

## 23. PORTUGAL

Area in sq. miles . . . . .	35,000
Population . . . . .	6,000,000
Capital . . . . .	Lisbon
Population of Capital . . . . .	500,000

Portugal has a probation law, part of decrees 27th May 1911 and 15th May 1925. Conditional sentence. Criminal responsibility under sixteen years, *nil* (as in Belgium).

Probation officers belong to three categories—curators of children, delegates of the judge, auxiliary probation officers.

Juvenile court law of 7th May 1911 and 15th May 1925 deals with offenders and morally abandoned children. There are psychiatric clinics and observation homes. *Conseils de tutelle* act in place of children's judges.

The National Federation of Institutions for the Protection of Children is a statutory body having judicial duties and State support.

No official information has yet been received.

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A. Dr. A. da Cruz Pereira do Vale claims that Portugal was one of the first States to recognise the importance of preventive measures as compared with corrective methods, in delinquency matters. In 1871 Portugal began to put into practice the separation of criminal minors from adult criminals.

The decree of 27th May 1911 created special tribunals for minors under the title *Tutorias da Infancia* for the guardianship, supervision and social protection of juveniles of less than sixteen years of age who were adjudicated to be abandoned, ill-treated or delinquent. This decree substitutes for the word "tribunal" that of *tutoria* (*tutelle*), with the object of removing the stigma attaching to legal proceedings, and further substitutes the fundamental principle of guiding and protecting for that of repression.

The *tutoria* was composed of a presiding judge, a doctor and a teacher. In connection with each *tutoria* there was a detention home, or "*refuge*," for the observation of the offender's mental and physical, etc., condition, as well as the usual institutions found elsewhere, such as reformatories.

Excellent though the ideas were, only two *tutorias* actually functioned, viz. Lisbon and Oporto.

This decree remains the basis of the Portuguese system as embodied in the new decree described under B.

B. The new Décret No. 10,767 is entitled "Organisation and regulation of the services for the jurisdiction and the protection of minors." It was issued by the Ministry of Justice and Social Welfare, 15th May 1925, and consists of two main parts :

I. An exposition of the motives underlying the decree.

II. The decree itself consists of 158 articles arranged in three chapters with their sections and articles. Chapter 1 deals with the organisation and functioning of the services. Chapter 2 with the auxiliary services for the prevention of crime and the preservation of children. Chapter 3 contains a number of miscellaneous orders.

I. *Exposition of Motives*.—In this official introduction the Government laid down the nature and principles governing the administration of justice for minors and the facts and circumstances which led to the decree. Such a course seemed necessary in order to assist the large army of officials and societies called upon to carry out or initiate this new and complex system.

The three fundamental activities of the State concerned with child welfare are :

- (1) Public Assistance Services,
- (2) Educational Services,
- (3) Judicial Services.

Nos. (1) and (2) consist of both State and voluntary bodies, whilst the last is exclusively a function of the State. Amongst them all there should be close co-operation if the aims of child welfare are to be realised.

Educational activity comes first among preventive measures, and involves the necessity of an extended observation and enquiry into character, etc., of the children concerned, seeing that there is so considerable a number of delinquent minors of weak mentality. The classification of abnormal children adopted is that promulgated by the Second International Congress of Child Welfare held at Brussels, 1921, viz. :

- (a) abnormals owing to social causes,
- (b) abnormals owing to biological or physical causes,
- (c) abnormals owing to psychic or neuropathic causes.

The problem of juveniles presents itself under three aspects :

(1) The social aspect appears in the origins and methods of the offence, the environment of which the child is a unit, and the study of social evils.

(2) The juridical aspect results from the obligation incumbent upon the State to protect society as well as the individual offender.

(3) The medico-psychological aspect involves the adoption of considered measures to restore the social equilibrium of the offender.

It was in 1911, owing to the efforts of the Rev. P. Antonio de Oliveira, that, so far as minors were concerned, older penal methods were modified and a special children's tribunal was substituted for the ordinary jurisdiction. The system of isolation in houses of correction gave way to measures of reform and correction.

The decree of 27th May 1911 still forms the basis of more recent legislation, including the present decree No. 10,767.

Children in need of protection fall under two categories :

(a) delinquent and incorrigible,

(b) children in moral danger through poverty, ill-treatment, immoral surroundings.

Both should pass through the tribunal for children before becoming wards of the State. For dealing with them there are the usual types of schools of reform, colonies for correction and places for extended observation. The tribunals were empowered to deprive parents of their parental authority, place children in private families, release on probation, send them to reformatory or colony of correction, etc.

The whole of this work comes within the scope of the Ministry of Justice, which confided the duties to a department "Administration and General Inspection," working side by side with the "Superior Council of Jurisdiction and Guardianship of Minors," which latter is a consultative body and a court of appeal. Below these come the central guardianship bodies, which work in conjunction with the *asiles* or refuges, i.e. the observation homes, and below these again are the regional guardianship committees covering the whole of the country.

The question as to whether the tribunals should be of a collective character, such as a committee, or an individual as in the case of a children's judge, has not yet been settled.

Opinion generally tends to favour the appointment of children's judges rather than councils or committees, but there are no funds at the disposal of the Government for the appointment of so large a number of judges as would be required and so for the present the Committee form, i.e. the *tutorias* (*conseils de tutelle*), will continue to act.

The above may be regarded as strictly official State organisations charged with the protection of children and with the defence of Society against crime. But there are in addition highly important auxiliary services. The legal machinery would be imperfect without the co-operation of all the child-welfare agencies in the country; and consequently, in order to bring about their effective union for co-operation with the official bodies, the "National Federation of Institutions for the Protection of Children" has been strengthened, brought into line, given an official statutory standing with judicial duties and funds for its proper administration. The National Federation, representing as it does all the child-welfare agencies of the country, standing outside the range of political activities, assured of its financial stability, linking up State-aided services with private institutions in the whole field of child-welfare work, is bound to strengthen the efficiency of the service. The Portuguese plan aims, not at making the punishment fit the crime, but at individualising the treatment so as to cure the patient and even in many cases to prevent him from becoming morally sick. All the various activities of the National Federation—health, education, correction homes, form together a most complex and far-reaching organisation, and are linked up with, and are at the disposal of, the *cours de tutelle regionales* and the other juridical services.

The introduction of the decree admits that in the doctrinal and legislative field "our country is on a level with our neighbours and even surpasses them in some directions, but in the practical field it needs administrative action, persevering and persistent." The removal of the factors causing delinquency amongst children, viz. poverty, illness, bad environment, etc., is the most effective way of removing crime in later life. It is cheaper too and results in the conservation of human happiness.

## II. *The Decree Itself.*

*Chapter 1*, Section 1 of the Decree, "Organisation and functioning of the services," vests the central co-ordination,

control and supreme direction in the "Ministry of Justice and Social Welfare" acting through *L'Administration et Inspection generales* of the services of jurisdiction and guardianship of minors with a *conseil superieur* acting as a consultative body and a court of appeal.

The juridical services are—

- (1) *Conseil superieur* (as a court of appeal).
- (2) Central courts.
- (3) Regional courts.

Institutional services are :

- (1) "Refuges" (at the disposition of the central courts for medical and mental examinations).
- (2) Reform schools.
- (3) Colonies for correctional purposes.

Under this decree the educational establishments, public assistance and health authorities, which are all dependent upon other ministries, may be utilised for the protection of children.

For the same purpose establishments of administrative bodies, or of private organisations, or those belonging to the National Federation of Institutions may be used.

Art. 2.—The Ministry of Justice and of Social Welfare will function side by side with the National Federation of Protective Institutions equally. Sec. 2 defines the duties of the "Administration and General Inspection," which reports to the superior council suggestions for alterations in the system, the need of new institutions, revision of mental and medical examinations and selects the institution when the guardianship courts have sentenced an offender to institutional treatment. It makes provision for the appointment, duties, etc., of officials, e.g. the "administrator and general inspector" must be a doctor of laws who has distinguished himself by his study of juvenile delinquency.

Art. 12 puts the probation staff under this same department. They are "delegates for the supervision of minors" and "auxiliary agents for the supervision of minors." These are nominated by the above-mentioned "Chief Inspector and Administrator," preferentially (as in Belgium) from amongst those engaged in the work of the guardianship courts and the officials attached to societies for child welfare, public assistance and educational authorities. The delegates and their auxiliary agents will fulfil their duties in the central guardianship courts under the direct orders of the president

judges ; and the " curators of children " under the direction of the " Administration and General Inspection," which can confer other powers upon the curators of children. (There seem to be three categories of probation officers—the delegate, the auxiliary agent and the curator.)

Art. 13 lays down the powers of the Superior Council and Art. 14 gives its constitution, viz. (1) the president, who is a judge chosen by the Minister of Justice, (2) two professors of penal law, one of Lisbon and the other of Coimbra Universities, (3) a Lisbon professor specialised in applied psychology, (4) the administrator and inspector-general, (5) a doctor—director of a section of the Institute of Criminology, (6) the public prosecutor (seven members in all).

Sect. 3 deals with the competence of the guardianship courts, of which there are two sorts, viz. the central guardianship courts of Lisbon and Oporto, and the regional courts.

Art. 20.—The following measures may be taken for prevention, reform or correction in connection with juvenile delinquents :

- (a) Reprimand.
- (b) Placing on probation.
- (c) Placing in an adoptive family or in a public or private educational institution.
- (d) Fine of less than 200 dollars.
- (e) Placing provisionally in a " refuge " or observation home for a period of not more than six months.
- (f) Placing definitively in a reformatory school for six years.
- (g) Placing definitively in a correctional school for six years.
- (h) Placing abnormal children in special schools.

Other measures may be taken, such as placing in semi-liberty, conditional release, enrolment in the army or navy ; and in the case of adult offenders the withdrawal of paternal or tutelary rights, compulsory payments by parents towards the expenses of their children's maintenance. As in Belgium, sentences passed on juveniles must come up for reconsideration every three years.

Art. 37 deals with the trial of children under sixteen years of age. After proceedings have been initiated at the first hearing, exhaustive enquiry is made, which includes age, environment, health and mental condition of the

offender. The dossier containing the results of the enquiries is passed on to the curator of children for his consideration, and then the second hearing takes place at which judgment is made. (*Note.*—This approximates closely to American practice, especially in the Eastern States.)

Art. 38 makes the two hearings compulsory in the case of the regional guardianship courts, but the Central Guardianship court may dispense with the preliminary hearing.

Art. 39 requires separation of juvenile from adult hearings and does away with the need, in the case of minors, of the solemnity and formalities of the ordinary courts.

Arts. 40-46 deal with the conditions under which parents or guardians are deprived of their authority, parental or tutelary, over their children; and the guardianship, maintenance and supervision of such children.

Arts. 47-48 deal with the maintenance of children under sixteen years of age.

Art. 49.—Collection of fines and of charges for the maintenance of children.

Arts. 50-53.—Appeals and records.

Arts. 54-70.—Special regulations for central guardianship courts.

Arts. 71-84.—Special regulations for regional courts.

Sect. 4.—Deals with institutional work. There are three sorts of institutions:

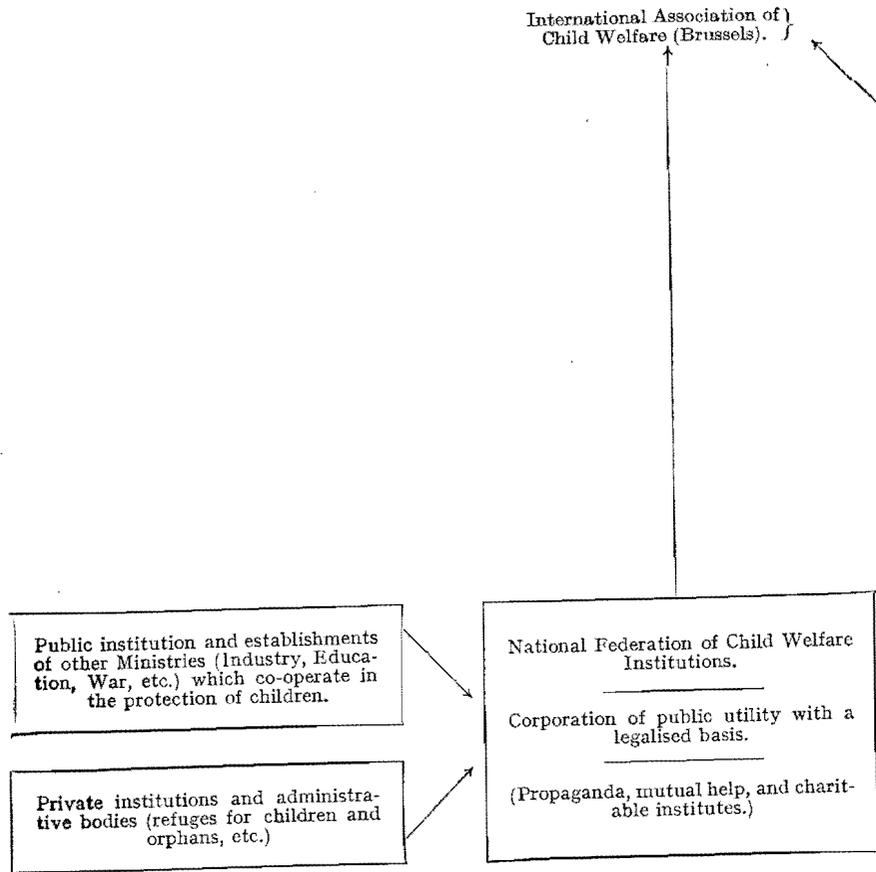
- (1) *Asiles* (refuges).
- (2) Houses of reformation.
- (3) Colonies of correction.

The authorisation of the Ministère de la Justice et des Cultes.

Art. 87 provides that doctors of medicine shall be the directors of the refuges, whilst the sub-directors must be "curators of children." It further specifies the requirements of the other members of the staff.

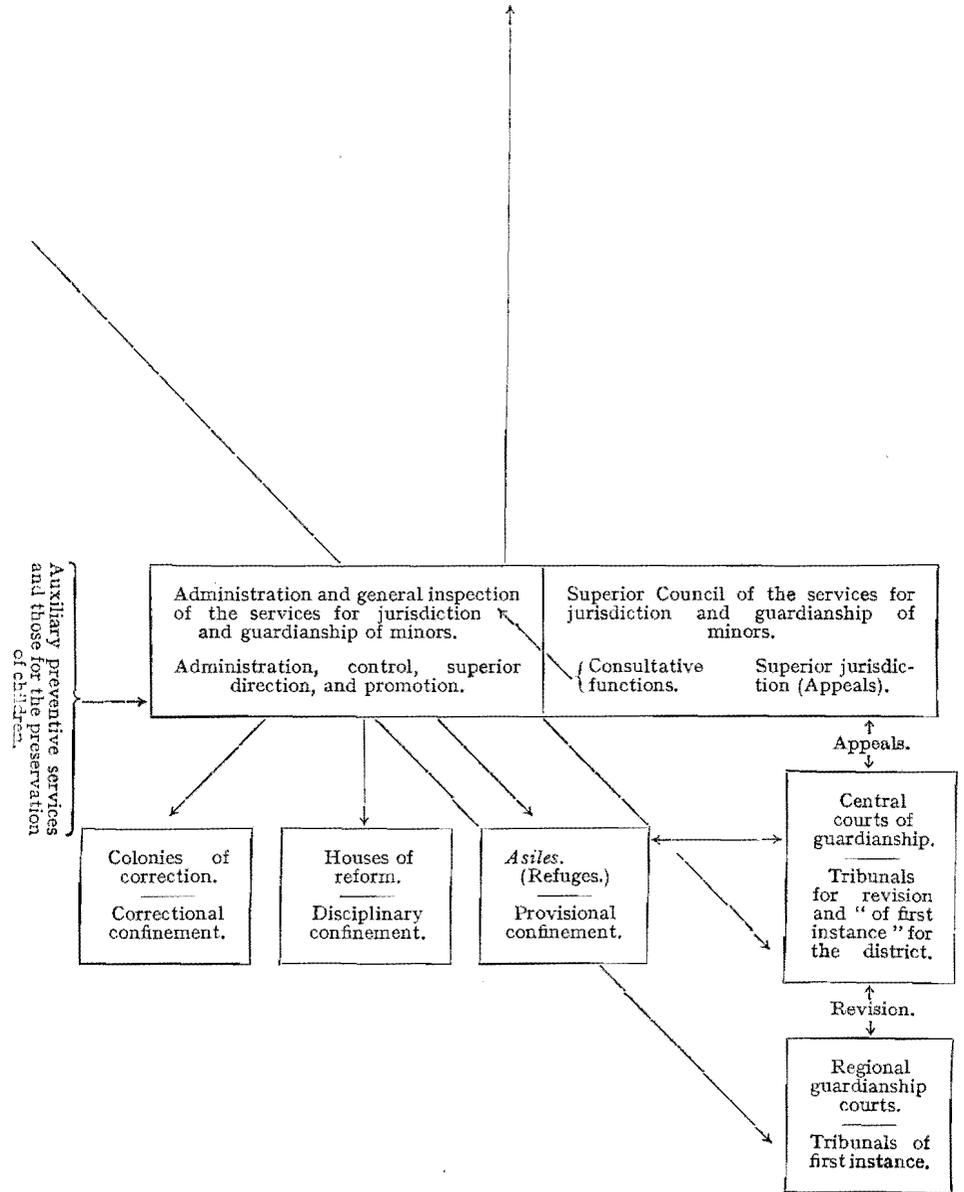
Arts. 101-106 state the general regulations applicable to "refuges," including the examinations—anthropological, medical and psychological. The study of the vocational aptitudes, the legal-social conditions of minors and their ancestors is carried out and registered in a biographical bulletin for each minor, the registration being the duty of the curator.

# PORTUGUESE MINISTRY OF JUSTICE



# AND SOCIAL WORK

SERVICES FOR THE JURISDICTION AND FOR THE GUARDIANSHIP OF MINORS.



Arts. 107-116 deal specially with schools of reform and colonies of correction.

*Chapter 2* of the decree is devoted to the Auxiliary Services and preventive work for protection of the minors in moral danger.

Sect. 1 (Arts. 117-120) defines the relationship of the legal and guardianship services to educational public assistance and health institutions whether public or private, as well as to the control of juveniles in industry.

Sect. 2 (Arts. 123-133) sets out the aims, methods of operation, etc., of the "National Federation of Child Welfare Institutions." This is a corporation of public utility which represents the moral and legal union of all the services and institutions, official and voluntary, which co-operate in the defence and protection of minors conformably with the regulations of the decree of 27th May 1911, and of the present decree.

*Chapter 3* (Arts. 134-158) consists of miscellaneous regulations dealing with personnel, offices abrogated, pensions, holidays, nomenclature of committees and institutions, officers, etc.

Art. 155 authorises the Government to publish at an opportune time "the Children's Code," embodying all legislation in force concerning children on the basis and organisation fixed by the 1911 and 1925 decrees.

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I have thought it useful to give the Portuguese legislation for children in some detail, because it will serve to make clearer the general lines upon which the *conseils de tutelle* operate in the other countries employing this method of jurisprudence for minors.

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*Note.*—Portugal is one of the countries which has given its adhesion and financial support to the International Association of Child Welfare, whose headquarters are at 67 Avenue de la Toison-d'Or, Brussels, Belgium. I would here express my thanks to Dr. Maquet, the learned Secretary of the International Association, for his kindness in sending me a translation of the Portuguese decree.