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CHAPTER 13

FAMILY OBLIGATIONS IN PORTUGAL

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INTRODUCTION

Definitions of family obligations, as found in social policy legislation and practice in Portugal, have changed over time in response to different social, economic and political settings. For a rapid overview of past settings, we can distinguish four main periods:

1. Until the nineteenth century, in a context we can describe as pre-existent to social policy legislation, social assistance was based on private charities and institutions (largely linked to the Church and the Religious Orders), directly or indirectly supported by the monarch, and non-intervention by the State was emphasized.

2. The nineteenth century and the beginning of the twentieth saw the emergence of new ideas concerning the functions of the State, with public action gradually appearing as a necessary response to the limitations of private institutions. However, social policy legislation, not to mention effective forms of social protection ensured by the State, were slow to develop. Thus private charities linked to the church, associations of mutual help based on the occupational affinities of workers, and informal solidarity networks continued to be the main providers of protection and support. Nevertheless, several superannuation funds were created through private or public initiative and compulsory social insurance legislation was introduced by the republican government¹ in 1919. Based on the contributions of employers and workers, it aimed to protect the whole of the working population, women and men, in sickness, work accidents, unemployment, disability, and old age. According to Maia (1985), this initial, and highly ambitious, system of compulsory insurance was hardly implemented and failed to make employers accept the obligations inherent to the system. It was abolished by the corporatist regime.

3. The new corporatist regime² set up in the 1930s and lasting until 1974 coincides with a period characterized by the gradual implementation but an uneven development of social protection. The role of the State is redefined as being one of promotion and tutorship of the institutions for social protection and assistance. Legislation concerning the organization of social protection was published in 1935 but a certain growth in social protection only became apparent in the mid-1940s, after a new diploma allowed the State to be directly responsible for the creation of institutions, thus overriding employers' lack of initiative.

The scheme set up by the corporatist state was based on the central assumption that full-time paid work was, and ought to be, the primary means of distributing income. The main benefits of the system were to effectuate some replacement of earnings (in sickness, disability and old age), which entailed a dividing line between employment and no employment; they were only to be paid in situations where there was an acceptable reason for not being in employment; they were only for people with an employment record; and they were only for those employed in the industrial and service sectors (when, in 1950, 46.9% of the working population was still in the agricultural sector). Rural areas did have a separate social protection system but levels of coverage were so low that it is estimated that 80% of the population that "should" have been covered was not included in any form of protection (Maia, 1985). And there was no separate fall-back system of assistance for situations which the main scheme did not cover.

The situations covered did not include caring in any form. Like housewives, those looking after a disabled person were expected to receive an income second-hand through the "head of the family", who was expected to be the main breadwinner. "Heads of families" represented the lowest link in the corporatist hierarchy and were usually expected to be men. You were considered a "head of household" if you were:

¹ The monarchy was overthrown in 1910.

² 1933 - 1974.

- a) A married person (male), with a "legitimate family" living with you and under your authority;
- b) A celibate, widowed, divorced or separated person with other family members living with you and under your authority;
- c) A married woman with a husband who is disabled or unable to provide support for the family. Thus only when she substituted her husband could a married woman be recognized as head of household and be entitled to certain rights (such as the right to authority in the home, the right to claim benefits or the right to participate in community structures); otherwise she was considered as dependent on her husband and subject to his authority.

Entitlement to benefit through a head of household was developed gradually. For instance, entitlement to medical assistance in sickness for the family members of a beneficiary with social protection was only established in 1950. Entitlement to benefit through a head of family depended on "legitimate relationships" (ie: living together and birth inside marriage), cohabitantes and illegitimate children being excluded. In this context, it is important to remember that the percentage of children born out of wedlock was particularly high in Portugal in the forties and fifties (varying between 12% and 17%) (Almeida, 1984). As for lone parents, although lone mothers (and spinsters) could earn their entitlement to benefit through employment in a sector with social protection, they had lower salaries than men and frequently worked in economic sectors with no established forms of social protection (ie: domestic services, agriculture). Thus they were often without access to the main benefits or to the Family Allowance, a benefit which was considered as a subsidy towards covering the cost of a child or another dependent family member.

It is important to examine the Family Allowance in other respects. Created in 1942 as a separate benefit for wage earners in the industrial and service sectors, it was based on the idea of "the need to reduce the difficulties that the cost of living implied for heads of family with large families"³. Moreover, from a corporatist point of view, the individual worker should not merely be considered as an isolated individual but as an integral part of a family. The corporatist state's mission being to promote and defend the family, it must, in consequence, promote the adoption of the **family salary**, that is, ensure that the worker's retribution was sufficient to guarantee not only his own maintenance but that of his family group as well. Although the payments were low, the type of family unit taken into account for Family Allowance was based on the extended family. The head of family could apply for benefit for his own or his wife's legitimate children under the age of fourteen (or under eighteen if they were students); for his own or his wife's grandchildren, but only if those responsible for their support were deceased; for his own or his wife's kin (upward extension); for any disabled child or adult, whatever his/her age. However, spinster heads of household could only claim family allowance for "ascendants" (elderly kin) and not for descendants.

In summary, the benefit system was based on the principle that benefit entitlement should be linked to employment (in certain sectors only), with no direct recognition of caring, unmarried persons or illegitimate children, and on the assumption that the social protection promoted by the state had a palliative role and limited extension. Social protection, for some of those employed in industry or the services, covered the contingencies of illness, disability, old age and the cost of dependent family members; the levels of payment were very low, namely for old age pensions and family allowance. There was no social protection for maternity, for survivors, in unemployment, in employment injuries and professional illnesses. The counterpart of this system was an ideology encouraging a strong work ethic (people must work to solve situations of deficiency) and family values and legislation wherein obedience to the head of the family and mutual help between family members were emphasized (Ingerson 1984 and Wall, 1994). This meant, for example, handing over your salary or staying at home as a spinster or bachelor to help out if father or mother needed you. In fact, the civil law underlined not only obedience to the "head of family" but took into account a wide range of family relationships when defining family obligations in terms of maintenance. Reciprocal obligations to provide support concerned not only the individual's married partner and children but also his parents, his partner's parents, aunts and uncles and grandparents. Strong moral obligations also existed between godparents and godchildren.

³ Decreto-lei 32192, de 13 de Agosto de 1942, p.1025.

On the other hand, social assistance persisted at extremely low levels of efficiency. The first "statute of social assistance", published in 1944, defined the role of the state as supplementary as regards direct delivery of caring services; in practice, these services continued to depend strongly on private and informal initiative.

In the 1960's and early 70s, new legislation aimed to integrate other sectors of the working population into the benefit system (in 1969, legislation created a special form of social protection for rural workers, which extended to this population some benefits to which other sectors were entitled, such as the Family Allowance) and introduced new benefits, namely a maternity subsidy (in 1962), a death subsidy (1973) and survivors' pensions (1970).

4. Social policy in the period following the Revolution of the 25th of April 1974 is marked by a considerable widening of objectives, both in terms of the role of the State and in terms of entitlement, of take-up rates and the types of benefits and services themselves. The 1976 Constitution lays strong emphasis on the role of the State, which is supposed to organize, coordinate and subsidize a social security system. It also embodies two main ideas: the universality of the right to social protection (all citizens have a right to social protection) and the principle that entitlement should also be linked to situations outside employment. According to the 1976 Constitution, citizens should be protected not only in sickness, old age, disability, widowhood, and orphanage but also in unemployment and in all other situations of deficiency or reduction of the means of subsistence or capacity for work. Other more general aims in terms of social welfare are defined: for example, the promotion of well-being in the family through the creation of a national network of crèches; or the promotion of family and community care to avoid the isolation of old people. Finally, the Constitution also establishes two important principles which lay the foundations for a new "model family" in the restructuring of the Civil law in 1977: the equality between men and women, and the non discrimination of children born outside marriage. It also emphasizes that citizens are free to set up family life as they wish.

Among the main steps taken to implement a new benefit system during the first few years after the revolution (between 1974 and 1980), it is important to mention the following:

a) A social pension, a means-tested benefit, was created for all persons over the age of 65 or disabled persons who were not covered by the main contributory benefits or any other form of social protection. Claimants had to prove that their monthly income was below a certain level⁴.

b) An unemployment subsidy was created⁵ for all unemployed wage-earners. It permitted partial replacement of earnings (60-75% of the national minimum wage for 180 days; more if the person was over fifty years of age). It was also established that unemployed workers and their families could maintain their rights to medical assistance and family allowance during unemployment. It is important to observe that the family situation of the unemployed wage-earner was taken into consideration in two ways : to exclude the person from the benefit if the domestic group to which he/she belonged earned more than 60% of the minimum wage per capita; to determine if the person was entitled to 60% of the minimum wage (if there were no dependent family members) or to 75% of the minimum wage (if there were dependent family members). Dependent members are married partners, children under age and elderly kin (upward extension) who have an income below 60% of the minimum wage.

c) The extension of social protection or certain benefits to rural wage-earners and to those working in the domestic sector;

d) The introduction of paid maternity leave (90 days) for wage-earners⁶.

e) Family allowance was maintained but several modifications were introduced concerning the claim, entitlement and the benefit unit. In the first place, the decree⁷ establishes that the claim can be made by any adult beneficiary, regardless of sex or status (the concept of head of family is considered

⁴ 1250 escudos. Despacho Normativo nº 59/77, de 23 de Fevereiro.

⁵ It was defined in Decreto-lei nº 169-D/75, 31 de Março and redefined in Decreto-lei nº 183/77, 5 de Maio.

⁶ Decreto-lei nº 112/76, de 7 de Fevereiro.

⁷ Decreto-lei 197/77, de 17 de Maio.

obsolete). Secondly, as regards entitlement, the benefit is considered to be the right of the child (as opposed to the right of the head of family). Finally, the benefit unit is reduced: from 1978 onwards⁸ elderly kin (upward extension) are no longer entitled to benefit, the justification put forward being that the same persons are now covered by the social pension. However, descendants beyond the first degree of relationship are entitled to benefit not only if their parents are deceased but also when parents for some reason are not entitled to the benefit;

f) the values of old age pensions were increased.

In order to analyse family obligations and social policy provisions in the 1980s and early 90s, we shall now address five different areas of social policy: marriage and cohabitation, parents and their dependent children, divorce and separation, adult children and their dependent parents, adults who are unable to support themselves.

1. MARRIAGE AND COHABITATION

The married ("legitimate") couple with husband as head of family and wife as subordinate homemaker was undoubtedly the model around which corporate social protection was constructed in the forties and fifties. The system also paid considerable attention to the extended family, and it took bachelors and spinsters into account.

The social protection system which emerged after the 1974 Revolution was built upon the idea of an "egalitarian" married couple⁹ and the right to establish different types of conjugal ties and forms of living. In legislation and social policy, the rights and duties of married couples are different from those of couples "living together as husband and wife", as we can see by examining and comparing social policy provisions and legislation regarding married couples and cohabiting couples.

Marriage is only allowed between persons of different sex¹⁰ but the rights and duties of husband and wife are the same : they are obliged to provide mutual help and support, to be responsible for the orientation and the cost of family life; their mutual duties include respect, being faithful to one another, cohabitation, cooperation and assistance¹¹.

The new constitution (1976) forbade any type of discrimination between children born within or out of legal marriage bonds, thus recognizing that legal protection is due to all citizens, regardless of the legal ties that formed family life. Compared to married persons, legal obligations between cohabiting persons are more limited. There are no mutual obligations of maintenance and support. The right to claim maintenance is only referred to in one situation: a widow or a 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 on the inheritance of the deceased.

Cohabiting couples also have automatic rights to their joint rented home in the case of death (of a partner they have been living with for at least five years). Married couples, on the other hand, 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.

Inheritance rights for married couples are thus different from those of cohabiting couples. A married partner is entitled to at least 25% of the value of the deceased's inheritance (if the couple is married with community of property acquired after marriage¹², this means a right to 25% of half the property acquired during marriage; if the couple is married with community of all assets, this means a right to 25% of half of all the property; if the couple is married with separate ownership, this means a right to 25% of all the property left by the deceased). A cohabiting partner does not have these rights. He/she

⁸ Decreto-lei nº 180-D/78, de 15 de Julho.

⁹ Artigo 1671 of the civil law establishes equality between married persons.

¹⁰ Articles nº 1577 of Civil Law.

¹¹ Articles nº 1671 and 1672.

¹² Community of property acquired after marriage is now the default option in Portugal, if couples do not specify otherwise. It is the most frequent option in Portugal (91% in 1993).

can only inherit some of their partner's property via a donation or a will (the devisor or the donee can freely donate roughly one third of his/her property).

In terms of social security benefits, married couples are entitled to a marriage allowance, a categorical benefit given once to beneficiaries when they get married, along with a right to eleven days off work. Obtaining certain benefits if you are not a beneficiary (insured person) is also possible through a married insured spouse. This includes the family allowance; the allowance for handicapped children; to an allowance for the permanent care of a handicapped child by a third person (this benefit was created in 1989¹³ and can be accumulated with the allowance for handicapped persons). The spouse of a deceased insured person is entitled the death grant; to the funeral grant; to survivor's pensions. On the other hand, entitlement through a cohabiting spouse covers the funeral grant, and, very recently (the decree was created in 1990¹⁴ but regulations were only set out in January 1994¹⁵) the right to survivor's pensions, to the death allowance and to the allowance for the permanent care by a third person (survivor pensioners who are dependent on a third person can qualify for this allowance). Pensioners have to prove that they had been living as husband and wife with the deceased partner for two years. In other words, benefits do seem to be extending gradually to cohabiting couples. Moreover, it is an issue which is being taken up in Parliament. In 1988, the Communist party presented a first project regulating access to benefits on the death of a cohabiting partner which was rejected. It has now handed in a new project (Projecto de Lei nº 457/VI, 1994) with the aim of simplifying the regulations defined in January 1994 and considered to be complicated and forbidding.

Married and cohabiting partners are also treated differently in the tax system. One of the issues discussed in the 1980s was the problem of family taxation. Portugal decided not to apply the system of individual taxation and instead adopted a system of taxation of family income. When one married partner earns all or more than 95% of family income (one main breadwinner), a quotient (1.9 in 1994) based on the couple and not on the number of family members is applied. Family size is taken into consideration but the effects on the amount of income exempt from tax are not very important. Celibate persons give right to a deduction of 30100 escudos, married persons to 22800 escudos and every child to 16500 escudos (in 1994). These quantities are increased by 60% when the contributor or a family member dependent on her/him is handicapped. It is also possible to deduce health care expenses, schooling expenses, expenses with residential care for elderly persons and with insurance, up to a maximum of 145500 esc. for celibate persons and 291000 esc. for married persons. Cohabiting couples are considered as two celibate persons.

Finally, the rights and duties of cohabiting parents towards their children are the same as those of married partners. Civil law also establishes the obligations of the unmarried father in relation to the mother of a child that he has legally recognized. He is obliged to provide alimony during pregnancy and during the first year of the child's life.

In summary, marriage in Portugal is the main institution which creates obligations and responsibilities of spouses to each other. It is also within marriage that spouses are more protected if a contingency befalls them. The rights and duties, as well as the protection of, cohabiting spouses have been increased when compared to the corporatist social protection system but a comparison of the situation of married versus cohabiting couples shows that the latter are usually considered as an institution of two separate individuals.

The issue of homosexual couples has not been addressed in social policy legislation and practice.

2. PARENTS AND THEIR DEPENDENT CHILDREN

All parents have a legal duty to maintain their children, whether they are, or ever were, married. In this respect, the revised civil law (1977) introduces significant changes in terms of its general principles and also modifies definitions of mutual obligations (Guibentif, 1992). Above all, more attention is paid to the child.

¹³ Decreto-lei nº 29/89, de 23 de Janeiro.

¹⁴ Decreto-lei nº 322/90, 18 de Outubro.

¹⁵ Decreto-lei nº 1/94, 18 de Janeiro.

In 1966, the law insisted on the duty of children "to honour and to respect their parents" (art. 1876). In the 1977 text, parents and children "mutually owe each other respect, help and assistance" (art. 1874).

Among the main alterations introduced, it is important to mention the extension of parents' alimony obligations beyond the coming of age, if the child has not finished its professional training (art. 1880). On the other hand, parents' usufruct rights over the child's property (art. 1893 in the 1966 civil law) are abolished, and so is the reference, still explicit in the 1966 law, concerning parents' power to chastise.

The 1966 civil law did give parental authority to both spouses but distinguished between the father's special authority (art. 1881), in his capacity as "head of family", and the mother's authority. Symptomatic of the inequality between the married partners was the father's right to emancipate the child without the mother's consent. The revised 1977 civil law sanctions the equality of the spouses in this respect. It also establishes the withdrawal of parental responsibility when the security, health or moral education of a child are in danger, whereas the 1966 law only dealt with the taking over of parental responsibility in the cases of persons convicted for crime, disabled persons with mental anomalies, absent persons or non emancipated minors.

Coming of age is at eighteen. This entitles you to vote, to take your driving license, or to become independent for the purposes of tax (in the latter case, on condition that you are not considered as dependent on your parents, that is, that you have income above the national minimum wage, even if you are still a student).

Children can work legally now at the age of sixteen (this used to be fourteen until recently). And the age limit qualifying children for Family Allowance varies according to the child's/young adult's activity. Descendants are entitled to family allowance up till the age of fifteen; up to the age of eighteen if they are still finishing obligatory schooling (9 years), up to the age of 22 if they are registered in secondary school (3 years, not obligatory); up to the age of 25 if they are at university (doing graduate or post-graduate degrees) or undergoing any other kind of professional training. On the other hand, parents' alimony obligations extend, as we have already mentioned, well beyond the coming of age, to include maintenance obligations during professional training.

This raises the question of who pays for the support and the costs of children and to what extent the latter fall upon their parents or are shared by the state. We have already mentioned the benefits provided by the social security system:

a) the Family Allowance, a contributory benefit that can be claimed for each child. Monthly payments are low (2450 escudos, more or less enough to buy 20 litres of milk, in December 1994) and a small additional payment (1230 escudos) is only available from the third child onwards (means-tested, taking into account family income);

b) the allowance for handicapped children under the age of 24;

c) the special education allowance for children under 24 who go to a special educational establishment or need other forms of support. Amounts vary in line with the cost of the specialized education and family income;

d) the birth allowance, a contributory benefit paid once when the child is born, regardless of parents' income;

e) the nursing allowance, a contributory benefit paid to nursing mothers during the first ten months after birth, regardless of parents' income.

f) the third party benefit. The handicapped child who receives the allowance for handicapped children or the special education allowance can qualify for this benefit, its aims being to compensate for the permanent care by a third party.

g) Maternity leave (90 days). Paternal leave may be granted for 30 or 60 days but only in the case of the mother's mental or physical incapacity. The increase in maternity leave, as well as the issue of the right to paternal leave, have been discussed in parliament but new laws have not been passed¹⁶. In the case of adoption, leave is granted for 60 days. The social security system does not contemplate any benefit for lone parent families.

Apart from providing benefits, the state also aims to provide, regulate and subsidize child care services. In the case of pre-school children, this means providing child care services for the under six's (obligatory primary school begins at six). Formal child care services are provided and/or tutored by the Ministry of Education (ME) and by the Ministry of Employment and Social Security (MESS); recently, the Ministry of Education has established agreements with local authorities whereby the latter provide housing and equipment and the Ministry the teachers. As a result, different types of formal child care services exist or are being developed:

a) The MESS directly administrates crèches and mini-crèches (small day-nurseries), childminders and family creches (the latter consisting of small, local networks of childminders tutored by a crèche), nursery schools (for the 3 to 6 age group) and leisure time centres (mainly for children between 6 and 11, the aim being to fill in the gaps created by a school timetable which only occupies children during part of the day). The MESS also tutors and subsidizes private non-profit social solidarity institutions (those created and run by the "Misericórdias", linked to the church, exist all over the country) with crèches, nursery schools and leisure time centres. The figures on the number of establishments and users in 1992 (see tables enclosed) show that the number of establishments directly administrated by the MESS (8 crèches and mini-crèches, 16 nursery schools, 41 crèches with nursery schools, 31 leisure time centres, 501 childminders and 40 family crèches) is very low and has decreased since 1987, with the exception of the childminders and family crèches, which have more than doubled, although they only cover 3395 users in 1992. This system of childminders was created in 1984 (Decreto-lei nº 158/84, 17 de Maio) to "create alternative solutions to classical establishments, without prejudice to the necessary intensification of a network of socio-educational structures". On the other hand, the number of private non-profit institutions that are subsidized and tutored by the MESS represent the bulk of supported child care services offered in 1992 and show an increase since 1987 for all types of establishments. Finally, it is necessary to comment on the type of service offered or regulated by the MESS in this context. The care model which is present in these establishments is based on the idea of social assistance: this means that they work full-time (10-12 hours), with canteens and other services; that payment is means-tested; that children with working parents (namely lone working parents) and children "at risk" have preference; that educational aims and practice are not a priority¹⁷. These establishments have difficulty in meeting demand and have long waiting lists.

b) The ME provides one main type of service: nursery schools (for the 3 to 6 age group). It is also responsible for the tutorship of private and cooperative school establishments. The number of child care establishments provided directly by the ME is also low (2853 nursery schools in 1990/91, with 68382 users) but has increased since 1985/86, up from 2141 schools and 49820 users (DEPGEF, 1994). The care model and the functioning of these establishments is different from those subsidized and tutored by the MESS. Educational objectives are more important; there is no fee; older children are given priority over younger children; and the school only opens five hours a day, closing for two hours during the lunch interval. As a result, working parents find it difficult to place their children in these establishments and look for alternative solutions. This is referred to as the main reason for explaining why full capacity is not always attained in these types of nurseries (Formosinho, 1994).

On the other hand, private profit-making and co-operative establishments usually open for longer hours (10-12) and provide other services (canteens or heating-up services for children who take their own lunch etc.) The data on services and establishments for pre-school children show that take-up

¹⁶ A project (Proposta de lei nº 114/VI) proposing alterations to the existing law on the protection of maternity was presented in parliament by the government party in December 1994. Paid maternity leave is increased to 14 weeks and two days paternity leave is introduced. the new law is expected to be passed in 1995.

¹⁷ Cf. Baimão, J. et alia, "Care and education for children under 6 in Portugal", in How Nations serve Young Children: profiles of Child care and Education in 14 Countries, High Scope Press, Michigan, 1989.

rates have increased but are still low, in fact among the lowest in Europe. If we take the three to six age group. Official figures show that the establishments tutored or directly provided by the ME and the MESS cover 53% of children of this age group in 1991/92 (21% by schools belonging to the ME official network, 8% by private schools tutored by the ME, 1% by schools belonging to the MESS official network and 23% by private non-profit schools authorised by the MESS) (Formosinho, 1994). However, the report on pre-school education by the National Council for Education (Formosinho, 1994) suggests that these figures overestimate take-up rates, namely because they take into account estimated capacity rates (ie: the number of children that "could" fit into the ME public nursery schools) and not actual take-up rates. The report suggests that take-up rates might be somewhere between the official rate and the figure (32%) indicated by an international survey on formal and informal child care services, based on a national sample (Bairão et al., 1989).

The gaps in child care services in Portugal show that informal child care, carried out inside the family or by private childminders, is very important. Certain assumptions seem to underlie these gaps in provision: first, that families will be the main providers of care for children under the age of six; secondly, that the state will step in either to provide establishments largely based on a social assistance model for parents who cannot cope, or to provide schools based on the assumption that someone is at home during the day to fetch the child, give her/him lunch and take her/him back again, etc.. These kinds of assumptions do not seem to coincide with family aspirations and needs. For example, in a survey carried out in 1993 by the Directorate for the family, 91% of families declare that they would like the state to promote the well-being of families through measures aimed at helping parents in the care of small children (Direcção-Geral da Família, 1993). Finally, if we try and look at who, in the family, steps in to provide child care services, a survey carried out on a representative sample of mothers with children between 3 and 11 months in the Coimbra district in 1993 (Portugal, 1994), showed that 35,9% stay with their mother (44% of these mothers left their jobs to take care of the baby), 26,9% are cared for by another member of the family (usually a grandmother), 19,7% are looked after by a childminder (private or belonging to the public network), 2,7% are cared for by a domestic employee, and only 14,8% are in a crèche. The study also shows that informal networks which provide child care services rely largely on women and particularly on the mother and sisters of the new mother.

The issue of pre-primary education has been taken up lately not only by the National Council for Education but also by the opposition parties, namely the Socialist party, which has included pre-school education as a main topic in its agenda on education policy.

At the level of school-age children and of higher education, the costs of education for families have also been in debate during the last year. Primary and secondary education in public establishments are free but many families in the 1980s and 1990s have found it difficult to keep children at school or give them the necessary support due to the costs of books, maintenance costs (food and clothing), high levels of failure, and timetables which keep children at school for only part of the day. The Ministry of Education has contributed to these costs by distributing free milk, at all levels of the obligatory school system, and by subsidizing and tutoring canteens (where it regulates the cost of meals for pupils and for other members of the school community)¹⁸. Although the number of meals served and the number of subsidised canteens have increased (from 22 in 1985 to 47 in 1991), there were only 1135 canteens working in 1991/92 (when at primary school level alone, there were 9258 schools in 1991/92) (DEPGEF, 1994). The ME and the Local Authorities (for primary school children) also subsidise the costs of meals or give snacks to children who come from families with very low levels of income (12035 children were entitled to this benefit in 1991/92 compared with 6010 children in 1985/86); they also subsidise the costs of books (6412 children were entitled to this subsidy in 1991/92 compared with 3993 in 1985/86) (DEPGEF, 1994).

The debate on the costs of education for families was triggered off by the creation in 1993 of a new fee for students in higher education. Until then, the fee paid by higher education students was symbolic; the new fee (the maximum annual fee is roughly twice the average monthly minimum wage) represents a more serious cost for families. The aim of the new fee, according to the ME, was to distribute the costs of higher education according to family income. In the public universities, students with a grant are exempt from payment and students from families with low income can be partially exempted from payment. However, it is necessary to take into account that only 9.2% (9.8%

¹⁸ See Despacho Conjunto 67/SERE/SEED/94, 30 de Agosto 1994.

in 1986) of the student population (10919 beneficiaries compared with 8385 in 1986) are covered by a grant (means-tested and dependent on academic success) and that the grant is well below subsistence level (about half the national minimum wage). Moreover, student lodgings have increased slightly but still only covered 4090 students in 1991/92 (when in 1991/92 there were 210176 students in higher education, including those in private universities)(DEPGEF, 1994). Lastly, the number of students entering public universities represent only half the total number of students entering higher education, the difference being covered by private universities, where students pay much higher fees and are still not entitled to social benefits. In this context, this means that most students have to pay for lodgings if they are studying away from home and that all students, even those with grants and lodgings, are partially dependent on their families to pay for the costs of higher education. As a consequence, the issue of the introduction of higher university fees created strong reactions not only from students but also from different sectors of society and continues to be a debatable issue where educational policy is concerned.

3. DIVORCE AND SEPARATION

Divorce¹⁹ can be implemented by mutual consent, if the couple has been married for at least three years. In divorce by mutual consent²⁰, the couple has to be in agreement concerning the establishment of parental responsibility and custody over young children (who keeps the children how visits and contacts with the other parent are to be organized, and the financial obligations of the latter in relation to his/her minor children); concerning alimony obligations between the spouses but only if one of the spouses is in need of them; concerning the family home. The courts have a right to refuse the agreement and to change the decision if they consider that the interests of one of the parties, in particular those of the child, are endangered. Finally, it is important to mention that procedures concerning divorce by mutual consent may be simplified in the near future. A new law proposed by the Ministry of Justice allows couples with no children (or where parental responsibility has been regulated) to carry out divorce procedures by mutual consent in the civil register, without passing through the courts.

Litigious divorce can be applied for on two grounds: the violation of conjugal obligations and duties the breaking up of married life. In litigious divorce, it is the courts who decide upon parental responsibilities concerning minor children, on the rights to the family home, on compensation for moral damage caused by the divorce, on the right to alimony and the levels involved, on the distribution of the couple's property. Responsibility and custody for dependent children can be handed over to either of the parents, though in practice the mother is usually chosen as guardian. There are no legal norms concerning the level of maintenance obligations so, ultimately, it is the judge who decides. He is obliged to take into account the financial capacity of the person (who cannot lose more than one third of his/her salary) as well as the needs of the child. If the non-custodial parent does not comply with the maintenance obligations, the state does not guarantee payment. The guardian of the child has to bring the matter to court and the latter will order payment to be deducted directly from the debtor's salary or from his assets.

Parental responsibility is an issue in debate and it seems likely that joint parental responsibility and custody following separation will be in discussion in the near future, although this discussion has not as yet reached parliament.

As we mentioned in section 2., all parents, whether married or unmarried, have ongoing obligations to the support of their children. However, following separation, these obligations are defined and/or ratified by the courts in the case of married parents. The situation of unmarried parents is slightly different. Parental responsibility is jointly exercised if the cohabiting parents declare that they want to do so; if not, parental responsibility is presumed, in favour of the mother. Following separation of cohabiting partners, if joint parental responsibility has not been declared, the maintenance obligations towards the children that the couple agrees upon do not have to be ratified by the courts, which

¹⁹ Civil marriages were introduced in Portugal in 1867 and divorce was introduced in 1910 with the first republic. However, between 1940 and 1974, the establishment of an agreement between the Portuguese state and the vatican forbade divorce for catholic couples married in church. This was altered in 1974.

²⁰ In Portugal, the majority of divorces are on the basis of mutual agreement (73% in 1993).

means that no third party will examine if the interests of the different parties are well defended. However, either parent can ask the courts to regulate maintenance obligations.

The consequences of separation for married and unmarried partners are also different in terms of social benefits. For example, a legally divorced spouse is entitled to a survivor's pension if, at the time of death (of former spouse), he or she was receiving maintenance from the former spouse. Cohabiting partners are only entitled to survivor's pensions if they were living with their partner at the time of death. Following separation, they have no right to financial support from each other and therefore these situations are neither regulated nor ratified by the courts. In summary, protection and obligations following separation are much reduced in the case of cohabiting partners.

4. ADULT CHILDREN AND THEIR DEPENDENT PARENTS

Relationships between children and their elderly parents have traditionally given rise, in Portugal, to both legal obligations and moral responsibilities of children in relation to parents. In the corporatist benefit system and civil law these obligations were taken into account: for example, obligations in terms of support included not only the maintenance obligations of spouses to each other and in relation to their children but also support obligations, in case of need, towards or from : "ascendants" (ie: elderly parents or grandparents), brothers and sisters, aunts and uncles, step-parents (the latter in relation to small children that were in the spouse's care at the time of the latter's death). On the other hand, we saw that entitlement to benefit, for example to family allowance, through the head of the family, included elderly kin living with and dependent on the beneficiary.

Some changes have been introduced over the last twenty years but legislation and certain benefits still take these relationships into consideration. In the first place, the maintenance obligations mentioned above were not altered in the restructuring of civil law. The counterpart of these obligations is that inheritance rights take different relatives into account, in the following order: spouses and children, spouses and their ascendants, brothers and sisters and their descendants (ie: nephews and nieces), collaterals up to the fourth degree of relationship (ie: aunts and uncles, first cousins). Those who fail in their maintenance obligations²¹, should these arise, can for this reason be excluded from inheritance. Secondly, although "ascendants" were excluded from the benefit unit in the case of Family Allowance, other benefits, such as survivor's pension, take elderly kin into consideration. Elderly parents are entitled to this benefit if they were economically dependent on the deceased person and on condition that no spouse or descendant is entitled to the same benefit.

Financial provision for elderly people by the state has been organized along two main lines since 1974: the social security old age pension scheme, entitling beneficiaries over 65 to monthly old age pensions, and the non-contributory old age pension scheme, entitling people over 65, with low incomes (less than 30% of the minimum national wage) and who are not eligible for pensions under the contributory scheme, to a "social pension". Levels of payment are low, below subsistence level for the majority of pensioners. According to Perista (1993), the average old age pension only represented 57.8% of the national minimum wage in 1992, and the average social pension only one third of the minimum wage. On the other hand, studies on the standard of living of pensioners show that the real value of pensions declined during the 1980s and that a great majority of pensioners are vulnerable to poverty (Pereirinha, 1992; Bruto da Costa, 1992).

Old age pensioners, survivor pensioners and invalidity pensioners are entitled to a small supplementary benefit: the third party benefit, for those who suffer from total incapacity and need constant assistance from a third person. The subsidy for a dependent spouse (a means-tested benefit) may also be granted to old age and invalidity pensioners.

Provision and regulation for the care of the elderly is entrusted to the Ministry of Employment and Social Security (MESS). Services and establishments come under the responsibility of the Regional Social Security Centres(RSSC), which operate on a regional basis (district). They can be carried out directly by official establishments which are dependent on the Centres or by other public or private

²¹ Maintenance is described in civil law as everything which is necessary to maintain a person, including food, housing and clothes (as well as education in the case of dependent children). Antigo 2003 of Civil Law.

entities which have agreements with the RSSC. Amongst the latter, it is important to mention the Private non-profit Social Solidarity Institutions, which we have already mentioned in the context of child-care services. Most of these institutions are linked to the church and others arose from grass roots movements with the aim of increasing the offer of services on a local basis.

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 old people during the day; and home care, whereby food and housekeeping help is taken to the old person's home. Statistics (see Tables enclosed on establishments and users) show that 95% of homes supported or directly administered by the MESS were provided in 1992 by entities that had agreements with the Social Security Centres and that this sector of provision has increased since 1987. Nevertheless, take-up rates for all types of homes are still remarkably low - 18.6% in 1990 if we take the number of persons over 65 as a basis for calculation (Perista, 1993) - and long waiting lists are a permanent feature. Level of payment in establishments supported by the MESS varies according to the user's income (property is sometimes handed over as well to contribute to payment) and, although the aim is to give preference to elderly persons who are in most need, financial difficulties of the establishments sometimes lead to higher income being used as a criterion for selection. The private profit-making sector (75 private establishments existed in 1992) fills in a small part of the gap. Places are difficult to come by and levels of payment are high, above the national minimum wage for a place in a home where elderly people are five to one room. As old age pensions are often below this level, this usually means that the family contributes substantially to the cost.

Day centres and domiciliary help are more recent features of care for the elderly. Days centres have increased since 1987, up from 13338 users in 1987 to 34055 users in 1992, and have an important role in keeping elderly people in the community. Elderly people can spend the day in these establishments but they can also come and fetch their food and take it home, have baths, etc. Domiciliary help in 1987 only covered 4545 persons and this has risen to 20568 in 1992. The take-up ratio in both cases is still low and there are difficulties in meeting demand. The gaps are met in a variety of ways: through informal networks based on the family and on neighbours (an elderly person is sometimes taken in during the day by another household; physically dependent parents are often taken in by one or by several of their children, in turn), as well as help groups organized by the local church and other religious groups or the local authorities; food and clothing are permanently distributed in this way and certain practices linked to charity traditions, such as passing round the hat, taking turns to take someone their meals and keeping lists of the "needy", are operative in local settings (Ferreiros Hespanha, 1993; Wall, 1994).

5. DISRUPTIONS TO INDEPENDENCE

Social provision in the corporatist system expected adults who were not able to support themselves either to be dependent on their families and on local charity (in the rural areas) or, in the industrial and service wage-earning sectors, to expect a partial replacement of earnings in situations of disability, illness or old age.

The aims and practice of social provision after the Revolution in 1974 were widened to include all the working population and to provide some support by the state not only in the above mentioned situations but also in unemployment, in temporary or permanent incapacity due to occupational illnesses or accidents during employment and in situations of non-contribution (old age social pensions, widow(er)'s pension, orphan's pension). Certain benefits which exist in more advanced welfare states, such as income support (intended to provide a minimum income), were never introduced²². On the other hand, we have seen that the existing cash benefits have low levels and that their real value did not increase in the 1980s. We have also seen that benefits in kind, directly administered by the state, have extremely low take-up rates and that, in sectors such as child care services and residential care, they have not fulfilled the original aims set out in the 1970s or those

²² A law on income support proposed by the Communist Party was rejected. Meanwhile, a law proposing a Guaranteed Minimum Income was introduced by the Socialist Party and was also rejected. It took the value of the social pension (16600 esc.) as a basis and established the amount of guaranteed Minimum Income to be paid by taking into account the number of persons in the household

announced over the last few years. In this setting, the individual in times of particular needs, such as disability or poverty in old age, turns simultaneously to the state and to other supportive networks; in other words, social benefits in cash and in kind are expected to mitigate the consequences of a situation.

The adult unemployed individual who has accomplished a period of 540 days work and has contributed for the past 12 months is entitled, since a new law was passed in 1989²³ to an unemployment allowance which represents 65% of his average wage; it is granted for 10 months or more (up to a maximum of 30 months) according to the age of the unemployed person (10 months if the person is under 25; 12 months if the person is between 25 and 30; 15 months if between 30 and 35; 18 months if between 35 and 40; 21 months if between 40 and 45; 24 months if between 45 and 50; 27 months if between 50 and 55; 30 months if 55 or over). Unemployed adults who do not qualify for this allowance or who have already received the allowance once, are entitled to receive unemployment assistance. This benefit, called the unemployment social allowance, is means tested: average monthly income per capita in the family household cannot exceed 80% of the national minimum salary. Level of payment also takes into account the family situation of the unemployed adult: he/she receives 70 to 100% of the national minimum salary, according to the number of dependent family members²⁴ (100% if there are four or more members; 90% if there are less than four; 70% for single adults). It is granted for the same period of time as the unemployment allowance, except in cases of entitlement to benefit following on the unemployment allowance; in this case, the time period is cut by half. In summary, entitlement to the first type of benefit is assessed individually, whereas entitlement to the unemployment social allowance is assessed by looking at the individual's family.

Adults with short-term illness are entitled to 65% of their average earnings (taking the previous six months as a basis), and to 70% of these earnings after a period of 365 days. Benefit is granted for a maximum period of 1095 days. In the case of adults who have become disabled before reaching retirement age, an invalidity pension is granted. Level of payment is established at 80% of the disabled person's salary, taking into account the latter's ten best wages over the last fifteen years; but a minimum level is established every year by the government. Disabled pensioners are also entitled to a small monthly subsidy if they have a dependent spouse (3832 escudos) and to a third party benefit if they need permanent care by another person (8800 escudos). In terms of caring, no special services are available at the home level apart from the domiciliary support mentioned previously in the section on elderly people. As a result, in cases of severe incapacity, this group is either cared for by a family member or has to be put into a home. Specialized support, such as nursing, is only available if paid for privately. Apart from the third party subsidy to which disabled adults are entitled, carers themselves are not entitled to specific benefits.

CONCLUDING REMARKS

Family obligations, as defined by social policy legislation and practice, have changed in Portugal since the corporatist benefit system, where employment in certain sectors, legitimate family ties and dependency on a main breadwinner "head of family" created the right to entitlement. Although the employment basis of entitlement continues to predominate, some situations outside employment, namely unemployment and non-contributory situations, are now taken into consideration. The model family underlying the benefit system still includes a fairly wide definition of family relationships and support obligations but is now based on the idea of egalitarian relations between spouses and mutual duties between parents and children. If we were to single out certain characteristics of social provision at present, it might be important to mention the following:

- Levels of social provision are low, both in terms of cash benefits, which have low levels of payment, and in terms of benefits in kind. Caring services had not yet been developed in the eighties when the state began trying to reduce costs and to increase caring services mainly through the private non-profit sector. Gaps in caring services are particularly obvious, when seen in a comparative European perspective, in the areas of child care and care for the elderly;

²³ Decreto-lei 79A/89, 13 de Março. See also Decreto-lei 418/93, 24 de Dezembro

²⁴ Dependent family members include spouses, descendants and ascendants who live with the beneficiary and are economically dependent on him/her. Income of dependent family members must not exceed the value of the social pension

- The gaps existing between formal provision and need are filled by the family (and this includes the extended family, such as grandmothers who care for grandchildren) and by informal networks;
- Marriage is the main institution entitling spouses to protection and on going maintenance obligations. These are reduced in the case of cohabiting couples but some benefits, such as survivors' pensions have been extended to cohabiting couples.
- Dependent children's entitlement to family allowance (and to maintenance by parents) has been extended beyond the coming of age (up to age 25 for children still studying or training).

Finally, if we look at the benefits in terms of the units (individual, couple, nuclear family and extended family) that underlie them, we can see that the four categories are important in the present benefit system in Portugal. National insurance benefits in the forties and fifties were originally designed as family benefits: the individual male wage-earner was seen as an integral part of a family unit and therefore, if he was assumed to be the main breadwinner, consideration was taken of family members (in ascending and descending line, except for "illegitimate" partners or children) that were under his care. Entitlement through wage-carriers who are insured persons is still a main feature of the present benefit system but benefits are now neutral concerning legitimate and illegitimate children and gender neutral. They also assume other distinctive features. In the first place, they are more diversified in terms of the four categories mentioned. Some clearly individualised benefits have been established (for example, the unemployment allowance) but there are benefits based on the couple as a unit for example, the marriage grant, or the supplement for a dependent spouse), or the nuclear family (family allowance) as well as on the extended family made up of different relatives in ascending and descending line (for example, survivors' pensions). This variety highlights features which are characteristic of Portuguese culture and society (where support obligations between relations in ascending and descending line are strong) and family members are expected to pool resources in situations of need but also shows that the benefit system has adapted to take into account different rights (individual, parental, marital, intergenerational, etc.) as well as different types of domestic arrangements. This also seems to mean that a more flexible approach has been adopted when defining the benefit unit; for example, when income has to be below a certain level for means-tested benefit, the individual's, the couple's, or the extended family's income may be taken into consideration, according to the specific situation of the claimant or the type of benefit claimed.

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TABLE 1

Social Security:
Establishments and Users, 1987

	No. of Establishments			No. of Users		
	Public	Dependent on Public Services	Other establishments *	Public	Dependent on Public Services	Other establishments*
CHILDHOOD AND YOUTH						
• Creches and Mini-creches	14	10	73	584	299	2527
• Nursery	32	40	390	2429	2167	24708
• Creches and Nursery	43	32	478	4601	2119	43855
• Leisure times and centres	25	40	496	1274	2403	29542
• Homes	4	4	155	206	214	6718
• Establ. for children and young people with disabilities	19	4	62	1133	3062	3224
DISABILITY AND REHABILITATION						
• Rehabilitation centres	1	-	-	28	-	-
• occupational centres	0	-	4	0	-	92
• Homes	4	-	6	58	-	214
ELDERLY PEOPLE						
• Homes and Resid.	11	12	377	862	1051	17767
• Day-centres and Social centres	10	22	451	531	1063	11744

Source: Anuário Estatístico da Segurança Social 1992, Instituto de Gestão Financeira da Segurança Social

* Establishments (usually private non-profit social solidarity institutions) that have agreements with the Social Security System.

TABLE 2

Social Security:
Establishments and Users, 1992

	No. of Establishments			No. of Users		
	Public	Dependent on Public Services	Other establishments*	Public	Dependent on Public Services	Other establishments *
CHILDHOOD AND YOUTH						
• Creches and Mini-creches	8	9	108	266	224	3482
• Nursery	16	35	440	1110	1267	25044
• Creches and Nursery	41	40	738	4019	3894	63789
• Leisure times and centres	31	61	963	1681	3876	52805
• Homes	8	17	184	329	4135	7362
• Establ. for children and young people with disabilities	22	6	93	1349	3929	4185
DISABILITY AND REHABILITATION						
• Rehabilitation centres	1	-	-	55	-	-
• occupational centres	0	-	57	0	-	1329
• Homes	1	1	30	23	75	741
ELDERLY PEOPLE						
• Homes and Resid.	16	18	583	1688	1379	25509
• Day-centres and Social centres	16	69	933	951	3447	29657

Source: Anuário Estatístico da Segurança Social 1992, Instituto de Gestão Financeira da Segurança Social

* Establishments (usually private non-profit social solidarity institutions) that have agreements with the Social Security System.

TABLE 3

Services and Users

	1987		1992	
	No.	Users	No.	Users
CHILDHOOD AND YOUTH				
• Childminders	210	721	501	1812
• Family creches	11	640	40	1583
• Families with foster care	964	1239	1438	1926
FAMILY AND COMMUNITY				
• Home help		4545		20568

Source: Anuário Estatístico da Segurança Social 1992, Instituto de Gestão Financiera da Segurança Social