

# DEVELOPMENTS IN NATIONAL FAMILY POLICIES IN 1994

by

John Ditch, Jonathan Bradshaw and Tony Eardley

THE UNIVERSITY *of York*

in association with:

Prof Bea Cantillon (Belgium)

Dr Vita Pruzan (Denmark)

Dr Thomas Bahle (Germany)

Dr Franz Rothenbacher (Germany)

Prof Loukia Moussourou (Greece)

Dr Juan Antonio Cordon (Spain)

Dr Jeanne Fagnani (France)

Dr Pierre Strobel (France)

Dr Gabriel Kiely (Ireland)

Dr Valerie Richardson (Ireland)

Prof Giovanni Sgritta (Italy)

Prof Anna Laura Zanatta (Italy)

Dr Pierre Hausman (Luxembourg)

Prof Hans-Joachim Schulze (Netherlands)

Dr Karin Wall (Portugal)

Prof Jane Millar (United Kingdom)

© John Ditch, Jonathan Bradshaw and Tony Eardley

ISBN: 1 871713 85 4

and

ISBN: 1 871713 75 7

Published by

SOCIAL POLICY RESEARCH UNIT  
UNIVERSITY OF YORK

Produced at  
Fretwell Print and Design  
Keighley, West Yorkshire BD21 1PZ, England

## CONTENTS

Preface and Acknowledgements	page 5
Chapter 1      The Socio-Economic Context	page 7
Chapter 2      Taxes and Benefits	page 15
Chapter 3      Reconciling Work and Family Life	page 49
Chapter 4      Care and Family Obligations	page 73
Chapter 5      Marriage, Divorce, Contraception and Adoption	page 91
Chapter 6      Families Under Stress	page 129
Chapter 7      Conclusions	page 147
List of References	page 149

The implication is obvious: the decline in employment means a commensurate reduction in the net disposable family income. In the same period, welfare contributions from workers increased (+2.8 per cent), while tax pressures on disposable family incomes have slightly decreased (-0.6 per cent). The consequences were predictable: the recent economic recession has aggravated family difficulties. Recent investigations indeed show that families generally feel quite clearly that further hardships await them in the near future, whether because of reduction of the social protection network or because of the greater sacrifices required by the necessity of balancing the public budget. A survey in November 1994 by ISCO (*Istituto Nazionale per lo Studio della Congiuntura*) predicts that in the next twelve months the general economic situation will probably deteriorate further according to 33 per cent of Italian families; that only half of families will be able to balance their budgets; and that slightly more than a third of all families will manage to save.

### LUXEMBOURG

In 1994 it was estimated that GDP growth was between 2.5 per cent and 3 per cent. Inflation declined to 2.2 per cent from 3.6 per cent in 1993. Unemployment increased to 2.7 per cent.

### NETHERLANDS

In 1994 the general economic climate in The Netherlands was better than in the preceding years. The inflation rate was 2.6 per cent and mainly caused by higher rents of houses, higher costs of public transport, telephone costs and the costs of fuel; social security benefits and the tax system did not completely follow this inflation rate in 1994 and were uprated using a separate index ('at a distance'). The expected inflation rate for 1995 is 2.6 per cent. The new government (a combination of two liberal parties, i.e. conservatives and left wing liberals) and the Labour Party (the so-called pink coalition) and also the labour unions and the organizations of employers repeatedly bring forward the slogan 'work, work, work'. A big problem for policy making in The Netherlands is the ratio between the economically active population and the so-called inactive population: about 87 working people versus 100 non-working (in 1994). Economic growth did not create the expected new jobs in 1994. Economists expect an increase in new jobs in 1995. The short-term policy is to create more part-time jobs, especially for women. Within the general economic climate and the social system no special attention is given by the government to families or family policy.

### PORTUGAL

Economic growth in Portugal has declined during the 1990s. The annual growth rate of GDP was significant during the period going from 1987 to 1990 (with growth of GDP above 4 per cent per year), but went down to 2.1 per cent in 1991, to 1.5 per cent in 1992 and was negative (-1.0 per cent) in 1993. On the other hand, unemployment rates have increased, from 4.1 per cent in 1991, 4.2 per cent in 1992 to 5.6 per cent in 1993, 6.2 per cent during the last trimester of 1993 and 6.8 per cent during the first and third trimesters of 1994. The rate of growth in total

growth in inflation was 8.9 per cent in 1992 and 6.5 per cent in 1993. Indicators concerning income, expenditure and real wages also show a decline. Thus the rate of growth in the total income available for families was 3.1 per cent in 1992 and -2.7 per cent in 1993; rate of growth in private expenditure was 4.7 per cent in 1992 and 0.3 per cent in 1993; rate of growth in real wages was 4.4 per cent in 1992 and 0.1 per cent in 1993. Other indicators, such as the proportion of temporary contracts for wage earners, have not varied: in the third trimester of 1994, 11.2 per cent of contracts were temporary (the values are the same for the 3rd trimester in 1993); 52 per cent of temporary contract wage-earners are women and 44.6 per cent of permanent contract wage-earners are women.

Considerable effort has been made to improve the physical, social and transportation infrastructure.

### UNITED KINGDOM

The impact of the economic climate has been very variable. Inflation has been low (the RPI rose from 141.9 in December 1993 to 145.2 in December 1994) and average earnings have risen (by 2.8 per cent between April 1993 and April 1994). Registered unemployment declined to 2,544,000 in December 1994, 8.7 per cent of the workforce, from 2,782,700 in December 1993, 9.9 per cent of the workforce. Research on the distribution of employment among families shows an increasing polarisation between 'work rich' and 'work poor' families. There has been a drop in one earner families and an increase in no earner families (as a result of unemployment and the increase in lone parent families) and in dual earner families which now make up more than half of all two parent families.



**Minimum incomes/social assistance**

There were no substantive changes during 1994 to the minimum income schemes, other than upratings, though there is an ongoing debate about whether to extend entitlement to the *Revenu Minimum Garanti* (RMG) to political refugees.

**Child support/maintenance**

There were no changes in child maintenance arrangements during 1994.

**NETHERLANDS****Fiscal policies**

There were no changes to the structure of taxation in 1994. The basic tax free income threshold was HFL 5,925 per annum. A married or cohabiting adult may transfer the tax-free allowance to his/her spouse/cohabiting partner under certain conditions, for example, when the other spouse/cohabiting partner has no income or earns an income below the tax-free allowance. The maximum amount of tax-free allowance was HFL 11,850 and was applicable to married income-earners whose spouse had no income or an income below the tax-free allowance. Similar conditions apply to cohabitants, except that there are some further restrictions regarding the duration of cohabitation (one year at least) and age limits are also applied.

Lone-parent tax payers benefit from an additional tax-free allowance of HFL 10,660 if they support a child below the age of 27. If the income-earner is employed and supports a child younger than 12 years he/she is entitled to an additional tax-free allowance equal to six per cent of earned income, up to a maximum of with a maximum of HFL 4,860. The annual maximum tax-free allowance of one parent families, when all deductions are included, may come to HFL 15,526.

The most important tax deductible allowances related to family circumstances are as follows:

- alimony to the former spouse(s);
- high expenses due to sickness, disability, adoption or childbirth if these are not refunded by health insurance or another insurance scheme;
- the costs of children under 27 for whom no child allowance is due and where the child is not entitled to receive a student grant under the Study Finance Act;
- the remittance of money to nearest relatives to cover their subsistence costs. Parents are allowed to donate an annual tax-free amount of up to a prescribed level, along with a one-off tax-free lump sum.

Tax allowances will be raised by 2.5 per cent in 1995, in line with forecast inflation.

**Family/child allowances**

There were no changes to the structure of child benefits in 1994, but at the end of 1994 the government announced that from January 1995 child benefits would be reduced by abolishing the proportionate increase in amount per child as the size of the family increases. This change provoked relatively few protests, although the Netherlands Family Council pointed to the adverse effects on poorer families and lone parents.

**Maternity grants/allowances**

There are no maternity allowances in the Netherlands.

**Other social security benefits affecting families**

There were no significant structural changes in 1994 to unemployment benefits, retirement pensions, survivors' benefits, sickness and invalidity benefits, health insurance or housing assistance.

**Minimum incomes/social assistance**

In 1994 the rates of payment of general assistance (*Algemene Bijstand*) were altered to reduce payments to people under 21 and to those aged 21-26 for a six month period following the end of full-time education. There were also amendments to the definition of what constitutes individual or shared accommodation for the purposes of housing assistance.

**Child support/maintenance**

In 1994 divorces in the Netherlands involved around 25,000 dependent children. In 80 per cent of cases custody went to the mother and around two-thirds of lone parents receive social assistance. Thus there is an undisputed relationship between lone parent status and dependence on social assistance. Only about nine per cent of divorced women receive maintenance and the Government is trying to increase this proportion. The municipal social services have both the right and the duty to collect maintenance payments and in 1993 and 1994 former husbands faced a stricter policy of maintenance collection because of financial pressure on the local authorities. Proposals from the government to place further legal obligations on local authorities to enforce maintenance payments have not, however, been implemented, because of opposition in Parliament.

**PORTUGAL****Fiscal policies**

In 1994, the structure of taxation is basically that single taxpayers have a tax-free allowance of ESC 30,100 and married taxpayers ESC 22,800 (each). Cohabitants are treated as two single people. These amounts are increased by 60 per cent when the tax payer or a dependent child is disabled. Child dependant allowances are ESC 16,500 and 'dependants' are defined as those who are not wage-earners or who earn less than the national minimum salary, and are under 25 years of age (or 18 if they are no longer students). Families are not entitled to deductions for other dependent relatives, which has been the subject of some discussion since people with elderly relatives in residential care can deduct these expenses (within limits) from tax.

Families are also entitled to deduct certain other expenditures from their income, namely expenditures relating to health care, education, insurance, and equipment for renewable energy, up to a maximum of ESC 145,000 for single persons and ESC 291,000 for couples. One small change introduced in 1993, but taking effect from 1994, was that people no longer automatically receive half this maximum miscellaneous deduction even if they do not put in any supporting evidence of expenditures.

Tax allowances for family members are raised every year in line with inflation. Apart from this there were no other changes.

**Parental leave**

Parental leave of up to six months for either partner was introduced in 1991. The basic scheme is unpaid, although collective agreements with some employers provide for full or partial payment and various extensions to the time. The take-up of parental leave varies across employment sectors and is often related to whether it is paid or unpaid. Workers in the non-profit sector, where leave is more often paid, for example, are more likely to take leave than those in private industry where it is mostly unpaid.

There were no changes to legislation during 1994.

**Child care**

Child care provision increased by 50 per cent between 1989 and 1992, most of the increase being accounted for by day care places. Availability remains very low, however, at only 3.2 places per 100 pre-school children. There has been a stagnation in the provision of day care by companies. Most child care for working parents is provided by the other parent or by a member of the extended family. Even in the formal system the borderline between formal and informal child care is not always clear, as volunteers play a substantial role in the day care system.

**Home-based working**

Tele-working appears to be largely practised by men. Women are being encouraged to start businesses during the 1990s, which has led to some increase in home-based self-employment.

**Status and role of fathers**

No legislative change. The traditional division of labour is prevalent, though it is beginning to be debated.

**PORTUGAL****Protection of pregnant women in the workplace**

There have been no changes in the protection of pregnant women against dismissal or in job security.

**Flexible working**

In 1994, in order to reconcile work and family life, wage-earners are legally entitled to the following (Statutory order n° 4/84, of 5 April, with regulations set out in statutory orders n°s 135 and 136, of 3 May 1985):

- either parent is entitled to miss work up to 30 days per year to care for a sick dependent child under 10 years of age;
- a wage-earner is entitled to miss work up to 15 days per year to care for a sick dependant over 10 years old, a spouse or a relative in ascending line;
- either parent with children under 12 years of age is entitled to part-time work or flexible working;
- subsequent to maternity leave, either parent is entitled to special leave (unpaid) to care for children. This leave may be granted for six months and can be extended to two years.

There have been no recent changes or extensions in the area of flexible working.

**Maternity/paternity leave and temporary or partial career suspension**

There has been no debate on the subject of temporary or partial career suspension and there are no legal provisions concerning career break schemes. Regulations of law n° 4/84 were set out in two separate statutory orders, one for the civil service sector and another for private entities. The two schemes are very similar but one difference is entitlement to two days paternity leave for wage-earners in the civil service sector. Trades unions also refer to a stronger tendency in the latter sector for use to be made of legal provisions.

**Child care**

Levels of fees paid by parents for child care services vary according to the type of child care service and family income. In 1994, the maximum fee paid in the establishments directly administrated by the Ministry of Employment and Social Security (MESS) was ESC 23,300 (47 per cent of the national minimum wage). Amounts take into account per capita family income and, according to social security statistics, a high proportion (63 per cent in 1992) of families using these establishments have a monthly per capita income below the national minimum wage. In 1994, families with a monthly per capita income below the national minimum wage would pay fees ranging from several hundred escudos to ESC 14,790 (this would include meals).

Private profit-making school establishments charge higher fees for pre-school nurseries, ranging in September 1994, in Lisbon, between ESC 30,000 and ESC 46,000 (with meals included) or ESC 13,000 less with no meals included.

The issue of pre-primary education has been taken up lately not only by the National Council for Education, which produced a report on pre-primary education in 1994 and has insisted that higher take-up rates should be put into effect, but also by the opposition parties, particularly the Socialist party, which has included pre-school education as a main topic in its agenda on education policy. It is also an issue which is periodically discussed in the context of the costs and the quality of educational establishments. A survey carried out by DECO on crèches and nursery schools in Lisbon and Porto, showed in 1993 that the quality of pre-school child care was often mediocre (too many children, poor security conditions etc.), due to lack of surveillance and lack of resources.

**Status and role of fathers**

There have been no legislative changes during the period. Surveys reveal that attitudes are changing, with most respondents expressing commitment to a 'symmetrical' family structure, but the actual allocation of household tasks is little altered.

**UNITED KINGDOM****Protection of pregnant women in the workplace**

There have been several important rulings relating to the protection against dismissal of pregnant women. The European Court of Justice has ruled that the termination of a contract on the grounds of pregnancy constitutes direct sex discrimination and that it is inappropriate to distinguish between pregnancy and the consequences of pregnancy or to compare pregnancy with illness.

income benefit and the duration of the claim. The duration of the claim depends on the age of the claimant (for example people of 59 years and above have an entitlement up to their 65th birthday). The benefit is calculated for each year that a person is over 15 on the date on which the benefit takes effect. About 2 per cent of the difference between the previous wage and the minimum wage is added to the minimum benefit. Under the new method the benefit is awarded for a standard period of five years. After that the claim is re-assessed.

#### **Care of elderly or disabled people, and of other dependent persons**

Care by family members or others is considered as an essential service by the government. On average, family members spend 5 hours per week on care. The National Council of Health finds that family members already offer their maximum in care and help.

People who give financial support to other family members, can sometimes, under certain conditions, get a tax reduction. In some cases volunteers who give support to someone are provided with free transportation or coffee and tea money by the municipalities or the organisations in which they work. There are no specific provisions in respect of carers within the Dutch social security system.

It is impossible to make a clear distinction between private and public or non-profit and profit organisations in services for disabled and elderly people. The provinces (the government and the municipalities) subsidize both forms of organisation. There is a tendency, however, to growth in private sector provision.

In general, care is not free, and many benefits are means tested. In many cases savings and capital sums are being used to pay for care. It is common for single people over 18 and couples who are married or living together and who are in an institution or home on the basis of the General Act on Exceptional Medical Expenses (AWBZ), to pay an income-related contribution of a maximum of HFL 1,350 per month (for nursing home patients 65 and over, the maximum is HFL 2,200 per month). In general, a patient is only obliged to pay a personal contribution after six months. Psychiatric and rehabilitation patients pay nothing at all during the first year of their hospitalization.

A minor change in 1994 is that under the provisions for the Handicapped Act, municipalities are (since April 1994) responsible for transport facilities, wheel chairs and adaptation to the home.

#### **Family help/respite care**

There is no system of respite care. Home help services are provided by local and regional agencies. There are a number of agencies, varying considerably in size, in most large cities and in the provinces the services are provided by the smaller municipalities. Home help services are accessible throughout the country. In principle home help is available to all households. Recently there has been a substantial shift in the categories of persons receiving service while the service itself has considerably improved. The increase in the number of very old people and of elderly people living alone, together with the fact that policy is geared toward reducing the need for placement in nursing homes and homes for the elderly, has led to an increasing demand for more continuous home help and more specialised services. This results in co-operation with other services and increased co-ordination with other services such as district nursing.

Government and home help service agencies have tried to bring services more closely in line with the needs of the clients. The original provision of help for five days a week has evolved into a system offering a far wider range of options. Home helps may visit clients several times a day if necessary. Recently it has also become possible to obtain home help outside business hours, during the evening and at the weekends. A responsive service tailored to the needs of the client is particularly important to people requiring intensive support.

### **PORTUGAL**

#### **Care of elderly or disabled people, and of other dependent persons**

There have been no marked changes in policy or provision. The National Commission for Third Age Policy created a programme for Integrated Support for the Elderly, aimed at providing finances for projects assisting elderly people in need (Regulations set out in Statutory Order 166, July 1994). Financial provision for elderly people by the state is organized along two main lines. First there is the social security old age pension scheme which entitles insured persons over 65 to monthly old age pensions. Secondly there is the non-contributory old age pension scheme, entitling people over 65 with low incomes (less than 30 per cent of the minimum national wage) and who are not eligible for pensions under the contributory scheme to a "social pension". Levels of payments are low and often below subsistence level for the majority of pensioners.

Three main types of services are available:

- residential care in homes (collective lodgings which provide permanent services);
- day by day care in centres which receive elderly people during the day;
- home care, whereby food and housekeeping is taken to the elderly person's home.

According to social security statistics, the majority of homes in 1992 were provided by private organisations (mostly non-profit social solidarity institutions) that had agreements with the regional centres (there were 24 official establishments, and of 651 not-for-profit establishments, only 75 did not have agreements with the centres).

Day centres and domiciliary help are more recent features of care for the elderly in Portugal and are still being developed. Day centres in 1992 (85 per cent were private establishments which had agreements with social security centres) have increased in number since 1987. The numbers of people benefiting from this is up from 11,370 in 1987 to 27,967 in 1992. These centres play an important role in keeping elderly people in the community. All types of service share difficulty in meeting demand and cover only small proportions of people in need. Attention is currently focusing on the need to improve both the quantity and quality of services offered. Recent evidence based on studies of small communities shows that the gaps in formal services are met in a variety of ways. One way is through informal networks based on the family and on neighbours (an elderly person may be taken in during the day or given meals by another household; physically dependent parents are often taken in by one or by several of their children). Support groups are also established by local authorities and churches.



There is no form of support for carers themselves. Disabled and elderly persons who need permanent care from another person can claim a small supplement over and above their pension. According to social security statistics, pensions constitute the main source of income for the majority of elderly people in homes, with only a small number having some private income.

#### **Family respite/respite care**

No services of this kind exist in Portugal.

#### **Other support services**

No official support services exist.

#### **Household work**

Social policy and provision has centred on the problem of replacement of earnings in situations of disability, illness, unemployment and old age. Social provision was widened to provide some support by the state in situations of non-contribution (benefits include old age social pensions, widow(er)'s pension, orphan's pension). Certain benefits which exist in other welfare states, such as income support, were not introduced. Claims for change or development have been made mostly in relation to existing benefits and also in relation to the introduction of income support or support for lone parent families. Claims have not been made for recognition of child-care and other caring jobs.

### **UNITED KINGDOM**

#### **Care of elderly or disabled people, and of other dependent persons**

The British Government appears to be progressively moving towards a sharper distinction between medical and social care. Draft guidance issued by the Department of Health in August said that the National Health Service (NHS) would continue to provide long term care to those with "complex and multiple" needs but for the significant majority needing continuing care the expectation is that they will rely on means-tested social services or a place in a nursing home.

A sharper distinction between medical and social care will have important implications for family carers. If the person needing care does not qualify for means-tested social services or a place in a nursing home they will either have to pay for services or rely on their families for support. It has also been reported by the Audit Commission, the body supervising local government spending, that a number of local authorities in the Great Britain are experiencing problems in funding care services for elderly people, disabled people and those suffering from mental health problems.

Research commissioned by the Carers National Association, a voluntary organisation representing carers, found that the vast majority of carers (80 per cent) felt that the Government's community care reforms, introduced in April 1993, had made no difference to their lives, and 8 per cent believed that services had deteriorated.

Forms of support (both financial and service-based) exist for people caring for other family members. Carers are eligible for Invalid Care Allowance (ICA), provided they are under 65 years old and are caring for someone regularly and

substantially for at least 35 hours per week. However, because of the age profile of carers, and strict interpretation of eligibility rules only 17.5 per cent of carers actually receive this benefit. A Carer Premium of £12.50 per week is also available to those on ICA and Income Support. Credits are also available for social security contributions for those receiving ICA and for those receiving home responsibilities protection (ie at home receiving child benefit or caring for an invalid).

Practical help for carers exists in the form of visits from doctors, social workers and home helps. However, the reality of this help is very limited, and only a small percentage of carers actually receive this kind of support.

For a number of years Government policies have encouraged the use of private sector care homes for disabled and elderly people and this has led to a significant rise in their number. Government spending on care in private homes, for example, has risen from £10 million in 1979 to £2.5 billion by 1992. The Government's care in the community legislation may decelerate this trend, although the Government has stated that it is committed to encouraging private domiciliary care services, a relatively undeveloped sector in the UK at present.

#### **Changes in inheritance rights**

There have been no direct developments/changes affecting the rights of inheritance in the UK in recent years. However, one study, published in 1992, calculated "very conservatively" that homes worth £2.5 billion are disappearing each year from families' inheritances because of the need to pay for long term care.

#### **Family help/respite care**

Provision is organised by local authorities and so is variable. A carer in receipt of ICA can take up to 4 weeks away from caring responsibilities every six months without losing benefit entitlement. Quality varies but research findings all indicate the usefulness of respite care services and the difference that they make to the lives of carers. A Private Members Bill, the Carers (Recognition and Services Bill) received a second hearing in February 1995. The Bill calls for a statutory right to respite care services and a separate assessment of the needs of carers.

**Parental representation**

A new law with regard to medical action was passed on 17 November 1994 and will come into effect on 1 April 1995.

**PORTUGAL****Marriage and cohabitation**

There have been no changes in the law on marriage. There are no mutual obligations of maintenance and support between cohabiting partners, but a widow/widower who has been living with another person as husband or wife for more than two years can, on the partner's death, claim maintenance rights from the estate of the deceased. Cohabiting partners also have automatic rights to their joint rented home in the case of death (of a partner they had been living with for five years). Married couples have rights over the rented home in the case of death of one of the partners and also have inheritance rights over the home owned by the couple or the deceased spouse and usufruct rights to the contents. Entitlement through a cohabiting spouse covers the right to survivor's pension, to the death subsidy and to the subsidy for the permanent care by a third party (the statutory order is from 1990 but regulations were set out in January 1994). The surviving spouse has to prove that the couple had been living as husband and wife for two years.

Sex between married persons by violent means can be included in the notion of rape.

Changes in legal provisions regarding misuse of marriage were introduced in 1994 (Statutory order 25/94, 19 August). Previously, a foreign citizen could acquire Portuguese nationality on marriage and now he/she may only acquire it after three years.

**Divorce and separation**

Alterations are being prepared by the Ministry of Justice concerning the procedures for divorce by mutual consent with a view to simplifying them. Couples with no children (or couples with children where parental responsibility has been regulated) will be able to divorce by mutual consent in the civil register, without going to court.

Mediation or conciliation during the course of divorce or separation is the judge's responsibility, according to articles 1774 and 1776 of civil law. No provision exists in terms of services for mediation in Portugal.

**Pregnancy/fertility/parenthood**

There have been no changes in law/policy. The right to family planning exists in the Constitution and Statutory order 384/84 of 24 March sets forth legislation concerning the rights of citizens to family planning and sexual education. Regulations regarding family planning were published in 1985; regulations regarding sexual education have not yet been published. The main organization offering help with family planning is the APF (Association for Family Planning), a non-governmental institution that receives financial support from the Health Ministry. It has offices in five different regions. Buying contraceptive sheaths has

become easier over the last few years (with slot-machines outside chemists, availability in supermarkets etc.). According to the APF, the number of sheaths sold doubled between 1985 and 1993. Family planning is also available from the MDV-Life Association Organisation and the Catholic Church provides specific courses for young couples before marriage.

There has been debate on the need for legal norms regulating medical practices in medically assisted fertility treatment. The techniques are generally limited to heterosexual couples with a "stable" relationship (who have been living together for two or three years) and to women under 45 years who have been diagnosed as infertile or sterile. Other norms include: doctors have a right to be conscientious objectors; there should be refusal of post mortem insemination; surrogate motherhood, experimentation and genetic manipulation of embryos should not be allowed.

In January 1990, a National Council of Bio-ethics was created and published a paper on medically-assisted fertility in February 1993. It proposes excluding reproduction with donors (of sperm and oocytes), surrogate motherhood (regardless of whether the latter contribute with their own oocytes) and believes that the surplus embryos from FIVETE and ZIFT should not be destroyed, but given to other couples or used for research. In March 1993, another Workgroup for Studies on Family Medicine, Fertility and Human Reproduction was appointed and published a 1993 report based on a consultation with the doctors who are responsible for programmes of medically-assisted fertility. There have been no changes to the 1984 law on the availability of abortion.

A new law on adoption was issued in May 1993 (n°185/93):

- concerning who can adopt: two persons married for over 4 years and not legally separated, one of the spouses being over age 25; a single adopting person, over age 30; a single adopting person over age 25 if the adopted child is the spouse's child; multiple adoption is not permitted and the maximum age for adoption is 50, except in cases where the adopted child is the spouse's child (no limit);
- concerning who can be adopted: children under age of the adopting person's spouse; children under age that have been handed legally or administratively to the adopting person. The adopted child must be under 15 years. A child over 15 may also be adopted if he/she is legally related to the adopting person or is the spouse's child;
- concerning consent: consent of any child over age 14 is required; of the adopting person's spouse; of the adopted child's parents, even if they are under age and do not exercise parental responsibility. This consent is unnecessary if the child has been abandoned by the parents, if the latter have put the child's health, security or education in danger or if the parents of a child taken in by another person or an institution show no interest in the child;
- the possibility of transnational adoption was established in 1980 but regulations were only set out in the 1993 law. The placing of children who reside in Portugal in foreign countries is only possible by means of a legal decision which takes into account the probability of adoption in Portugal. Adoption of foreign children is organized by the social security institutions.



**Parental status/children's status**

All parents have a legal duty to maintain their children, whether they are, or ever were, married, but if unmarried, parental responsibility is exercised jointly if the parents declare that they want to do so; if not, parental responsibility is presumed, in favour of the mother.

**Rights of children**

Portuguese law has no provisions which allow young children to challenge parental decisions. Children under age must obey their parents or their tutor in everything which is not illegal or immoral (art.<sup>o</sup> 128 of civil law). Children under age cannot abandon the parental home or be taken from it (art.<sup>o</sup> 1887 of civil law) and the actions of children who are under age may be annulled (art.<sup>o</sup> 125 of civil law). Nevertheless, the child's incapacity diminishes as it approaches the age of legal independence. Consent for adoption is mentioned above; if the child's parents do not agree on parental responsibility and the child is over 14, the court must hear the child before taking any decision. And parents "must take into account the child's opinion in important family matters and grant them autonomy in the organization of their lives" (n<sup>o</sup> 2 of art.<sup>o</sup> 1878 of civil law).

**Parental representation**

Parents represent their children in relation to outside agencies until they reach the age of legal independence (18 years old). Portuguese families are represented, have 'a voice' and vote at the Economic and Social Council of Portugal.

**Other legal aspects concerning sexual relationships**

There have been no changes in the law or any debate on the issue of the age of consent for heterosexual or homosexual activity. Homosexual activities are punishable "if an adult entices a child under the age of 16" (art.<sup>o</sup> 207 of the Penal Code), but apart from this, the law omits to mention them.

**UNITED KINGDOM****Marriage and cohabitation**

There were no changes in the law on marriage.

For a couple to be defined as cohabiting it is necessary that they live together under the same roof and that neither partner has another normal place of residence. The social security system generally treats cohabitants in the same way as married couples although a widowed cohabitant is not entitled to widows' benefits. In the tax system cohabitants are treated as separate individuals.

The Criminal Justice Bill has been amended to make it a statutory offence for a husband to rape his wife. This will bring statute law in line with case law, following the case decided by the House of Lords in 1991.

In October 1994 a new set of Home Office immigration rules came into force. It has not changed the 'primary purpose' rule for marriage and partnerships, despite it having become common practice for the Home Office, following internal instructions, to allow unmarried heterosexual couples to remain in the UK. The internal instructions on deportation state that a 'genuine and subsisting common-law relationship' is to be considered 'as if it were a marriage'. There is still no recognition of same sex relationships for the purposes of immigration.

There were no other changes regarding marriage and cohabitation.

**Divorce and separation**

The Lord Chancellor published a consultation document on divorce which accords a primary role to the parties involved in sorting out their future. It stresses parental responsibility and emphasises the welfare of children. The Law Commission also proposes 'no fault' divorce based on the sole ground of irretrievable breakdown of marriage as shown by the passing of a one year period; it proposes a single port of call for initiating divorce proceedings where legal information about divorce, its costs and State funding, marriage guidance and mediation services will be provided. An important goal of the new process proposed in the Green Paper is to identify marriages that could be saved. However, the later White Paper has abandoned the concept of fault.

There have been no changes in legal separation and no changes either in statutes or case-law concerning separation among cohabiting couples, but a law reform group has produced a paper arguing that it should be a professional requirement for solicitors acting on the behalf of an unmarried couple to enquire as to how the property is to be divided. It also suggests that pre-nuptial contracts be recognised and enforced by law.

The Divorce Green Paper proposes widely available family mediation. Negotiations led by lawyers should be secondary to mediation rather than the reverse, as is now the case.

**Pregnancy/fertility/parenthood**

Since 1974, family planning provision has been administered through District Health Authorities (in Great Britain). Resources have been diverted into providing and improving services for young people in the context of the Government's target to halve the number of conceptions to women under 16 years old. The Royal College of Obstetricians and Gynaecologists proposed that the emergency morning-after Pill should be available for sale without a prescription. The Department of Health said that ministers saw some merits in the proposition to allow chemists to sell the Pill.

The Human Fertilisation and Embryology Authority (HFEA) produced a report in 1994 on the use of donated ovarian tissue for treatment and research. It recommends approval for research using foetal, cadaver and live-donor ovarian tissue, once the informed consent of the live donor has been given. Currently this research will be prohibited under an amendment to the Criminal Justice Bill. The High Court ruled against a woman suing her local Health Authority which, in accordance with NHS guidance, refused to treat her at the age of 37 on the grounds of age. Section 30 of the Human Fertility and Embryology Act 1990 was implemented in November 1994. This enables 'commissioning parents' to obtain a parental order in respect of a child born to a surrogate mother.

The availability of abortions and service provision remains unchanged. The most recent figures show that 127,243 abortions took place between January and September 1993, but not all were to UK nationals.

Since the Government published its White Paper *Adoption - The Future* in November 1993, there has been a period of consultation resulting in the



discussion about how to co-ordinate or rationalise these services. The collection of reports of child abuse is mainly the role of 14 Bureaux of Confidential Doctors, who up until 1992 were nationally funded. Since then, as part of a more general decentralisation of services, the provinces and municipalities have responsibility for funding under the law on Youth Aid. Eleven of the agencies are co-operating in the organisation of a joint fund and in 1995 another will join them, but there is some concern that the process of decentralisation will undermine the present co-operation and may lead to fragmentation and regional differentiation of services. The number of reported cases of abuse has been rising (from 430 in 1972 to 13,000 in 1993) and special publicity campaigns in the early 1990s led to a big increase in calls from children on the confidential telephone help-lines (*kindertelefoon*), but the level of trained staff working in this field has been lagging behind.

Child Protection Services, attached to the Ministry of Justice, also deal with cases of abuse. Parliament has urged the government to integrate these services with those of the Bureaux of Doctors, but this is meeting with some opposition from the Ministry of Justice. A Commission has been set up to examine ways of creating an integrated and publicly visible service.

The third agency involved in this issue is the police. Currently officers of the youth and vice squads are receiving training in recognising child abuse, and special audio and videotaped interview units are being set up.

Sanctions against abuse take three forms: criminal prosecution, civil remedies and therapeutic treatment. In general the preference is for the latter, though in cases of sexual abuse the criminal law is more frequently used. Currently an experiment in the use of treatment rather than prosecution is being conducted in cases of incest, in order to determine whether this will increase the likelihood of confession, whether offenders will continue to participate in treatment if they are not prosecuted and how it affects rates of recidivism. Results of the experiment are expected in 1996.

#### **Removal of parental authority**

Dutch legislation on the removal of parental authority has not changed fundamentally for decades. The Secretary of Parliament suggested a change in the supervision order that was accepted by Parliament in 1994. It is likely to be accepted by the Senate and will be implemented in 1995. The two most important aspects of the proposal are the following:

- the legal grounds for issuing a supervision order will change. Currently a judge can place a child under supervision if she/he is 'threatened with bodily and moral decline'. It is proposed that this should be changed so that a supervision order can be issued if a child is raised 'in such a way that his moral or mental interests or his health is seriously damaged, and other means to reduce this threat have failed, or presumably will fail';
- the responsibility for and power over the child after the court order has been issued will be shifted from the judge to the child welfare board, who will provide a 'supervisor' for the family.

## **PORTUGAL**

### **Violence in the family**

The legal framework for dealing with violence in the family has been described in earlier Observatory reports and there have been no recent changes or developments. The 1991 law aimed at 'guaranteeing adequate protection to women victims of violence', through measures such as information campaigns, research, the creation of refuges and support centres, the setting up of telephone helplines, the establishment of special police units, and the introduction of state compensation for victims, has not yet been implemented. Thus there are no women's refuges in Portugal, though the subject is under debate, and *Misericórdia* (a religious non-governmental organisation) and the municipality of Lisbon have proposed setting up shelters.

There is little evidence as yet on the extent of domestic violence, but the studies conducted so far indicate that it is a serious problem. The results of a study on violence against women by the Commission for the Equality of Rights of Women (CERW) are expected in 1995.

Though there are no specific programmes to deal with violence against women in the family, there have been a number of initiatives. The Portuguese Association to Support Victims is a voluntary organization supported by the state, and offers advice and training. Another NGO - the Womens' Association against Violence - and The Commission for the Equality of Rights of Women have also promoted information campaigns. Both the CERW and the Ministry of Justice provide legal consultations. The Commission also has an agreement with the police force to carry out training sessions for officers.

### **Child abuse**

Some indications of the extent of abuse of children come from analysis of calls to a telephone help-line called Children's SOS. The proportion concerning sexual abuse, while relatively small, has been steadily increasing. According to the SOS organisation, the increase suggests that a more substantial effort is being made by society to identify and give support in cases of abuse.

There have been no recent developments in legislation, but some policy and service provision initiatives have been taken. An interministerial project - the Family and Child Support Project Expert Committee - created by the Council of Ministers in 1992 to support abused or neglected children and their families has commissions in three towns, with two more being set up. Services include a confidential telephone service, which began in January 1994 and took 1,005 calls in the course of the year, psycho-social support teams and crisis intervention teams. The Institute for Child Support also runs a telephone help-line (Children's SOS), legal services, direct support services, teams working with street children, and children's play projects.

### **Removal of parental authority**

Parental authority is automatically withdrawn in certain circumstances, such as the conviction of parents for criminal offences. The courts can also order parental responsibility to be withdrawn in cases where the security or moral safety of a child is in question. This is subject to a parental right of appeal and children over 14 years have a right to be heard in court. There have been no recent changes to these provisions.