bodies with primary responsibility for implementing the Protocol**

27. The governmental bodies that have primary responsibility for the implementation of this protocol are the Ministries of Justice<sup>1</sup>, Labor, Solidarity and Social Security (MTSS) and Internal Affairs.

## **C. Dissemination of the Protocol and training**

### **Magistrates**

28. During the initial training program for judicial magistrates and public prosecutors due importance is given to the law applicable to children, and within the continuous training sessions both run by the Centre for Judicial Studies (CEJ).

### **Social Workers**

29. The deep reform carried out since 2001 on Children’s Law and on the in-depth reformulation of the System on the protection of Children and Young People triggered the need to qualify professionals, by progressively uniting their actions with the system’s new guidelines and CRC. Several training measures are being developed by Social Security Institute, I.P.

### **Borders and Foreigners Service**

30. Within the Borders and Foreigners Service (SEF), which operates within MAI, matters related to the CRC are lectured under the theme of “Human Rights and Policy

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<sup>1</sup> Within the Ministry of Justice, three main bodies can be identified as being responsible for the implementation of the Protocol:

1. The Directorate-General for Justice Policy, responsible for the necessary amendments to the national legislation;
2. The Criminal Police is responsible for the investigation of crimes under the coordination of the Public Prosecutor.
3. The National Commission for the Protection of Children and Youngsters at Risk, responsible for planning, coordinating and monitoring public policy and intervention on the protection of children at risk.



Ethics”, which is integrated in the initial and ongoing trainings for promotion into the careers of Investigation and Monitoring.

### **Police Forces**

31. The training of the police forces of the Ministry of Internal Affairs has always focused on human rights issues, both in the initial and continuous training courses, in the upgrading and expertise actions as well as in certain pinpointed activities, like seminars. One example was the seminar that took place on the 10th December of 2008, to commemorate the 60th anniversary of the Universal Declaration of Human Rights, concerning “Human Rights and Police Practices”. It should also be noted that the police forces of the Ministry of Internal Affairs have their own vocational training schools. Thus, at the *Polícia de Segurança Pública* (Public Security Police) there is a Superior Institute of Police Sciences and Internal Security (ISCPSI), which has the purpose to train police officers and promote their continuous improvement and is able to confer academic degrees within its scientific scope, and the Police Practical School (EPP), which is a police teaching establishment that offers professional training courses on the upgrading and updating of police officers and on expertise to all PSP personnel.

32. At GNR (National Republican Guard), the Police School, *Escola Prática da Guarda* (EG) is a unit specially designed to train the GNR forces and to also promote the updating, expertise and evaluation of their knowledge. It should also be referred that, within the context of the GNR training, the first four years of the officials’ training course are taught by the Military Academy and the upgrading course for the senior officers is provided by the Military Institute of High Studies, both subject to the Ministry of National Defence. This training, which has the purpose to guarantee the respect for the fundamental rights, abides by the legal rules and practical orders conveyed at all levels.

33. The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography has also been translated into Portuguese and is available online on the website of the Office for Documentation and Comparative Law (GDDC), as well as of other relevant institutions.

## **D. Mechanisms and procedures for collecting and evaluating data and other information concerning the implementation of the Protocol**

34. One of the challenges of implementing the Optional Protocol relates to data collection. According to the relevant entities, it is still very difficult to estimate the extent of sexual exploitation of children since the visible part of it is just the “tip of the iceberg”. In Portugal this reality is not very well known and available data and statistics is still somewhat diffused. Often the reports of sexual abuse of minors do not disaggregate data or relate it to the crimes foreseen in this Protocol and different entities do not cross their data, providing for different numbers.

35. In this sense, an important mechanism was created by the end of 2008, the Observatory for Traffic of Human Beings ([www.otsh.mai.gov.pt](http://www.otsh.mai.gov.pt)) that produces and disseminates information and knowledge on the phenomenon of trafficking in human beings to provide a better overview of the extent and nature of these crimes in Portugal (as a country of origin, transit and destiny) and also contextualizing it within the global phenomenon. This mechanism is situated within the Directorate-General for the Interior and cooperates with other agencies involved with trafficking in human beings, particularly with the Coordinator of the First National Plan Against Trafficking in Human Beings, the Justice Ministry, the Secretary General for Internal Security System (*Secretário-Geral do Sistema de Segurança Interna*) (to articulate with security forces and services) and the

Commission for Citizenship and Gender Equality (for gender related issues). Its budget for 2009 was of 250.000 Euros.

36. In 2009, 85 alleged cases of trafficking in human beings were brought to the criminal police's attention. Out of these 85 notifications, 7 cases were confirmed. Among the notified cases, 61 related to female victims and the victim's minimum age was 12 years. Regarding the confirmed cases, the victim's minimum age was 18 years. More data on the number of crimes and inquiries can be found on the Annex to the present report.

37. The Annual Report of Internal Security (*Relatório Anual de Segurança Interna*) provides data for sexual crimes against minors which, according to the last report, have rocketed between 2003-2009, given that in 2002 it was "only" 599:

<i>Number of sexual crime against minors</i>	<i>Year</i>
1313	2003
1256	2004
1189	2005
1364	2006
1426	2007
2093	2008
2363	2009

38. These offenses are not related to the sale or trafficking of children. Regarding the most recent data (related to 2009), it is important to note that the overwhelming majority of the victims (82,71%) are female and under 16 years of age (61,23%).

39. In addition, and according to the same report, this increase is related to the above mentioned disclosure of an alleged network of children's sexual abuse operating in a public social institution, where sexual abuse of children and child prostitution were allegedly taking place. This case created a general awareness within the media and consequently, the public at large, breaking the taboo and prompting increased complaints made by individuals.

40. The only data available within the Statistics Department of the Directorate-General for Justice Policy concerns the number of judicial proceedings for the promotion and protection of rights of minors at risk related to situations where minors engaged in prostitution activities. These cases were in the number of 3 in 2003; 4 in 2004; - in 2005 the number was below 3 units and, because of that, this data is protected under the principle of statistical confidentiality. Finally, in 2006 there were 5 cases.

41. Child pornography has been increasing over the years and, according to information collected by the Report on Sexual Criminality against Children and Youngsters in 2008 (Department of Criminal Investigation), there were 160 investigations concerning this crime.

42. According to the same report the number of investigations related to Sexual Coercion of Minors for 2008 was 28.

## **E. Budget allocated to the various activities related to the implementation of the Protocol**

43. The execution of the Optional Protocol involves an annual funding of € 336.688.58 by each Ministry involved.

## **F. State strategy for the elimination of the sale of children, child prostitution and child pornography and the protection of victims**

44. The Portuguese system foresees a punitive approach to the subject matters of the Optional Protocol, however it has complemented it with a strong focus on prevention, support and empowerment of the victims, which is addressed by different mechanisms, which will be described below.

### **1. National plans against trafficking in human beings (2007 - 2013)**

([http://www.pcm.gov.pt/pt/GC18/Documentos/PCM/Anteprojecto\\_II\\_PNCTSH.pdf](http://www.pcm.gov.pt/pt/GC18/Documentos/PCM/Anteprojecto_II_PNCTSH.pdf) )

45. The two Plans of Action are based on a number of documents, such as the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime, the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, OSCE's action plan to combat trafficking in human beings, and the Brussels declaration on preventing and combating trafficking in human beings.

46. The two National Plans of Action for the Elimination of Traffic in Human Beings have been approved: the first one for the period 2007-2010 and the second one for the period 2011-2013. The Second Plan of Action is coordinated by the National Commission for Citizenship and Gender Equality and entails 45 measures, which are structured around four strategic areas of intervention, namely, i) Knowing, Raising Awareness and Preventing; ii) Educating and Training; iii) Protecting and Assisting; and iv) Ensuring Criminal Investigation and Cooperating. Among the 45 measures, we highlight the elaboration of annual awareness-raising campaigns, promoting the integration of training courses on traffic of human beings at the university-level, integrate the subject-matter into the schools curricula, promote the training of magistrates in this area, promote the training of health personnel and police forces in this area, promote financing of projects in the area of protection and assistance of victims and implementing mechanisms, as well as legal advice to victims of traffic in human beings.

47. All these measures are associated to authorities responsible for their execution, the process indicators and result indicators. Cooperation with NGO's and Civil Society Organizations is also a priority. Among other authorities mentioned, the MTSS through the Social Security Institute (ISS) collaborates with the Technical Support Commission to the Coordinator of this Plan.

### **2. CAIM project – Cooperation, Action, Research, World Vision**

(<http://www.aim.com.pt>)

48. This is a pilot project combating prostitution and the traffic of women and children for sexual exploitation co-financed by the Equal Community Initiative a Project Development Partnership including the MTSS. Several pedagogical materials were presented, and the MTSS, through the ISS, assumed the following responsibilities:

(a) Act as a Mediator / facilitator with the social networks, having organized during 2008, five meetings in districts in order to sensitize and disseminate the products of the project. Several Social Security professionals, police forces, IPPS professionals, local authority members and local associations participated in these meetings;

(b) Designation of District Facilitators for Human Trafficking, in each Social Security District Centre, which work as privileged mediators and qualified stakeholders in this area;

(c) Integration of the intervention model “Indication, Identification and Integration of Women Victims of Trafficking for Sexual Exploitation”, which enables Social Security to use a uniform tool to analyze and identify situations of human trafficking.

**3. National Commission for the Protection and Promotion of Children and Youngsters at Risk (<http://www.cnpcejr.pt/>)**

49. This is a multisectoral body of coordination of the local Commissions for the Protection and Promotion of Children and Youngsters at risk, acting within their territorial circumscriptions. It was created under the aegis of the Ministries of Justice and of Labor, Solidarity and Social Security and is responsible, among other things, for the identification of children who are especially vulnerable (this will be further developed in the section on Prevention and Detection).

**4. Working group on the prevention of sexual abuse and commercial sexual exploitation of institutionalized children**

50. This working group was created by decision of the Prosecutor-General in November 2007 to analyze the situation of children and youngsters living in public institutions and to make recommendations to clarify and regulate situations. It has worked until March 2008. The Working Group undertook a study of the crimes that occurred in these institutions, namely its characteristics and dimensions.

51. This group has underlined that the number of institutionalized children is very high (15,016 in 2006) and that the overwhelming majority of the sexual offences these children face are perpetrated within the family or by close relations (67%). Moreover the Group noted that the total number of crimes involving children under 5 years of age has been constantly increasing (between 2002 and 2006), totaling then 628 cases. The Group also addressed the need to investigate not only these “traditional” crimes but also a new form of crime and the commercial sexual exploitation of children which it says has dramatically increased over the years, due to information technologies, sexual tourism and international traffic of human beings. However, the “electronic threat” should not lead to neglecting the local phenomena. Therefore, and influenced by the Optional Protocol to the CRC, the group has divided its work into two dimensions: the traditional aggression, perpetrated within the family or familiar surroundings; and a second one focused on this new type of aggression that deals with the commercial exploitation, giving special attention to the latter. The working group presented a program of action, which was widely disseminated<sup>2</sup>.

### **III. Prevention and detection (art. 9, paras. 1 and 2)**

52. As was mentioned above, the Portuguese system in place on the subject-matter of the Optional Protocol puts a strong emphasis on the prevention and detection of cases of sale of children, child prostitution and child pornography. In this Section the report will deal with some of the most relevant measures and mechanisms in place in this area.

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<sup>2</sup> [http://www.pgr.pt/grupo\\_soltas/Actualidades/gpaci%202.pdf](http://www.pgr.pt/grupo_soltas/Actualidades/gpaci%202.pdf).

## A. National Commission for the Protection and Promotion of Children and Youngsters at Risk<sup>3</sup>

53. The system of promotion and protection of children at risk takes into account a number of situations of special vulnerability of children, necessarily encompassing cases of extreme seriousness such as trafficking in children, prostitution and child pornography. These are justifiable situations that legitimate the intervention of the Commission for the Protection of Children and Youngsters at Risk. With relevance to actions pertaining to the Justice sector, and subsequent to the identification of children who live in situations of vulnerability, protection and promotion measures are applicable. These measures, set forth in the Law of Promotion and Protection of Children and Youngsters at Risk (Law 147/99, of 1st September) can be enforced by the Local Commissions for the Protection of Children and Youngsters, or by the Courts, and may be of two basic types:

(a) Measures that maintain the child in his /her natural life environment (support next to parents, support next to other family members, placing the child under the care of an unsuspected person, support for an autonomous life);

(b) Placement measures (placement within a family environment or placement within an institutional environment).

54. Other general forms of protection, such as the substantial and procedural provisions in connection with civil tutorship measures aimed at the regulation of parental responsibilities, adoption, tutorship, disqualifications, limitations in the exercise of parental responsibilities and child support, are also adequate to protect especially vulnerable children exposed to situations of sale, child prostitution and child pornography.

55. In 2008 a Portuguese University Institute (ISCTE) elaborated a Study with a Diagnosis and Evaluation of the Local Commissions for the Protection of Children and Youngsters (<http://www.cnpcjr.pt/downloads/CIES-ISCTE-Avaliação%20CPCJ-Sumário%20Executivo.pdf>). The study identified as positive results:

- multidisciplinary intervention/partnerships of the local commission;
- local proximity;
- early intervention;
- working with families at risk;
- a greater awareness by the population in general of the competences of the local commissions;

56. As for the biggest constraints, they have been identified as:

- lack of sufficient social answers to follow up and implement the recommendations made by the local commissions;
- lack of human resources to deal with all the cases in an adequate manner;
- because of the greater awareness and information about the activities of local commissions, there is an excessive recourse to them, which renders them less efficient;
- lack of work prioritization by the services;

<sup>3</sup> For more information on the National Commission, see the first and second reports of Portugal on the application of the CRC submitted to the Committee on the rights of the Child.

However, concerning restraints, the report notes significant improvements compared to 2006.

## **B. Memorandum of understanding between different ministries and the Child Support Institute (IAC)**

57. The intervention developed by a social solidarity private institution, the Child Support Institute (IAC), needs to be highlighted. IAC's experience based on its work with street children (who practice prostitution or not) has been developed and deepened since 1989. Its aim is to contribute to the child's integral development through the promotion and protection of their rights, with the objective of getting enhanced responses that allow to find in a short time any disappeared and/or sexually exploited child and to combat these phenomenon.

58. So as to reinforce this experience and provide it with all the necessary resources, a Memorandum of Understanding was celebrated with IAC in 2002 involving the Ministries of Justice, Education, Labor and Social Solidarity. Later, in 2004, another protocol was celebrated between IAC and the Ministry of Interior, with an annual duration automatically renewed for equal periods, also meant to collaborate in IAC's following activities:

(a) Creation of a SOS-Child line and of a hotline which will be used to support disappeared or sexually exploited children, similar to other existing lines in the European Union;

(b) Information, reception, support and routing of the child victim and/or his/hers relatives or legal representatives;

(c) Cooperation with security forces or services in order to disseminate search messages related to disappeared children and also in the actual search of children who are disappeared in the capital city, Lisbon;

(d) Forwarding any appeals related to any disappeared and/or sexually exploited children that reach the SOS-child (*Projecto de Rua/Street project*) during off-work hours;

(e) Promotion of awareness campaigns;

(f) Updating, on a regular basis, the National Directory related to the institutions that work in this area.

## **C. Measures taken by the Ministry of Labor and Social Solidarity (MTSS)**

59. Apart from the functions already described above, the Ministry for Labor and Social Solidarity (MTSS) further develops specific measures for children victims of trafficking and exploitation. Several mechanisms have been implemented as well as specialized equipment to deal with this issue, providing a response to children at risk when accompanied by the respective mother.

60. When situations of isolated children are identified, these are classified as situations of danger, within the scope of the Law on the Protection of Children and Young People in Danger, and are duly accompanied and referred to the services and support solutions which exist for children and young people at risk.

61. Concerning this point, it is important to highlight the following **social solutions**, which in the Social Security scope, seek to respond to situations of children and young people at risk, and which are potentially related with the object of the Optional Protocol,

although they have been established prior to the period referred in the report (16 May of 2003 and September 30 of 2008):

(a) Outreach teams for children and young people: provide support to children and young people at risk, deprived of a normal family context, and which use deviant behaviors for subsistence;

(b) Foster families for children and young people (Decree-law 190/92, of 3 September, Law 147/99, of 1 September, and Decree-Law 11/2008, of 17 January): this solution consists in entrusting the child and young person to a family or institution qualified in the matter and technically justified, arising from applying the protection and promotion measure with the objective of integrating them in a family environment;

(c) Temporary placement centre (Law 147/99, of 1 September): provides urgent and temporary placement for children and young people at risk, for a period inferior to 6 months, based on applying the promotion and protection measure;

(d) Shelter for children and youths (Decree-law 2/86, of 2 January, and Law 147/99, of 1 September): provides shelter for children and young people at risk for periods superior to 6 months based on applying the promotion and protection measure;

(e) Autonomy-building apartments (Decree-law 2/86, of 2 January, and Law 147/99, of 1 September): provides support to young people with specific personal skills, as they transition into adulthood by making the services which link and promote the existing resources at local level more dynamic.

62. There is also an Intervention Nucleus for the Runaway composed of a multidisciplinary team intervening in emergency situations so as to identify runaway children / young people, which also works towards finding customized solutions. It also identifies and diagnoses the cases of runaway minors in Lisbon by carrying out daily and nightly rounds in 6 predefined zones.

#### **D. Hotline for cases of missing children**

63. In view of article 5 of the decision of the Commission of the European Communities of 15<sup>th</sup> of February 2007 (2007/116/CE), MAI has created, in August 2007, a hotline (116000) for cases of missing children. This European number was introduced in Portugal on July 25<sup>th</sup> 2008 (the second European country to put this number into functioning, after Hungary). Since the creation of this line there have been 34 cases of missing children reported in 2007, 76 in 2008 and 88 in 2009<sup>4</sup>.

#### **E. Awareness-raising and prevention campaigns**

64. Portugal has taken a number of measures to promote awareness on the subject matter of the sale of children and child prostitution and pornography:

65. In November 2007, the Borders and Foreigners Service (SEF) put into action a Council of Europe's campaign against trafficking in human beings called "*Não estás à venda*" ("You're not for sale"). This campaign included the publication by SEF and MAI of a comic book, which told a number of stories of situations related to trafficking in human beings that took place in Portugal and other Portuguese speaking countries (PALOP).

<sup>4</sup> [http://www.soscrianca.pt/index.php?option=com\\_content&view=article&id=8&Itemid=9&lang=pt](http://www.soscrianca.pt/index.php?option=com_content&view=article&id=8&Itemid=9&lang=pt)

66. SEF has also developed awareness campaigns about trafficking in human beings (with sessions that take about one hour) in schools and hospitals. Data from 2008 indicates that around 2000 people took part in these sessions.

67. A Working Group has also been created to elaborate an Informational Pamphlet translated in the languages of the nationals who come to Portugal as a transit country and/or destination. This Pamphlet is easy to read and widely distributed in different public locations, informing on places where victims can be assisted.

68. Within the scope of information technologies, a series of measures have also been taken.

69. The Portuguese Criminal Police is, within the Ministry of Justice, the entity responsible not only for the investigation of the criminality that falls within the scope of the Optional Protocol, but also for the promotion and development of prevention campaigns in this area. Accordingly, in 2007 it has celebrated a Protocol of Cooperation with the Ministry of Education for the prevention of sexual crimes against minors committed in the context of new information technologies and telecommunications.

70. By means of this Protocol of Cooperation, investigation agents from the Judiciary Police with expertise in the area of sexual criminality against minors and information technologies help in the training and sensitization of teachers and parent's associations to the dangers associated with the use of modern information technologies and their relation with sexual crimes. Hopefully, these preventive actions are helping to minimize the exposure of children to victimization.

71. Additionally, this Police participates in conferences, actions and other initiatives organized under the aegis of both public entities and NGO's directed to minors, parents and professionals, where these themes are discussed (it is estimated that, in 2007 over 3000 people were targeted by these awareness programs).

72. Through these preventive efforts, minors are alerted to the risks and encouraged to report crimes of sexual nature directly to competent authorities or through the Portuguese hotline created for this purpose in the context of the European program Internet Safer Plus (<http://linhaalerta.internetsegura.pt>). This hotline intends to provide for a safe and confidential environment where the general public can report illegal contents accessible through the Internet (namely child pornography) aiming at the blocking of illegal sites and criminal prosecution of offenders who make them available.

#### **IV. Prohibition and related matters (arts. 3; 4, paras. 2 and 3; 5; 6 and 7)**

73. The Portuguese Criminal Code is in compliance with the criminalization obligations set forth by the Protocol and further details will be given below.

##### **A. Human trafficking (art. 3, paras. 1 (a) (i), 2 and 3)**

74. The crime of trafficking of human beings is established in article 160, and specific provisions concerning trafficking in minors are laid down in articles 160, §2 and 160, §4. According to article 160, §2 whoever, by any means, induces, transports, lodges or receives a minor for sexual exploitation, labor exploitation or organ extraction purposes is sentenced to an imprisonment penalty of 3 to 10 years.

75. If these conducts take place with recourse to violence, kidnap or significant threat; through fraud; with abuse of a position of authority which results from a situation of



dependence (hierarchical, economical, working or familiar); with abuse of a mental disability or of a situation of special vulnerability of the victim; by obtaining the consent of the person who exercises control over the victim or acting in a professional manner or with the intent of making profit, they are sentenced to an imprisonment penalty of three to twelve years.

76. Article 160, §4 criminalizes any offering, giving, asking for or accepting a minor, obtaining or giving consent in his/her adoption through any payment or other consideration. These offenses are sentenced with one to five years of imprisonment.

77. The Portuguese Criminal Code also contains other dispositions that are relevant in the repression of trafficking in children: article 160, §5 stipulates that whoever having knowledge of the crime of trafficking in children uses the services or organs of the victim is sentenced to an imprisonment penalty of one to five years.

## **B. Child prostitution (art. 3, paras. 1 (b), 2 and 3)**

78. Article 175 of the Portuguese Criminal Code criminalizes the instigation, fostering and facilitation of the prostitution of minors with an imprisonment penalty of one to five years. In case the perpetrator commits the offense with recourse to violence or serious threat, through fraud, with the abuse of a position of authority resulting from a family relation, tutorship or trusteeship, or from a situation of economical, hierarchical or working dependence; acting professionally or with the intent of making profit or taking advantage of a mental disability or of a situation of special vulnerability of the victim, he or she is sentenced with an imprisonment penalty of two to ten years.

## **C. Child pornography (art. 3, paras. 1 (c), 2 and 3)**

79. Article 176 of the Portuguese Criminal Code criminalizes the pornography of minors. It establishes that whoever: uses the minor in a pornographic performance or induces him or her for such purpose; uses the minor in photographs, films or recordings of a pornographic nature, regardless of the media or induces him or her for such purpose; produces, distributes, imports, exports, circulates, exhibits or gives, at any title or by whatever means, these materials; acquires or owns photographs, films or recordings with the intention of distributing, importing, exporting, divulging, exhibiting or giving them is sentenced with an imprisonment penalty of one to five years.

80. In case these acts are practiced professionally or with the intent of making profit the sentence is an imprisonment penalty of one to eight years.

81. If the pornographic materials depict minors in a realistic manner, the sanction amounts to an imprisonment penalty of up to two years.

82. Acquisition and detention of pornographic materials is sanctioned with up to one year of imprisonment or with a criminal pecuniary sanction.

83. In compliance with the principle of equality enshrined in article 13 of the Portuguese Constitution, no distinction is made in the Criminal Code in relation to the gender of the victim. The age of the victim is an aggravating circumstance both in the crime of sexual exploitation of minors (*Lenocínio de menores*) (article 175) and pornography of minors (article 176) when the victim is less than 16 years old (with an aggravation of one third in the minimum and maximum limits of the penalty) and 14 years old (with an aggravation of a half in the minimum and maximum limits of the penalty).

**D. Statute of limitations for each of these offences**

84. According to the Portuguese Criminal Code, the time limit to initiate legal proceedings in crimes against sexual freedom and sexual self-determination practiced against minors, including both child prostitution and child pornography, does not expire before the victim reaches the age of 23 years old (article 118, §5 of the Portuguese Criminal Code).

85. In the crime of trafficking in minors, legal proceedings must be initiated up to fifteen years after the practice of the crime (article 118, §1, a) of the Portuguese Criminal Code).

86. In all crimes described, attempt is punished with the penalty applicable to the crime in question, in an especially reduced manner (article 23 of the Portuguese Criminal Code and article 176 for the crime of child pornography).

87. In relation to complicity, the criminal sanction is the one applied to the author, but it is especially reduced (article 27 of the Portuguese Criminal Code).

88. As far as participation is concerned, each participant shall be sentenced according to his/her degree of guilt (article 29 of the Portuguese Criminal Code).

89. Furthermore, we do not find any legal provisions in force that may be considered as an obstacle to the implementation of the Protocol. Portugal has amended its Criminal Code in September of 2007 (Law 59/2007, of 4<sup>th</sup> September) in order to fully comply with all the dispositions of the Protocol.

**E. Improperly inducing consent to adoption (art. 3, para. 1 (a) (ii))**

90. Portugal is a State Party to the 1967 European Convention on the Adoption of Children.

91. There is no other mechanism for constituting the filial relationship of adoption other than a judicial decision – article 1973 of the Portugal Civil Code. Agencies or persons that act as intermediaries in Portugal – whose activity is regulated by Regulative Decree 17/98, of 14<sup>th</sup> August – only work with candidates for the adoption of children: informing them, assisting them in contacting entities responsible for children who are up for adoption, and providing support along the adoption process (article 20 of the mentioned Regulative Decree).

92. On the other hand, Portuguese law stipulates that any entity working in the study and evaluation of the social and legal situation of the child, as well as any entity responsible for implementing the child's adoption project, is forbidden from acting as intermediary in the adoption, or carrying out this activity (number 2 of article 21 of Regulative Decree 17/98). This separation ensures that nowhere in the process is the intermediary in a position to contact the natural family of the child.

93. Furthermore, there are legal requirements to the consent that are meant to ensure the maturity of the choice being made, and the motivation behind it. Namely, the previous consent for adoption must be given before a judge in a court of law. Before accepting the consent, the judge must ensure that the parent is clear about its meaning and effects (article 1982 of the Portuguese Civil Code).

94. The activity of intermediaries authorized to work in Portugal is accompanied and verified by the Ministry of Labour and Social Solidarity's General Inspectorate, with powers of audit and inspection.

95. The following circumstances may give reason for the suspension of the above mentioned authorization:

- (a) Inexistence of the conditions legally required for carrying out this activity;
- (b) Non performance of the activity for a period of 2 years; or
- (c) Existence of any procedure or practices that contradict the purposes of adoption (namely, the best interest of the child).

96. In Portugal only persons or agencies that have the express authorization of both the Ministry of Justice and the Ministry of Labour and Social Solidarity can carry out the activity of intermediaries in adoptions – number 3 of article 29 of Decree Law 185/93, of 22<sup>nd</sup> May. Their activity is regulated by Decree 17/98, of 14<sup>th</sup> August.

97. So far, there have been three agencies authorized to act as intermediaries in adoption in Portugal – Ministerial Orders 161/2005, of 10<sup>th</sup> February, 162/2005, of 10<sup>th</sup> February, and 223/2007, of 2<sup>nd</sup> March.

98. Every birth occurred in the Portuguese territory must be declared with the purpose of being registered – articles 96 and following of the Portuguese Civil Registry Code. This declaration is mandatory, not only for parents and relatives, but also for the people working in the health unit where the child was born, where such declaration is also possible. Birth registration is drawn up immediately after the declaration (article 102 of the Civil Registry Code).

99. If, within 20 days after birth, or until the mother is released from the health unit, the birth is not declared, the administrative and police authorities, as well as any other person, even if deprived of any particular interest, will participate the fact to the Public Prosecutor who must act to overcome that failure (ex officio birth registration).

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

101. The consent of a parent can be waived by the court only in the following cases (article 1981 of the Portuguese Civil Code):

- (a) If the parent is deprived of the use of mental capacities or if, for any other reason, there are serious difficulties in hearing him/her;
- (b) If the parents have abandoned the child;
- (c) If the parents have, seriously endangered the safety, health, instruction and education, or the development of the child;
- (d) If the parents of a child admitted in a child care facility or cared by a private person display an evident lack of interest for the child, where the quality and continuity of parentage bonds are seriously jeopardized, for a period of at least 3 months;
- (e) If the parents have been prohibited from exercising paternal authority over the child and, after 18 or 6 months over that decision has become final, neither the Public Prosecutor nor the parents have requested for the prohibition to be lifted;
- (f) Although adoption in Portugal may only be established by a judicial decision, it will not be so unless it carries out the best interest of the child. The decision is based on the evaluation, by Social Security Services, of the child's situation, the candidates for the adoption and their relationship to one another (articles 1973 and 1974 of the Portuguese Civil Code). The whole process ensures compliance with international standards such as the

ones established by article 21 of the Convention, and without evidence that all those procedures have been carried out, the judge will not decide for the adoption.

#### **F. Liability for legal persons (art. 3, para. 1)**

102. The criminal liability of legal persons in relation to conducts enumerated in articles 170, §2, 175 and 176 of the Portuguese Criminal Code (which criminalize the activities enumerated in article 3, paragraph 1 of the Protocol) is stated in article 11 of the Portuguese Criminal Code.

103. The liability of legal persons in relation to the crimes envisaged by the Protocol is quite recent (September 2007). Therefore, data concerning its effectiveness as a deterrent to the sale of children, child prostitution and child pornography is not yet consolidated in a way that allows for an accurate analysis of the impact of these dispositions.

#### **G. Inter-country adoption (art. 3, para. 5)**

104. Portugal ratified, through Parliament Resolution 8/2003, the 1993 Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption (Hague Convention). By passing the referred Convention, Portugal aims to establish safeguards to ensure that inter-country adoptions take place in the best interests of the child with respect to his or her fundamental rights and also, to establish a system of co-operation amongst Contracting States and to ensure that those safeguards are respected and thereby prevent the abduction, the sale or traffic in children.

105. In Portugal, the MTSS through the ISS assumes the role as Central Authority in Inter-country Adoption, cooperating namely to:

- (a) Facilitate, follow and expedite the procedures in view of carrying out the adoption process;
- (b) Facilitate, follow and accelerate the adoption process;
- (c) Promote the development of counseling services and authorities in the adoption and in its follow up process.

106. More recently, and through the Ordinances 161/2005 and 162/2005, of 10 February, the Government authorized DanAdopt — Danish Society for International Child Care and Bras Kind — Familien für Kinder, two private non profit associations, to work in Portugal as mediators in cases of international adoption, guaranteeing, the promotion of international adoption in Portugal, by preventing the abduction, sale or trafficking of children.

#### **H. Jurisdiction (art. 4)**

107. As regards criminal jurisdiction over the offences referred to in article 3 of the Protocol, the Portuguese Criminal Code establishes, in its article 4, the applicability of Portuguese criminal law to any offences practiced within the Portuguese territory, regardless of the nationality of the perpetrator, or on board of Portuguese vessels or aircrafts. In addition, several criteria of extraterritorial competence are foreseen in article 5 of the Portuguese Criminal Code. Therefore, Portuguese jurisdiction may also be established in relation to the criminal offences referred to in the Optional Protocol in case the acts are conducted against Portuguese nationals, by Portuguese nationals who usually live in Portugal at the time of the offence and are found in the Portuguese territory.

108. In the crimes of trafficking in minors, child sexual exploitation and child pornography, Portuguese courts are competent to prosecute the offence as long as the offender is found in Portugal and cannot be extradited or surrendered in the context of the European Arrest Warrant or other international cooperation instrument to which Portugal is a Party.

109. The criminal offences foreseen in the Protocol fall within the Portuguese jurisdiction also when they are practiced by non-nationals who are found in Portugal and whose extradition has been required and cannot be given or in those cases where the agent is not surrendered in execution of the European Arrest Warrant or another instrument of international cooperation to which the Portuguese State is a party.

110. Portuguese jurisdiction is also established in relation to legal persons that have their seat in the Portuguese territory and to facts committed abroad in cases where such an obligation exists by means of an international agreement or convention to which Portugal has agreed.

## **I. Extradition in the event of a crime (art. 5)**

111. According to the Portuguese Law, extradition of persons accused of having committed one or more of the offences referred to by article 3 of the Protocol does not require the existence of an extradition treaty with the requesting State, as Portugal enacted a general law on judicial co-operation - Law 144/99, of 31<sup>st</sup> August, (as amended by Laws 104/2001, of 25<sup>th</sup> August, and 48/2003, of 22<sup>nd</sup> August), that approves the law on international judicial co-operation in criminal matters.

112. The Portuguese State gives primacy to international treaties<sup>5</sup>, conventions and agreements, meaning that co-operation (extradition is a form of co-operation) shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that bind the Portuguese State and, where such provisions are non-existent or do not suffice, the provisions of the above mentioned law.

113. Thus, if having an extradition treaty with the requesting state highly facilitates the procedure – and for this reason Portugal has been negotiating and signing treaties with non-European countries, such as India and Algeria, both on extradition and on mutual legal assistance in general – it is not mandatory that such a treaty exists for this purpose.

114. In the absence of an extradition treaty, international co-operation in criminal matters falls within the province of the principle of reciprocity. However, according to article 4 of Law 144/99, the absence of reciprocity shall not prevent compliance with a request for co-operation where such co-operation:

- (a) Is seen to be advisable in view of the nature of the facts, or in view of the need to combat certain serious forms of criminality;
- (b) May contribute to the betterment of the situation of the person concerned or to his social rehabilitation; or
- (c) May serve to shed light on facts endorsed to a Portuguese national.

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<sup>5</sup> Pursuant to article 8, paragraph 2 of the Portuguese Constitution “The rules set out in duly ratified or passed international agreements shall come into force in Portuguese internal law once they have been officially published, and shall remain so for as long as they are internationally binding on the Portuguese state.”

115. For the Portuguese State, article 5, paragraph 2 of the Protocol is considered sufficient basis for an extradition request made by another party to the Protocol. However regarding the extradition of Portuguese nationals special rules are foreseen. According to article 32 of Law 144/99, extradition shall be excluded where the person claimed is a Portuguese national, except when the extradition of nationals is provided for in a treaty, convention or agreement to which Portugal is a Party, and extradition is sought for offences of terrorism or international organized crime, and the legal system of the requesting State embodies guarantees of a fair trial.

116. In the above mentioned circumstances, "...extradition may only take place for purposes of criminal proceedings and provided that the requesting State gives assurances that it will return the extradited person to Portugal for that person to serve in Portugal the sanction or measure eventually imposed on him, once the sentenced is reviewed and confirmed in accordance with the Portuguese law, unless the extradited person expressly refuses to be returned."

117. Since becoming a party to this protocol, Portugal has signed the following extradition treaties: with Algeria- entered into force in 2008; with China- approved for ratification, April 2008; with the Community of the Portuguese Speaking Countries - signed in 2005, ratified by Mozambique in 2007 and by Portugal in 2008, is waiting the ratification by a third country in order to enter into force; with India- entered into force in October 2008; with Morocco - signed in 2007, ratified in 2009.

118. The above mentioned treaties allow for extradition whenever the crime committed is punished in both states with a penalty of deprivation of freedom of a maximum period of at least 1 year. Therefore, the offences referred to in the Protocol are extraditable offences. Also the European Arrest Warrant<sup>6</sup> is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order<sup>7</sup>

119. Other than the treaties signed by Portugal and mentioned above there has been no new legislation or regulation concerning extradition proposed, drafted or adopted.

120. Portugal has never refused a request for extradition of a person subject to its jurisdiction who was accused by another State of any of the offences referred to in the present Protocol.

121. In 2010, one extradition to Australia was granted, related to a case of child prostitution. In 2006, 2007 and 2008, three European Arrest Warrants were executed: two to the Netherlands and one to the United Kingdom. The underlying crimes were sexual exploitation of children and child prostitution.

122. Portugal has not received any request for the extradition of any person accused of any of the offences referred to in this Protocol. Concerning the European Arrest Warrant, which absorbs the great majority of the requests, the warrants issued are not registered according to the type of crime.

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<sup>6</sup> Law 65/2003, of 23 August, approving the legal regime of the European arrest warrant entered into force on January 2001. This law substitutes within the member States of the European Union the Convention on Extradition.

<sup>7</sup> The European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

## **J. International cooperation (art. 6)**

123. As mentioned above, the legal basis for this cooperation is: within the EU Member States, the European Arrest Warrant legislation and (besides traditional instruments) other instruments enacted by the EU and transposed by national legislation, especially those that implement the principle of mutual recognition; and as regards third countries: treaties, conventions and agreements or, in their absence, Law 144/99, of 31 August (law on international judicial co-operation in criminal matters).

## **K. Seizure and confiscation (art. 7)**

124. The legal basis within the EU Member States for seizure and confiscation of either goods used to commit or facilitate any offence foreseen in the Optional Protocol or of proceeds derived from the commission of such offences is the European Arrest Warrant legislation and (besides traditional instruments) other instruments enacted by the EU and transposed by national legislation, especially those implementing the principle of mutual recognition; and in what regards to third countries: treaties, conventions and agreements or, in their absence, Law 144/99, of 31 August (law on international judicial co-operation in criminal matters).

## **V. Protection of the rights of victims (arts. 8 and 9, para. 3)**

### **A. Adaptation of criminal justice proceedings (art. 8, para. 1 (a))**

125. Portuguese Criminal Procedural Law is sensitive to the special needs of children victims of crimes, setting forth a number of provisions that allow for the protection of children's rights and interests in criminal proceedings.

126. The vulnerability of child victims is recognized in relation to children acting as witnesses in the Law of Protection of Witnesses in Criminal Proceedings (Law 93/99, of 14 July), as the special vulnerability of the witness may arise, amongst other circumstances, from their small age (article 26, §2). Article 26, §1 of this law states that in those cases where a especially vulnerable witness participates in a criminal proceeding, the judiciary authority ensures that the procedural act takes place in the best possible conditions, in order to guarantee the spontaneity and sincerity of the answers.

127. During the investigation phase, the statements of the especially vulnerable witness should take place as soon as possible after the commission of the crime and the repetition of the hearings should be avoided (article 28 of Law 93/99, of 14 July). In acts subsequent to the investigation phase, and namely in trial, the judge may conduct the proceeding in order to prevent the presence of the offender and of the especially vulnerable witness in the same room.

128. The status of witnesses within criminal proceedings encompasses rights and duties that apply to children: the judiciary authority always assesses the mental and physical capacity to bear testimony and, in crimes against sexual freedom and sexual self-determination, a personality assessment may take place if the witness is under 18 years old (article 131 of the Criminal Procedure Code).

129. The child witness also has the right to be informed on the possibility of refusing to bear testimony, for instance, if the defendant is his/her parent or brother/sister, foster parent/adoptive parent (article 134 of the Criminal Procedure Code), thus preventing situations that might be conflicting and cause emotional pain to the child. During the trial,

the witness who is under 16 years of age is subject to questioning only by the judge who presides to the court (other judges, jurors, Public Prosecutor, defence lawyer or lawyers of other parties to the process may ask the president to question the witness, according to article 349 of the Criminal Procedure Code). During the hearings the court may command the defendant to withdraw from the room if there are reasons to believe that his/her presence would prevent the person who is being heard from saying the truth or if the person who is being heard is under 16 years of age and there are reasons to believe that conducting the hearings in the presence of the defendant might seriously impair the child (article 352 of the Criminal Procedure Code).

130. As far as court facilities are concerned, there are already some court rooms especially adequate to ensure that children are heard in the best possible environment, creating the conditions for an informal atmosphere, the respect for their privacy, and for the physical and psychological safety of the child. Moreover, work is under way to equip other courts with similar facilities.

#### **B. Support services (art. 8, para. 1 (d))**

131. Especially vulnerable witnesses should be accompanied by a social service technician designated by the judicial authority (article 27 of Law 93/99, of 14 July) and, if necessary, provided with psychological assistance. Additionally, the judiciary authority may authorize the presence of the technician or other escort during the proceedings.

#### **C. Privacy and identity of the child (art. 8, para. 1 (e))**

132. The privacy and identity of the child victim is also protected: there are limitations in the freedom of media, namely by preventing the publicizing, by any means, of the identity of the victims of trafficking in human beings and crimes against sexual freedom and sexual self-determination, unless there is express authorization from the victim (article 88 of the Criminal Procedure Code).

#### **D. Training (art. 8, para. 4)**

133. As already mentioned above, due importance is given to the training of judges regarding the legal instruments applicable to children, both during the initial training program for judiciary magistrates and public prosecutors, as well as in the framework of the on-going training. This training is run by the Centre for Judicial Studies (CEJ).

134. Within the CAIM project, the Support Training Kit for the Prevention and Assistance to Victims is a guiding tool used in the implementation of training courses developed by the MTSS through the ISS involving different professionals working with victims of traffic and sexual exploitation. Based on this referential training, several training courses were already developed targeting social emergency professionals of Social Security and the Portuguese Red Cross.

#### **E. Temporary placement (art. 8, para. 5)**

135. Article 19 of Decree-Law 190/2003, of 22 August, is another provision especially designed to protect children who are victims of crimes: it allows for the temporary placement of the child or juvenile in a child-care institution when the child witness has to be temporarily withdrawn from his/her family or social closed group (article 31 of the Law 93/99, of 14<sup>th</sup> July).



136. Still in the area of traffic in human beings, in 2008 the Government created a Centre for Shelter and Protection of Victims of Traffic in Human Beings. The Center aims at receiving women who have been victims of traffic, as well as their children, independently of their respective age, nationality, race, religion and other factors. Up until now 10 women have been received in the Centre, and their stay is of up to one year (even though longer periods can take place, in case of need). Of the group of 10 women, 4 were children and 2 were 18 years old. The Center has a capacity for six people, it works 24/7, and its location is confidential and moveable in order to ensure the safety conditions for these women. By celebrating a co-operation agreement with an NGO, the CSP has been working since June 2008 and the Ministry for Social Solidarity funds it by allocating a monthly amount corresponding 1.399.13€ per woman.

#### **F. Rights of the accused person (art. 8, para. 6)**

137. The rights of the accused person to a fair and impartial trial are not impaired by the consideration of victims' rights. According to article 61 of the Criminal Procedure Code, the accused person enjoys the right to be present at any proceeding that directly concerns him/her; to be heard by the court or by the judge who presides the pre-trial phase subsequent to the investigation (*juiz de instrução*) in decisions that may affect him/her; to be informed of the facts impending upon him before making any statement; not to answer questions made by any authority on the facts impending upon him and on the content of the statements concerning those facts; to be assisted by a defense lawyer in all procedural acts and to be allowed to communicate in private with him/her; to take part in the investigations and subsequent pre-trial phase, giving evidence and asking for any necessary proceedings; to be informed by the judiciary authority or by the criminal police of the acts where his/her presence is mandatory; to appeal of decisions that are not favorable.

#### **G. Social reintegration of victims (art. 9, para. 3)**

138. APAV- The Portuguese Association for Victim Support (APAV) is a social solidarity private institution, a legal entity of public interest, whose statutory aim is to inform, protect and support citizens who have been victims of penal offences. Its Victim Support Offices offer services for emotional, juridical, psychological and social support for the victims of crimes, such as personal counseling and follow-up, and confidential and free support. APAV receives financial support, inter alia, from the Ministry of Justice, different municipalities, as well as private sources.

139. Within the CAIM project, the Centre for Shelter and Protection, already highlighted above, is a national and public solution offering shelter for women and minors identified as victims of trafficking.

140. Apart from these and other programs already mentioned, there are no special remedies and procedures that may be used by child victims of sale and prostitution, but they can obviously use those available to victims in general.

#### **H. Prohibition of production and dissemination of material (art. 9, para. 5)**

141. The production and dissemination of material advertising sale of children is one of the conducts encompassed by the legal type of the crime of trafficking in children (article 160, §2 of the Portuguese Criminal Code), as it should be considered a form of instigation. Therefore, the sanctions applicable are those established for all the material conducts that can be defined as trafficking – three to twelve years. In the crime of sexual exploitation of

minors, the advertising of materials should be considered as a type of promotion, which is also a material element of the offence, punishable with one to five years of imprisonment.

142. In addition, article 7 of the Publicity Code (Decree-Law 330/90, of 23<sup>rd</sup> October ) prohibits any advertising that instigates the practice of illegal activities or crimes and punishes this infraction with fines.

## **VI. International assistance and cooperation (art. 10)**

### **Mutual Legal Assistance (MLA) treaties**

143. Portugal has signed various Mutual Legal Assistance (MLA) treaties:

- with Algeria - entered into force in February 2009;
- with Angola - entered into force in May 2006;
- with Argentina - ratified in 2007;
- with Australia - entered into force in 1993;
- with Brazil - entered into force in 1994;
- with Canada- entered into force in 2000;
- with Cape Verde - entered into force in 2005;
- with China - ratified in 2009;
- with the Community of the Portuguese Speaking Countries - signed in 2005, ratified by Mozambique in 2007 and by Portugal in 2008,
- with Guinea-Bissau - entered into force in 1994;
- with Hong Kong, ratified in 2004;
- with Macau - entered into force in 2002;
- with Mexico - ratified in 1999;
- with Morocco - entered into force in 2001;
- with Mozambique - entered into force in 1996;
- with São Tome and Principe - entered into force in 1979 (the additional protocol to the MLA agreement entered into force in 2000);
- Spain- entered into force in 1998; with Tunisia - entered into force in 2000.

144. These treaties include rules on prevention, detection, investigation and prosecution of offences depending on the punishment of the crime (for instance regarding crimes punished in both states with a penalty of deprivation of freedom of a maximum period of at least 1 year) and not on the nature of the crime.

### **Transnational Project in Trafficking in Human Beings**

145. Other international cooperation initiatives where Portugal is involved include a Project whose objective is to create a transnational project in Trafficking in Human Beings: Data Collection and Harmonized Information Management Systems. This project started in May 2008. Participating States are Slovakia, (Ministry of the Interior), Poland (Ministry of the Interior), Portugal (MAI) and the Czech Republic (Ministry of the Interior). This Project started in May 2008. The participating States are Slovakia (Ministry of the Interior),

Poland (Ministry of the Interior), Portugal (MAI) and the Czech Republic (Ministry of the Interior).

146. Furthermore, actions have been taken to improve the bilateral cooperation with Brazil related with information and research in the fight against human trafficking.

## Annex I

### Crimes associated with exploitation and trafficking in minors, 2003 to 2007 (May 2007)

Research conducted during the SIIC – Investigation in 22 May 2007 regarding crimes that may be associated with exploitation and trafficking in children, participation by the Judiciary Police from 2003 to 2007.

*Distribution by number of inquiries by Unit and Type of Main Infringement (victims minors)*

Year	Main Infringement	Unit													Total in general
		Central DCCB	Guarda	Aveiro	Braga	Leiria	Ponta Delgada	Portimão	Setúbal	Funchal	Coimbra	Region of Faro	Region of Lisboa	Region of Porto	
2003	Sexual exploitation				1		1			3				2	7
	Sexual exploitation and traffic of minors												1		1
	Kidnapping	11				1	1				3		2	13	31
	Abduction	10	1		4	3		2	5	1	7		5	39	77
	Subtraction of minors												1		1
2003 Total		21	1		5	4	2	2	5	4	10		9	54	117
2004	Sexual exploitation					1	1			1	1			4	8
	Sexual exploitation and traffic of minors				1					2					3
	Kidnapping	3					1				7	2		8	21
	Abduction	19	3	2		5		3	2		11	4	3	12	64
	Subtraction of minors	1						1				1	2		5
2004 Total		23	3	2	1	6	2	4	5	1	18	7	6	24	102

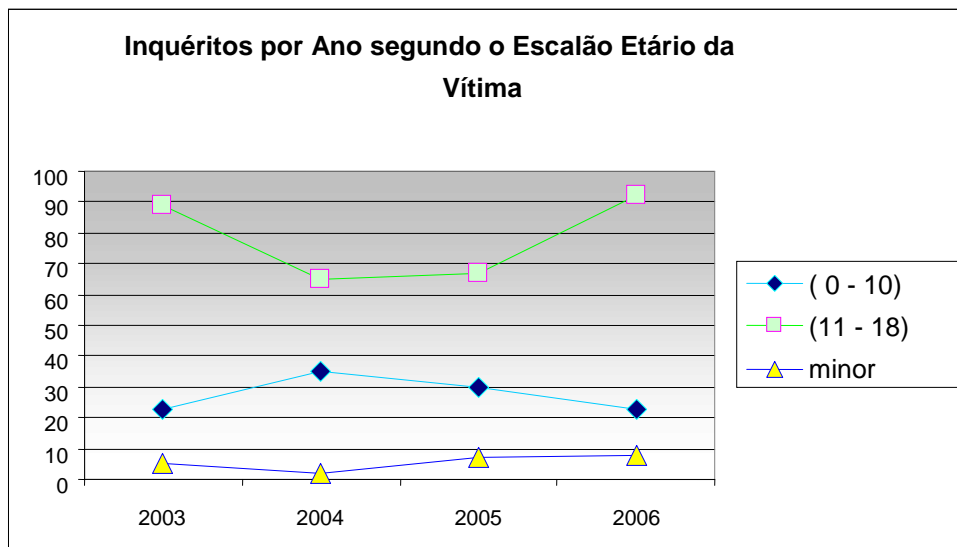
*Distribution by number of inquiries by Unit and Type of Main Infringement (victims minors)*

2005	Sexual exploitation	1							2			1		4	
	Sexual exploitation and traffic of minors				1					2	1		2	6	
	Kidnapping	6			1								12	19	
	Abduction	9	4	1	3	6	1	3	3	3	8	3	2	21	67
	Subtraction of minors					1						2		3	
	Trafficking in persons								1				4	5	
2005	Total	16	4	1	5	7	1	3	6	3	10	4	5	39	104
2006	Sexual exploitation	3									1		1	2	7
	Sexual exploitation and traffic of minors				1			1			2		1	3	8
	Kidnapping	7	1	1					1		1			11	22
	Abduction	29	2	1		2	3	2	4	9	10		5	18	85
	Trafficking in persons													1	1
2006	Total	39	3	2	1	2	3	3	5	9	14		7	35	123
2007*	Kidnapping	1						1	2		2			1	7
	Abduction	14	2	4	1	4	2		1	3	4		2	7	44
	Subtraction of minors													5	5
	Trafficking in persons							1							1
2007	Total	15	2	4	1	4	2	2	3	3	6		2	13	57
	<b>Total in general</b>	<b>114</b>	<b>13</b>	<b>9</b>	<b>13</b>	<b>23</b>	<b>10</b>	<b>14</b>	<b>24</b>	<b>20</b>	<b>58</b>	<b>11</b>	<b>29</b>	<b>165</b>	<b>503</b>

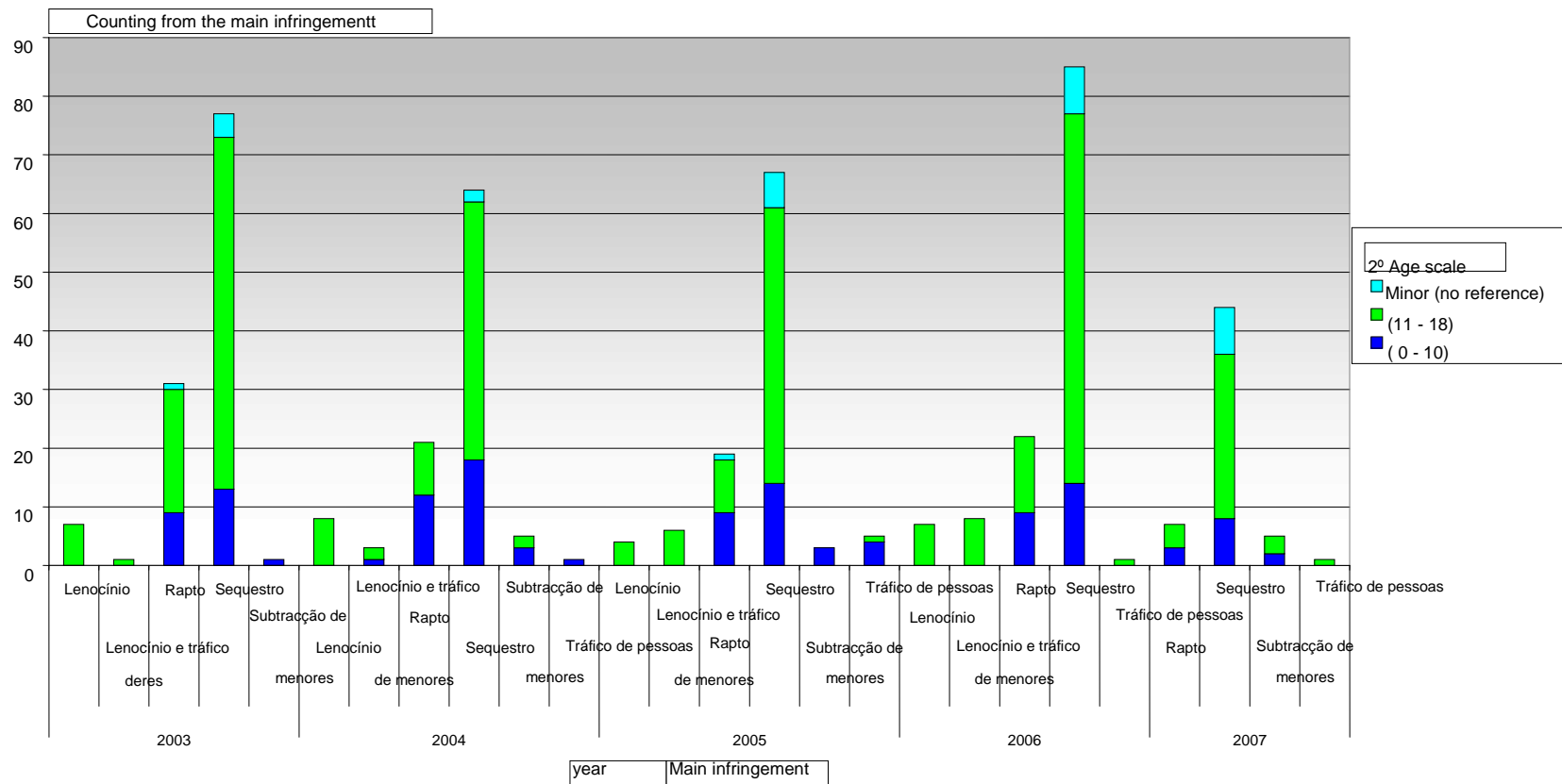
\* In 2007 corresponds to the chronological period between January 01 and May 20.

*Distribution of the number of inquiries by Year according to the Age of the Victims*

Year	( 0 - 10)	(11 - 18)	minors	Total
2003	23	89	5	117
2004	35	65	2	102
2005	30	67	7	104
2006	23	92	8	123
2007	13	36	8	57



Inquiries by Year according to the Age of the Victims



## Annex II

### Taken from the Report on Sexual Criminality against children and youngsters, 2008

#### 1. Distribution of inquiries regarding these infringements by Department of Criminal Investigation, 2008

*Investigations (Inquiries) regarding Sexual Crimes against Children and Youngsters and persons incapable of resistance according to each Department in 2008*

Departments	Sexual abuse of children		Sexual abuse of dependent minors		Sexual abuse of person incapable of resistance		Sexual abuse of committed person		Sexual acts with teenagers		Sexual abuse of minors		Rape of minors		Child Pornographie		Total	
	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%	Nº	%
DCICCEF1	14	1,4													105	65,6	119	7,7
Aveiro	43	4,3			4	7,8			1	0,8			5	3,8			53	3,4
Braga	57	5,7	1	2,3	1	2			10	7,6	3	10,7	10	7,6	2	1,3	84	5,4
Funchal	46	4,6			2	3,9			2	1,5	2	7,1	3	2,3	3	1,9	58	3,7
Guarda	13	1,3			1	2			3	2,3			3	2,3	2	1,3	22	1,4
Leiria	72	7,2	7	16,3	6	11,8			13	9,8	2	7,1	9	6,9	4	2,5	113	7,3
Ponta Delgada	68	6,9	5	11,6	1	2			7	5,3	1	3,6	4	3,1	1	0,6	87	5,6
Portimão	22	2,2	3	7	1	2			7	5,3			1	0,8	2	1,3	36	2,3
Setúbal	67	6,7	1	2,3	3	5,9			7	5,3	1	3,6	9	6,9	4	2,5	92	5,9
Coimbra	74	7,4	6	14	8	15,7			9	6,8	3	10,7	10	7,6	4	2,5	114	7,4



*Investigations (Inquiries) regarding Sexual Crimes against Children and Youngsters and persons incapable of resistance according to each Department in 2008*

Faro	53	5,3	1	2,3					5	3,8			11	8,4	5	3,1	75	4,8
Lisboa	265	26,4	7	16,3	13	25,5	1	50	37	28	13	46,4	39	29,8	10	6,3	385	24,8
Porto	210	20,9	12	27,9	11	21,6	1	50	31	23,5	3	10,7	27	20,6	18	11,3	313	20,2
<b>Total</b>	<b>1004*</b>	<b>100</b>	<b>43</b>	<b>100</b>	<b>51</b>	<b>100</b>	<b>2</b>		<b>132</b>	<b>100</b>	<b>28</b>	<b>100</b>	<b>131</b>	<b>100</b>	<b>160</b>	<b>100</b>	<b>1551*</b>	<b>100</b>

## 2. Distribution by type of places where the infringement occurred

*Distribution of the number of investigations according to the place of occurrence by type of infringement (Sexual abuse of children and youngsters 2008)*

Type of place where it occurred	Type of infringement																Total	
	Sexual abuse of children		Sexual abuse of dependent minors		Sexual abuse of person incapable of resistance		Sexual abuse of committed person		Sexual acts with teenagers		Sexual Coercion of minors		Child Pornography of minors		Rape of minors		N	%
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%		
Residency	446	44,5	25	58,1	24	47,1			54	40,9	4	14,3	3	1,9	48	36,6	604	39,0
Stair Buildings/Lift/Garage/Parking lot	17	1,7							3	2,3	4	14,3			9	6,9	33	2,1
(sub-total – area of residence)	463	46,2	25	58,1	24	47,1			57	43,2	8	28,6	3	1,9	57	43,4	637	41,2
Business facility/Services/Coffee/Restaurants	28	2,8			3	5,9			4	3,0	1	3,6			2	1,5	38	2,5
Public facility											1	3,6					1	0,1
Hotel/tourism facility	5	0,5							1	0,8					4	3,1	10	0,6
Circus/Fair	1	0,1									1	3,6					2	0,1
Beach restrooms/ Beach / Port/River	2	0,2							1	0,8					1	0,8	4	0,3
Gymnasium/Sport institution	5	0,5							4	3,0	1	3,6					10	0,6
Garden/Park	9	0,9	1	2,3							2	7,1			2	1,5	14	0,9
(sub-total – business area leisure /entertainment)	50	5	1	2,3	3	5,9			10	7,6	6	21,5			9	6,9	79	5,1
Abandoned building/Construction works / Work-shop/ Cottage	12	1,2			3	5,9			5	3,8					8	6,1	28	1,8
Empty Spaces/Pine-wood/Cane-plantation/open country	30	3,0	1	2,3	3	5,9			1	0,8	4	14,3			18	13,7	57	3,7
Transportation/means of transportation/halt/Stop	39	3,9			3	5,9			12	9,1					7	5,3	61	3,9
Public place/public street	41	4,1			2	3,9			8	6,1	6	21,4	1	0,6	13	9,9	71	4,6
(sub-total – isolated zone)	122	12,2	1	2,3	11	21,6			26	19,8	10	35,7	1	0,6	46	35,00	217	14,00
Home/Day Center/children´s home	16	1,6			2	3,9	1	50,0									19	1,2
School/nurse/nursery/School Facility	40	4,0	2	4,7	3	5,9			1	0,8					2	1,5	48	3,1

*Distribution of the number of investigations according to the place of occurrence by type of infringement (Sexual abuse of children and youngsters 2008)*

Hospital/Medical Office					1	2,0	1	50,0			1	3,6					3	0,2
Church/Cult place	2	0,2							2	1,5							4	0,3
Fire department											1	3,6					1	0,1
(sub-total – area of assistance and training)	58	5,8	2	4,7	6	11,8	2	100	3	2,3	2	7,2			2	1,5	75	4,9
Telephone	33	3,3			1	2,0							9	5,6	1	0,8	44	2,8
Internet/Use of Technology	36	3,6	2	4,7					8	6,01	2	7,1	144	90,0			192	12,4
Other places	4	0,4	1	2,3					1	0,8					2	1,5	8	0,5
Without reference	236	23,4	11	25,6	6	11,8			27	20,5			3	1,9	14	10,7	297	19,1
<b>Total</b>	<b>1004</b>	<b>100</b>	<b>43</b>	<b>100</b>	<b>51</b>	<b>100</b>	<b>2</b>	<b>100</b>	<b>132</b>	<b>100</b>	<b>28</b>	<b>100</b>	<b>160</b>	<b>100</b>	<b>131</b>	<b>100</b>	<b>1551</b>	<b>100</b>

## 3. Distribution by type of relationship between Author/Victims according to the infringement

*Distribution of the number of inquiries according to the type of relation/ Motive by type of infringement (Sexual Abuse of Children and Youngsters 2008)*

Type of relation/ Motivation	Type of infringement																Total		
	Sexual abuse of children		Sexual abuse of dependent minors		Sexual abuse of person incapable of resistance		Sexual abuse of committed person		Sexual acts with teenagers		Sexual Coercion of minors		Child Pornography of minors		Rape of minors		N	%	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%			
Between parents and sons/daughters	161	16,1	15	34,9	3	5,9			1	0,8			2	1,3	3	2,3	185	11,9	
Stepfather /stepson/stepdaughter	79	7,9	8	18,6	4	7,8			10	7,6					8	6,1	109	7,0	
Grandparents/grandchildren	48	4,8	1	2,3									1	0,6	2	1,5	52	3,4	
Uncle/nephew /niece	62	6,2	4	9,3					3	2,3					4	3,1	73	4,7	
Between family members	66	6,6	3	7,0	5	9,8			2	1,5					3	2,3	79	5,1	
Foster family			1	2,3													1	0,06	
(sub-total family relations)	416	41,6	32	74,4	12	23,5	0	0	16	12,2	0	0	3	1,9	20	15,3	499	32,16	
Boyfriend/girlfriend/partner	31	3,1			1	2,0			23	17,4			1	0,6	12	9,2	68	4,4	
Colleagues	11	1,1			1	2,0						1	3,6			2	1,5	15	1,0
Friends	1	0,1							1	0,8							2	0,1	
Neighbours	38	3,8			4	7,8			2	1,5					3	2,3	47	3,0	
Relations	161	16,1	3	7,0	15	29,4	1	50,0	44	33,3	5	17,9	5	3,1	39	29,8	273	17,6	
(sub-total social relations)	242	24,2	3	7	21	41,2	1	50	70	53	6	21,5	6	3,7	56	42,8	405	26,1	
Professor/Tutor/Educative Assistance	25	2,5	1	2,3	1	2,0			8	6,1	1	3,6					36	2,3	
Family of the child nurse/Child nurse	12	1,2	1	2,3													13	0,8	
Medical doctor/Physiotherapeutic							1	50,0			1	3,6					2	0,1	
Priest	1	0,1							1	0,8							2	0,1	
(sub-total relations of assistance and training)	38	3,8	2	4,6	1	2	1	50	9	6,9	2	7,2	0	0	0	0	53	3,4	
Business men/woman	12	1,2															12	0,8	

*Distribution of the number of inquiries according to the type of relation/ Motive by type of infringement(Sexual Abuse of Children and Youngsters 2008)*

Technological means	53	5,3	1	2,3	1	2,0				7	5,3	2	7,1	145	90,6		209	13,5	
Child prostitution	5	0,5								1	0,8				1	0,8	7	0,5	
Identified	134	13,4	4	9,3	7	13,7				17	12,9	8	28,6	4	2,5	22	16,8	196	12,6
Unknown	94	9,4			9	17,6				10	7,6	10	35,7	2	1,3	32	24,4	157	10,1
Without reference	10	1,0	1	2,3						2	1,5							13	0,8
<b>Total</b>	<b>1004</b>	<b>100</b>	<b>43</b>	<b>100</b>	<b>51</b>	<b>100</b>	<b>2</b>	<b>100</b>	<b>132</b>	<b>100,2</b>	<b>28</b>	<b>100</b>	<b>160</b>	<b>100</b>	<b>131</b>	<b>100</b>	<b>1551</b>	<b>100</b>	

## 4. Distribution by type of participant according to the infringement

*Distribution of the number of inquiries according to the type of participant by type of infringement (Sexual Abuse of Children and Youngsters 2008)*

Type of Participant	Type of infringement																Total	
	Sexual abuse of children		Sexual abuse of dependent minors		Sexual abuse of person incapable of resistance		Sexual abuse of committed person		Sexual acts with teenagers		Sexual Coercion of minors		Child Pornography of minors		Rape of minors		N	%
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%		
Victim	23	2,3	2	4,7	3	5,9	1	50,0	5	3,8	6	21,4	4	4,4	45	34,4	92	5,9
Mother	304	30,3	8	18,6	10	19,6			57	43,2	12	42,9	9	5,6	22	16,8	422	27,2
Father	119	11,9	2	4,7	8	15,7			18	13,6	2	7,1	7	4,4	15	11,5	171	11,0
Family relations (sub-total – individual circle)	49	4,9	6	14,0	3	5,9	1	50,0	8	6,1			1	0,6	4	3,1	72	4,6
Friend	6	0,6															6	0,4
Neighbor	6	0,6													1	0,8	7	0,5
Acquaintance (sub-total – social circle)	1	0,1							1	0,8			1	0,6			3	0,2
School/Institution	88	8,8			5	9,8			5	3,8	1	3,6			9	6,9	108	7,0
CPJC/Social Security/IAC	140	13,9	10	23,3	11	21,6			18	13,6	1	3,6	1	0,6	7	5,3	188	12,1
Hospital/INEM/112/Health Center/Medical doctor (sub-total - assistance and training circle)	41	4,1			3	5,9			4	3,0					5	3,8	53	3,4
Court/MP	86	8,6	8	18,6	5	9,8			8	6,1	2	7,1	14	8,8	4	3,1	127	8,2
Organ of the Criminal Police	53	5,3	2	4,7	2	3,9			4	3,0	3	10,7	42	26,3	15	11,5	121	7,8
Other	28	2,8	2	4,7					1	0,8			74	46,3	1	0,8	106	6,8
Anonymous	32	3,2	1	2,3	1	2,0			3	2,3			4	2,5			41	2,6
Unknown	2	0,2															2	0,1

*Distribution of the number of inquiries according to the type of participant by type of infringement(Sexual Abuse of Children and Youngsters 2008)*

Without reference	26	2,6	2	4,7							1	3,6			3	2,3	32	2,1
<b>Total</b>	<b>1004</b>	<b>100</b>	<b>43</b>	<b>100</b>	<b>51</b>	<b>100</b>	<b>2</b>	<b>100</b>	<b>132</b>	<b>100</b>	<b>28</b>	<b>100</b>	<b>160</b>	<b>100</b>	<b>131</b>	<b>100</b>	<b>1551</b>	<b>100</b>