

**Law No. 6/2023**

**March 1st**

**Law for the Protection of Children and Young People in Danger**

The development of an integral protection system for children and young people requires an effort to harmonize all the laws related to the promotion and protection of the rights of children and young people.

In particular, the approval of specific legislation centered on the protection of children and young people in danger and sensitive to their needs, contributes to the establishment of an integral protection system, also in line with the international commitments assumed by the country, in particular, in relation to the 1989 Convention on the Rights of the Child and optional protocols.

In this context, the Law for the Protection of Children and Young People in Danger establishes crucial mechanisms for preventing violations and protecting the rights of children and young people.

The establishment of specific requirements and conditions for interventions by civil, administrative and judicial entities, according to the principles of minimum intervention, proportionality and mandatory hearing, consolidates the protection system centered on the victim.

Also, by determining the law the duty to report incidents that are likely to violate the rights of children and young people to the competent entities and authorities, the comprehensive protection system under development in the country is reinforced. Finally, the development of a specific procedural framework focused on the protection of children and young people reinforces measures aimed at reducing secondary victimization, avoiding exposing victims to additional harm. The National Parliament decrees, under the terms of paragraph 1 of article 95 of the Constitution of the Republic, to be valid as law, the following:

## **CHAPTER 1**

### **GENERAL PROVISIONS**

#### **Article 1**

##### **Purpose**

The purpose of this law is to promote the rights and protect children and young people in danger, in order to guarantee their well-being and integral development.

#### **Article 2**

##### **Scope**

This law applies to children and young people in danger who reside or are in national territory.

#### **Article 3**

##### **Application of the law to persons over 17 years of age**

1. The present law applies to young people up to the age of 21, when they require the continuation of the intervention for promotion and protection started before reaching the age of 17.
2. The intervention for promotion and protection referred to in the previous number may be extended as long as educational or professional training processes continue and until the young person reaches 23 years of age.
3. The continuation of a promotion and protection measure for those over 17 years of age cannot limit or restrict the legal capacity of the young person.

#### **Article 4**

##### **Definitions**

1. For the purposes of this law, it is considered:
  - a) «Promotion and protection agreement», commitment reduced in writing between the services for the protection of children and young people and the parents, legal representative or whoever has de facto custody, and also the child and young person over 12 years old, through which an individual plan and promotion and protection measures are established;
  - b) «Child or young person» means a person under the age of 17;

c) «Disabled child or young person» means a child or young person with physical, mental, psychosocial, intellectual, neurological or other sensory impairments that, in interaction with various environmental, behavioral or other obstacles, may obstruct their full and effective participation in society on equal terms with other children and young people;

d) «Entities with competence in the field of childhood and youth», public or private collective persons that carry out their activity with children and young people;

e) «De facto custody», the relationship that is established between the child or young person and the person who has been assuming, continuously, the essential functions proper to those who exercise parental responsibilities, in the interests of the child and young person, to see to their safety and health, to provide for their maintenance and to direct their education;

f) «Promotion and protection measure», the measure adopted by the services for the protection of children and young people or by the courts, under the terms of this law, to promote the integral well-being and protect the child and young person in danger;

g) «Danger» means any threat to the life, physical or mental integrity, safety, health, training, education or development of the child or young person;

h) «<<Networks for the protection of children and young people», collegiate bodies made up of representatives of social services, services for the protection of children and young people, municipalities, communities and entities with competence in matters of childhood or youth, namely in the social, health, education, professional training, employment, security, justice, culture and sport areas, and with the scope of action at municipal or administrative post level;

i) «<<Service for the protection of children and young people», the service of the direct administration of the State, central and decentralized, with the responsibility for the protection of children and young people, which operates in direct dependence of the ministry with responsibility in the area of social solidarity, under the terms of the respective organic law;

j) «<<Child and youth protection system», includes all public or private, natural or legal persons who contribute to ensuring the well-being, promoting the rights of children and young people, preventing any violation of their rights and protect children and young people, always safeguarding their best interests, namely:

1. Parents, legal representative or whoever has de facto custody, as well as all members of the household;  
ii. The elements of the community; iii. Community leaders;

IV. Services for the protection of children and young people, services and public entities with responsibility in the areas of social solidarity, protection of children's rights, education, health, security, civil registry or any other whose mission involves the promotion or protection of children's rights; v, The judicial entities, including the courts, the Public Prosecutor's Office and the Public Defender's Office;

VI. Police authorities;

VII. The Ombudsman for Human Rights and Justice;

VIII, Social solidarity institutions, civil society and religious organizations;

k) «Urgent situation», the situation of current or imminent danger to life or serious impairment of the physical or mental integrity of the child or young person, which requires immediate protection under the terms provided for in this law.

2. A child or young person is considered to be in danger if he or she is in one of the following situations:

a) Is abandoned or lives on its own;

b) Is a victim, directly or indirectly, of physical or psychological abuse, sexual abuse, child pornography, domestic violence or any other crime provided for in criminal law;

c) Is neglected for not receiving, in a serious or repeated way, care for food, health, education, hygiene, surveillance or affection appropriate to their age and personal situation;

d) Is forced to engage in activities or work that are excessive or inappropriate for their age, dignity and personal situation or that are harmful to their education or development;

e) Is subject, directly or indirectly, to behaviors that seriously affect their safety, emotional balance, well-being or development;

f) Takes on behaviors or engages in activities or consumption that seriously affect their health, safety, training, education or development without their parents, legal representative or whoever has de facto custody opposing them in an appropriate way to remove this situation ;

g) Any other situation in which the life, physical or mental integrity, safety, health, training, education or development of the child or young person is at stake.

## **Article 5**

### **Legitimacy of the intervention**

The intervention to promote the rights and protection of children and young people in danger takes place:

a) When the parents, legal representative or whoever has de facto custody of the child or young person endanger their life, physical or mental integrity, safety, health, training, education or development;

b) When the danger referred to in the previous paragraph results from the action or omission of third parties or of the child or young person, which the parents, legal representative or whoever has de facto custody of the child or young person do not adequately oppose remove.

## **Article 6**

### **Guiding principles of promotion and protection intervention**

The intervention of any entity to ensure the well-being, promotion and protection of the rights of children and young people in danger, obeys the following principles:

a) Best interests of the child and young person — all decisions relating to the child or young person must give priority to their best interest, which is evaluated in their individual, family and community context, considering the consequences of each decision, whether immediate or long term, and with a view to promoting their well-being and integral development;

b) Prevention — The competent entities and services must act in concert to develop initiatives, programs and activities to prevent dangerous situations, with children and young people, families and the community;

c) Privacy - all decisions regarding the child or young person must respect their privacy, right to image and privacy of their private life, namely by establishing adequate guarantees of confidentiality and limiting public access to information that allows identifying the child or young;

d) Ultimate intervention - the protection system monitors and monitors situations in need of protection and intervenes whenever necessary, with intervention being exercised exclusively by services, entities and institutions whose action is essential for the effective promotion of the rights and protection of the child and the youth in distress;

e) Prior intervention — intervention must be carried out as soon as the danger situation is known;

f) Proportionality and topicality - the intervention for the promotion and protection must be necessary and adequate to the situation of need for protection in which the child or young person finds himself when the decision is taken and can only interfere in his life and in the life of his family to the extent strictly necessary for that purpose;

g) Family responsibility - the family has the responsibility to protect and care for the child and young person, and can be supported whenever necessary;

h) Priority of the continuity of deep psychological relationships — the intervention for the promotion and protection must respect the right of the child and young person to the preservation of affective relationships that are of great significance and of reference for their healthy and harmonious development, and the measures must prevail that guarantee the continuity of a bond that generates security;

i) Prevalence of the family - the child and young person has the right to live in the bosom of their family, so priority should be given to promotion and protection measures that keep the child or young person integrated into their biological family, with other family members or in a stable family situation;

j) Mandatory information — the child and young person, the parents, the legal representative or the person who has de facto custody of them have the right to be informed of their rights, the reasons that led to the intervention or any other decision that affects the child or young person, as well as the way in which these are processed;

k) Mandatory hearing and participation The child and young person, separately or in the company of their parents or a person chosen by them, in all administrative and judicial proceedings, have the right to freely express their opinion and to be heard and to participate in the acts and in defining the measure of promotion and protection, their opinion being taken into account in all matters concerning them, in accordance with their age and maturity;

l) Exceptionality of the measure of reception in an institution - the reception of the child or young person in institutions, centers or shelters must be an exceptional measure, of a temporary nature and for the shortest possible period, determined according to the best interests of the child or young person, whenever it is not possible to maintain

the child or young person in their natural environment or resort to a solution that favors their insertion in a family environment;

m) Subsidiarity - the intervention must be carried out successively by the entities with competence in matters of childhood and youth, by the services for the protection of children and young people and, ultimately, by the courts;

n) Equality and non-discrimination — all children and young people have equal rights, and cannot be subject to any type of discrimination based on any condition, namely color, race, sex, gender, language, religion, nationality, ethnic origin, sexual orientation, physical or mental condition, social position or economic situation, political or ideological opinion of the child or young person, their family members or legal representatives or whoever has de facto custody.

## **CHAPTER 11**

### **INTERVENTION FOR THE PROMOTION OF THE RIGHTS AND PROTECTION OF CHILDREN AND YOUNG PEOPLE IN DANGER**

#### **Section I**

#### **Intervention modalities and competent authorities**

#### **Article 7**

#### **competent authorities**

The promotion of the rights and protection of children and young people in danger is incumbent, namely:

- a) To the Government, through the ministry responsible for social solidarity;
- b) The State entity responsible for promoting, defending and monitoring the rights of children and young people;
- c) Entities with competence in the field of childhood and youth;
- d) Protection networks for children and young people;
- e) Child and youth protection services;
- f) To the police authorities;
- g) To the Public Ministry;
- h) To the Courts.

#### **Article 8**

#### **Intervention by the ministry with responsibility for social solidarity**

1. The ministry with responsibility for social solidarity is responsible for the management and coordination of the child and youth protection system and develops measures and programs that implement policies for the promotion of rights and protection of children and young people, in particular guaranteeing the protection of children and young people in danger, without prejudice to the powers of other State bodies.
2. The Government ensures that policies for the promotion and protection of the rights of children and youth are implemented equitably and consistently throughout the country.

## **Article 9**

### **Intervention from police authorities**

1. The police authorities intervene in terms of promoting the rights and protection of children and young people in danger through units specially dedicated to dealing with children and young people.
2. The units referred to in the previous number are regulated by their own diploma.

## **Article 10**

### **Intervention of child and youth protection networks**

1. The mission of the protection networks for children and young people is to support families and communities in preventing situations of danger and protecting children and young people, in a coordinated manner at municipal level.
2. The child and youth protection networks work in concert and independently to promote rights and prevent dangerous situations for children and young people.
3. The protection networks for children and young people are regulated by their own diploma.

## **Article 11**

### **Intervention of entities with competence in matters of childhood and youth**

1. Entities with competence in matters of childhood and youth intervene in the promotion of rights, in the prevention of dangerous situations and in the protection of children and young people within the scope of their attributions and under the terms of this law.
2. The intervention of entities with competence in matters of childhood and youth is carried out in a consensual manner with the people on whose consent the intervention of child and youth protection services would depend, under the terms of this law.

## **Article 12**

### **Intervention of child and youth protection services**

1. The intervention of child and youth protection services takes place when it is not possible for the entities referred to in articles 10 and 11 to act adequately and sufficiently to remove the danger in which the child or young person is.
2. The services for the protection of children and young people must promote and integrate partnerships and resort to them whenever, due to the circumstances of the case, their isolated intervention does not prove adequate for the effective promotion of the rights and protection of the child or young person in danger .



## **Article 13**

### **Consent**

1. The application of promotion and protection measures, by the services for the protection of children and young people, depends on the express consent of the parents, the legal representative or the person who has de facto custody,
2. The application of promotion and protection measures, by the protection services for children and young people, depends on the consent of both parents, even if the exercise of parental authority is entrusted exclusively to one of them, as long as the other is not inhibited from exercising parental authority.
3. When one of the parents who must give consent is absent or, in any way, uncontactable, the consent of the parent who is present and contactable is sufficient, without prejudice to the duty of the child and youth protection services to endeavor, demonstrably and for all means to your reach, for the knowledge of the whereabouts of that, with a view to the provision of the respective consent.
4. When guardianship has been instituted, consent is provided by the guardian or, failing that, by the guardian.
5. If the child or young person is entrusted to the custody of a third person, in accordance with the provisions of the Civil Code, or if they find themselves living with a person who only has de facto custody, consent is provided by the person who has custody of them, although in fact, and by the parents, their consent being sufficient for the start of the intervention.
6. If, in the case of the previous number, it is not possible to contact the parents despite carrying out the appropriate steps to find them, the provisions of number 3 shall apply, with the necessary adaptations.
7. In the cases provided for in paragraphs 3 and 5, the legitimacy of child and youth protection services for the application of promotion and protection measures ceases, whenever the parent who is not inhibited by parental authority opposes the intervention.
8. If the persons who must give consent cannot read or write, the child and youth protection services take the necessary steps to ensure that these persons are fully informed, and record their consent in the presence of a witness.

## **Article 14**

### **Non-opposition of the child or young person**

1. The intervention of the entities referred to in articles 10, 11 and 12 also depends on the non-opposition of the child or young person, under the terms of the following number.
2. The opposition of the child or young person is considered relevant according to their ability to understand the meaning of the application of the promotion and protection measure.

## **Article 15**

### **Judicial intervention**

1. Judicial intervention takes place when:

a) The necessary consent for the application of the measure by the child and youth protection services is not provided, the consent given is withdrawn, or when the agreement for the promotion and protection of rights is repeatedly not complied with;

b) The person who must give consent, under the terms of this law, has been indicted for the crime of domestic violence, against freedom or sexual self-determination that victimizes the child or young person in need of protection, or when, against that person, the right of complaint has been exercised for the commission of any of the aforementioned types of crime;

c) The child or young person opposes the application of the measure by the services for the protection of children and young people, under the terms of this law;

d) The services for the protection of children and young people do not obtain the necessary means to apply or execute the measure they consider adequate, namely, in opposition to a service or entity;

e) The Public Ministry considers that the decision of the child and youth protection services is illegal or inappropriate for the promotion of the rights or protection of the child or youth;

f) Following the immediate protection of the child or young person, within the scope of the urgent procedure provided for in this law;

g) The process of child and youth protection services is attached to a judicial process, under the terms of this law.

2. Judicial intervention also takes place when, taking into account the seriousness of the situation of danger, the special relationship of the child or young person with whom it was caused or the knowledge of a previous repeated non-compliance with a measure of promotion and protection by the person who gave consent, the Ministry Public, ex officio or under the proposal of the services for the protection of children and young people, understands, in a justified way, that, in this case, the intervention of the services for the protection of children and young people is not adequate.

3. For the purposes of the provisions of the previous numbers, the services for the protection of children and young people send the process to the Public Prosecutor's Office.

## **Section II**

### **Child and youth protection services**

## **Article 16**

Protection services for children and young people aim to promote the rights of children and young people and prevent or put an end to situations likely to affect their lives, physical and mental integrity, safety, health, training, education or integral development.

## **Article 17**

### **Competence**

1. It is incumbent upon, in particular, the services for the protection of children and young people:

a) Inform and sensitize the community about the rights of children and young people and carry out prevention activities;

b) Receive denouncements of dangerous situations, assess those that come to his attention in the exercise of his duties and decide to follow them up;

c) Attending the child and young person, the parents, the legal representative or the person who has de facto custody of them and their family, explaining their rights and informing them of the reasons that determined the intervention and how it is carried out;

d) Request the necessary consent for the intervention from the child or young person, the parents, the legal representative or the person who has de facto custody of them, under the terms of this law;

e) Carry out the necessary steps aimed at investigating the existence of dangerous situations for the child and young person;

f) Request information and collaboration from entities with competence in matters of childhood and youth and other entities, public services or local partners;

g) Archive the promotion and protection process when there is no need for intervention;

h) Determine the initiation of the promotion and protection process;

i) Apply, on a precautionary basis, promotion and protection measures, under the terms of this law;

j) Apply promotion and protection measures, review them and determine their cessation, under the terms of this law;

k) Submitting promotion and protection processes to the Public Prosecutor's Office and communicating the situations provided for in this law;

l) Monitor the implementation of promotion and protection agreements, within the scope of the promotion and protection measures applied;

m) Carry out urgent measures aimed at ensuring the immediate protection of the child or young person determined by the Public Prosecutor's Office and under the guidance of the latter;

n) Preparing and submitting social reports to the judicial authorities and providing them with the necessary clarifications, under the terms of the law or whenever requested by those authorities;

o) Monitor the implementation of promotion and protection measures applied by the courts;

p) Exercising other powers assigned to it by law.

2. In exercising the powers referred to in the previous number, it is up to the child and youth protection services to prepare and maintain an updated record, which includes a summary description of the steps taken and the respective results.

## **Article 18**

### **duty of collaboration**

1. Public services and entities and police authorities have a duty to collaborate with child and youth protection services in the exercise of their attributions.
2. The duty to collaborate is equally incumbent on natural and legal persons who are requested to do so.
3. The duty of collaboration covers information and the issuance, free of charge, of certificates, reports and any other documents considered necessary by the child and youth protection networks, by entities with competence in matters of childhood and youth, and by child and youth protection services in the exercise of their powers.

## **CHAPTER 111**

### **MEASURES TO PROMOTE THE RIGHTS AND PROTECTION OF CHILDREN AND YOUNG PEOPLE**

#### **Section I**

#### **measures**

#### **Article 19**

**The measures to promote the rights and protection of children and young people in danger, hereinafter referred to as promotion and protection measures, aim to:**

- a) Remove the danger in which children and young people find themselves;
- b) Provide children and young people with conditions that protect them and promote their safety, health, training, education, well-being and integral development;
- c) Ensure the physical and psychological recovery of children and young people who are victims of any form of exploitation or abuse.

#### **Article 20**

#### **Measures**

1. The promotion and protection measures are as follows:
  - a) Support from parents, legal representative or person with de facto custody;
  - b) Support from other family members;
  - c) Support from a suitable person;
  - d) Support for autonomy of life;

- e) Host family;
  - f) Reception in an institution;
  - g) Entrustment to the selected person, the host family or the institution with a view to adoption.
2. Promotion and protection measures are carried out in the natural environment of life or under a placement regime, depending on their nature, and may be decided on a precautionary basis, with the exception of the measure provided for in paragraph g) of the previous number.
  3. Measures to be carried out in the natural environment of life are those provided for in subparagraphs a), b), c) and d) of n. 0 1, and placement measures, those provided for in paragraphs e) and f) of the same number.
  4. The measure provided for in paragraph g) of no. 1 is considered to run in the wild in the first case and placement in the second and third cases.
  5. The regime for implementing the measures is set out in specific legislation,

#### **Article 21**

##### **Promotion and protection agreement**

Promotion and protection measures applied by child and youth protection services or in court proceedings, by negotiated decision, form part of a promotion and protection agreement.

#### **Article 22.0**

##### **precautionary measures**

1. As a precautionary measure, the court may apply the measures provided for in paragraphs a) to f) of no. 1 of article 20, under the terms foreseen for urgent judicial procedures or while the social diagnosis of the situation of the child or young person is carried out and the definition of their subsequent referral.
2. The services for the protection of children and young people may apply, as a precautionary measure, the measures provided for in the previous number, while carrying out the social diagnosis of the situation of the child or young person and defining their subsequent referral, without prejudice to the need to enter into a promotion and protection agreement in accordance with the general rules.
3. The measures applied under the terms of the previous numbers have a maximum duration of six months and must be reviewed within a maximum period of three months.
4. Once applied by the services for the protection of children and young people, the precautionary measure must be communicated to the Public Prosecutor's Office, which immediately proceeds with the competent judicial authorities to initiate a process of promotion and protection.

## **Article 23**

### **Competence to apply the measures**

1. The application of the promotion and protection measures provided for in paragraphs a) to f) of no. 1 of article 20 is the exclusive competence of child and youth protection services and the courts,
2. The measure provided for in paragraph g) of no. Article 20 (1) is the exclusive competence of the courts.

## **Section 11**

### **Measure content**

## **Article 24**

### **Measure to support the child or young person with their parents, legal representative or the person who has de facto custody of them**

The measure of support for the child or young person with their parents, legal representative or person who has de facto custody of them consists of keeping the child or young person in the care of their parents, legal representative or person who has their de facto custody, providing support of a social, psychopedagogical nature and, when necessary, support for the family economy,

## **Article 25**

### **Support measure for children or young people with other family members**

The measure of support for the child or young person with other family members consists of placing the child or young person in the care of a person or family that has a kinship relationship with him, providing him with support of a social, psychopedagogical nature and, when necessary, support for the family economy.

## **Article 26**

### **Measure to support the child or young person with a suitable person**

The measure of support for the child or young person with a suitable person consists of placing the child or young person in the care of a person who, not belonging to their family, has established a reciprocal relationship of affection with them, providing them with support of a social nature, psychopedagogical and, when necessary, support for the family economy.

## **Article 27**

### **Support measure for autonomy of life**

1. The measure of support for autonomy in life consists of providing directly to young people aged 15 years or over support of a social, psychopedagogical nature and economic, namely through access to professional training programmes, with a view to providing conditions that enable and enable them to live on their own and progressively acquire their autonomy.

2. The measure referred to in the previous number may be applied to mothers under the age of 15, when it is verified that the situation advises the application of this measure.

3. The measure referred to in the previous numbers is only applied when none of the promotion and protection measures in the natural environment of life are adequate to safeguard the best interest of the young person and when his profile and his life context reveal conditions for his autonomy .

### **Article 29**

#### **Family foster care**

The measure of family care consists of trusting the child or young person in the care of a person or family, provided that they have been previously evaluated and selected by the child and young person protection services, providing the integration of the child or young person into a family environment and the providing adequate care for their needs, well-being and education necessary for their integral development.

### **Article 30**

#### **Types of foster care**

1. Foster care is short or long term.

2. Short-term foster care takes place when it is foreseeable that the child or young person will return to their family within a period not exceeding six months.

3. Long-term care takes place when it is uncertain whether the child or young person will return to their family and the circumstances relating to the child or young person require longer-term care.

### **Article 31**

#### **Reception measure in institution**

The measure of reception in an institution consists of placing the child or young person in the care of an entity that has reception facilities and equipment and qualified and permanent human resources, providing them with conditions that allow to ensure their education, well-being and its development.

### **Article 32**

#### **Confidence measure for the selected person, foster family or adoption institution**

The measure of confidence of the child or young person in the person selected, the host family or the institution with a view to adoption consists in the application by the Court

of the measures referred to in articles 25, 26, 29 and 31 respectively, with the aim of forwarding the child or young person for adoption.

## **Section 111**

### **From host institutions**

#### **Article 33**

##### **Nature**

Host institutions can be public or private non-profit, with a cooperation agreement with the State, through the ministry with responsibility for social solidarity.

#### **Article 34**

##### **Operation of host institutions**

1. Host institutions are organized into units that favor an affective family-type relationship, a personalized daily life and integration into the community.
2. The operating regime of host institutions is defined in specific legislation.
3. The parents, legal representative or whoever has de facto custody may visit the child or young person, in accordance with the opening hours and rules of operation of the host institution where he or she is located, unless a court decides otherwise.
4. The court or the services for the protection of children and young people may authorize other suitable adults, who are of emotional reference to the child or young person, to visit them.
5. Within the scope of a promotion and protection process and their legal competences, the judge, the Public Ministry, the Ombudsman for Human Rights and Justice, the Public Defender's Office or the lawyer, as well as the public services and entities with the responsibility of defending the rights of children and young people, can request information and visit host institutions.

#### **Article 35**

##### **Human Resources**

1. The host institutions necessarily have human resources organized in articulated teams, namely:
  - a) A technical team, constituted in a multidisciplinary way, which must include employees with adequate training in the areas of



psychology or social work, the technical director being appointed from among them;

b) An educational team that preferably includes employees with specific professional training for the functions of socio-educational monitoring of children or young people admitted and inherent in the profession of auxiliary educational action and care for children and young people;

c) A support team that must include employees from general services trained in the area of protection of children and young people.

2. Whenever justified, the host institution may resort to existing responses and services in the community, namely in the areas of health and law.

3. The technical team is responsible for diagnosing the situation of the child or young person in care and defining and executing their promotion and protection project, in accordance with the decision of the court or the services for the protection of children and young people.

4 For the purposes of reviewing the applied reception measure, the technical team of the host institution is obligatorily heard by the decision-making entity.

#### **Section IV**

#### **Promotion and protection agreement and execution of the measure**

#### **Article 36**

#### **Promotion and protection agreement rules**

1. The promotion and protection agreement must include:

a) The identification of the employee or technician of the services for the protection of children and young people who is responsible for monitoring the case;

b) The period for which it is established and in which it must be revised;

c) The necessary declarations of consent or non-opposition.

2. Clauses that impose abusive obligations or that introduce limitations to the functioning of family life beyond those necessary to remove the concrete situation of danger cannot be established.

#### **Article 37**

#### **Promotion and protection agreement relating to a measure in a natural environment of life**

1. The promotion and protection agreement establishing a measure to be carried out in the natural environment of life must include, namely:

a) Food, hygiene, health and comfort care to be provided to the child or young person by the parents or by the persons to whom they are entrusted;

b) Identification of the person responsible for the child or young person during the time they cannot or should not be in the company or under the supervision of their parents or guardians.

people to whom it is entrusted, for work reasons or other reasons considered relevant;

c) The education plan, professional training, work and occupation of free time;

d) The health care plan, including medical consultations and psychopedagogical guidance, as well as the duty to comply with established directives and guidelines;

e) The economic support to be provided, its modality, duration and entity responsible for the attribution, as well as the assumptions for the concession;

f) If necessary, the attendance of a training program by parents, legal representative or whoever has de facto custody, aiming at a better exercise of parental responsibilities.

2. In the cases provided for in paragraph e) of paragraph 2 of article 4, if the danger results from behavior adopted due to alcoholism, drug addiction or psychiatric illness of the parents or persons to whom the child or young person is entrusted, the agreement also includes the mention that the permanence of the child or young person in the company of these people is conditioned to their submission to treatment and the establishment of a commitment in this regard.

3. When the intervention is determined by the situation foreseen in paragraph f) of no. 2 of article 4, the agreement may also contain directives and obligations established for the child or young person in relation to environments or places that he/she should not attend, people who do not must accompany, substances or products that must not be consumed and conditions and times of leisure time.

## **Article 38**

### **Promotion and protection agreement concerning placement measures**

1. The promotion and protection agreement in which the placement measure is established must contain, with the necessary adaptations, the clauses listed in the previous article and:

a) The type of reception and the family or institution where the reception will take place;

b) The rights and duties of the intervening parties, namely the frequency of visits by the family or people with whom the child or young person has a special affective bond, the periods of visit to the family, when this is in their interest, and the amount of benefit corresponding to expenses with the maintenance, education and health of the child or young person and the identification of those responsible for payment;

c) The periodicity and content of the information to be provided to child and youth protection services and to the judicial authorities, as well as the identification of the person or entity that must provide it.

2. The information referred to in sub-paragraph c) of the previous number must contain the necessary elements to assess the personality development, school performance, progression in other learning, the adequacy of the applied measure and the possibility of the return of the child or from the youth to the family.

### **Article 39**

#### **Rights of the child or young person in foster care**

1. The child or young person hosted in an institution has, in particular, the following rights:

a) Regularly maintain, and in privacy conditions, personal contacts with the family and with people with whom he has a special affective relationship, without prejudice to the limitations imposed by judicial decision or by the services for the protection of children and young people;

b) Receive an education that guarantees the integral development of their personality and potential, being assured the provision of health care, school and professional training and participation in cultural, sporting and recreational activities;

c) Benefit from a space of privacy and a degree of autonomy in the conduct of their personal life appropriate to their age and situation;

d) Receive, depending on your situation, material support appropriate to your age, namely pocket money;

e) The inviolability of correspondence;

f) Not be transferred from the institution, except when this decision corresponds to their interest;

g) Not to be separated from other foster siblings, unless their best interest so advises;

h) Be accommodated, whenever possible, in a host institution close to their family and social context of origin, unless their best interest advises against it, namely when the family and social context of origin was the trigger for the dangerous situation;

i) Contact, with a guarantee of confidentiality, the services for the protection of children and young people, the Public Ministry, the public defender or lawyer and the Ombudsman for Human Rights and Justice.

2. The rights referred to in the previous number are necessarily included in the internal regulations of the host institutions.

#### **Article 40**

##### **Monitoring the execution of the measure**

1. The child and youth protection services carry out the measure under the terms of the promotion and protection agreement.
2. The execution of the measure applied in a judicial process is directed and controlled by the court that applied it.
3. For the purposes of the preceding paragraph, the court sends a copy of the decision to the territorially competent child and youth protection services for monitoring the execution of the measure.

#### **Section V**

##### **Duration, revision and termination of the measure**

#### **Article 41**

##### **Duration of measurements in the natural living environment**

1. Without prejudice to the provisions of no. 2, the measures provided for in subparagraphs a), b), c) and d) of no. 1 of article 20 have the duration established in the agreement or in the court decision.
2. The measures referred to in the previous number may not last longer than one year, however, they may be extended for up to 18 months if the interests of the child or young person so advise and provided that the legally required consents and agreements are maintained.
3. Exceptionally, when the defense of the best interests of the child or young person requires it, the measure provided for in paragraph d) of no. 1 of article 20 may be extended by agreement or judicial decision, as there are, and while they last, educational or professional training processes.

## **Article 42**

### **Duration of placement measures**

The measures provided for in paragraphs e) and f) of no. 1 of article 20 have the duration established in the agreement or in the court decision.

## **Article 43**

### **Review of the measure**

1. Without prejudice to the provisions of no. 3 of article 22, the measure must be revised after the period established in the agreement or in the judicial decision, and, in any case, periods never exceeding three months have elapsed in the cases of application of a placement measure and six months in cases of application of measures to be carried out in the natural environment of life.

2. The review of the measure may take place before the expiry of the period established in the agreement or in the judicial decision, ex officio or at the request of the parents of the child or young person, the legal representative or the person who has de facto custody, provided that facts that justify it.

3. The review of the applied measure takes place whenever the young person reaches the age of majority or emancipation through marriage.

4. The review decision determines the verification of the conditions for the execution of the measure and may also determine:

a) Termination of the measure;

b) Replacement of the measure by another more appropriate one;

c) The continuation or extension of the execution of the measure;

d) Communication to the entity legally authorized to intervene in matters of adoption if the requirements for adoption are met.

3. In the cases provided for in the previous number, the review decision must be based on fact and law, in coherence with the life project of the child or young person.

4. It is decided to discontinue the measure whenever its continuation proves to be unnecessary.

5. The decisions taken in the review form an integral part of the promotion and protection agreements or the court decision.

## **Article 44**

### **Confidence measure for the selected person, foster family or adoption institution**

1. Except as provided in the following number, the measure of trust in the selected person, the host family or the institution with a view to adoption, lasts until the adoption is decreed and is not subject to revision.

, Exceptionally, the measure is revised in cases where its implementation proves to be manifestly unfeasible, namely when the child or young person reaches the age limit for adoption without the adoption project having been implemented.

3. In the decision applying the measure provided for in no. 1, the court designates a provisional guardian for the child or young person, who will exercise functions until the adoption is decreed or another civil guardianship measure is instituted.

4. The provisional guardian is the person to whom the minor has been entrusted.

5, In case of trust in the institution or host family, the temporary guardian is, preferably, the one who has the most direct contact with the child or young person, and, at the request of the entity legally authorized to intervene in matters of adoption, the guardianship provisional be transferred to the adopting candidate, as soon as selected.

6. Without prejudice to the provisions of the following number, the application of the measure provided for in no. 0 1 does not allow for visits by the biological or adopting family.

7. In duly substantiated cases and depending on the defense of the best interest of the adoptee, contacts between siblings may be authorized.

## **Article 45**

### **Cessation of measures**

1. Measures cease when:

a) The respective term of duration or possible extension has elapsed;

b) The review decision puts an end to them;

c) The adoption is decreed, under the terms provided for in the previous article;

d) A decision is handed down in a civil proceeding that ensures the removal of the child or young person from the situation of danger;

e) The young person reaches the age of majority, without prejudice to having requested the continuation of the promotion and protection measure, under the terms of the law.

2. Once the applied measure has ceased, the child and youth protection services or the court notify the child or youth, their parents, the legal representative or the person who has de facto custody of them, the lawyer or the public defender .

3. After the cessation of the applied measure, the child or youth and their family may continue to be supported by child and youth protection services, under the terms and for the period agreed upon.

## **CHAPTER IV COMMUNICATIONS**

### **Article 46**

#### **Communication of dangerous situations by police and judicial authorities**

1. The police authorities and judicial authorities communicate to the child and youth protection services the situations of children and young people in danger that they become aware of in the exercise of their functions.
2. Without prejudice to the provisions of the previous number, the judicial authorities adopt appropriate civil guardianship measures.

### **Article 47**

#### **Communication of situations of danger by entities with competence in matters of childhood and youth**

1. Entities with competence in the field of children and youth communicate to the services for the protection of children and young people the dangerous situations that they become aware of in the exercise of their functions whenever they cannot, within the exclusive scope of their competence, ensure in time the sufficient protection as the circumstances of the case require.
2. Host institutions must communicate to the Public Prosecutor's Office all situations of children or young people that they take in without prior decision by the child and young people protection services or the court.

### **Article 48**

#### **Communication of dangerous situations by anyone**

1. Any person who is aware of the situations provided for in paragraph 2 of article 4, may communicate them to the entities with competence in matters of childhood and youth, to the police authorities, to the services for the protection of children and young people or to the judicial authorities.
2. Communication is mandatory for anyone who is aware of situations that put the life, physical or mental integrity or freedom of the child or young person at risk.
3. When communications are addressed to the entities referred to in no. 1, they carry out a summary study of the situation and provide protection compatible with their attributions, informing the child and youth protection services of the situation whenever they understand that their intervention is not adequate or sufficient.

## **Article 49**

### **Communications from the child and youth protection services to the Public Ministry The child and youth protection services communicate to the Public Ministry:**

- a) Situations in which the necessary consents for their intervention, the application of the measure or its revision are not provided or are withdrawn, in which there is opposition from the child or young person, or in which, having been given, they are not complied with established agreements;
- b) Situations in which they do not obtain the availability of the necessary means to apply or execute the measure they deem appropriate, namely due to opposition from a service or institution;
- c) Situations in which a decision has not been issued after six months after knowledge of the situation of the child or young person in danger;
- d) The application of the measure that determines or maintains the separation of the child or young person from their parents, legal representative or persons who have de facto custody;
- e) Cases in which, by virtue of the successive or isolated application of the promotion and protection measures provided for in subparagraphs a) to c), e) and f) of no. 1 of article 20, the sum of the duration of the referred measures totals 18 months;
- f) Situations in which they consider it appropriate to be referred for adoption, under the terms foreseen regarding the trust to the selected person, the host family or the institution with a view to adoption;
- g) De facto situations that justify the regulation or alteration of the regime for the exercise of parental authority, the inhibition of parental authority, the establishment of guardianship or the adoption of any other civil measure, namely in cases where it is necessary to establish or alteration or non-compliance with maintenance payments.

## **Article 50**

### **Reporting a crime committed against children or young people**

When the facts that led to a situation of danger constitute a crime, the entities with competence in matters of children and youth and the services for the protection of children and young people must communicate them to the Public Prosecution Service or to the police authorities, without prejudice to the communications provided for in the previous articles.



## **Article 51**

### **Consequences of communications**

1. The communications provided for in the previous articles do not determine the cessation of the intervention of entities and institutions, except when the legally required consents have not been provided or have been withdrawn.
2. The communications provided for in this chapter must indicate the measures taken to protect the child or young person and be accompanied by all available elements that are relevant to the assessment of the situation, safeguarding the privacy of the child or young person.

## **CHAPTER V**

### **INTERVENTION BY THE PROSECUTION OFFICE**

## **Article 52**

### **Assignments**

1. The Public Ministry intervenes in the promotion and defense of the rights and interests of children and young people in danger, under the terms of this law.
2. The Public Prosecutor's Office may request from the parents, legal representative or whoever has de facto custody the necessary clarifications for the promotion and defense of the rights of children and young people in danger.
3. The Public Prosecutor's Office monitors the activity of child and youth protection services, with a view to assessing the legality and adequacy of decisions, monitoring their procedural activity and promoting appropriate judicial procedures.
4. It is also incumbent upon the Public Prosecutor's Office to represent children and young people in danger, proposing actions, requesting civil guardianship measures and using any judicial means necessary for the promotion and defense of their rights and protection.

## **Article 53**

### **Initiative of the judicial process of promotion and protection**

1. The Public Prosecutor's Office requests the initiation of the judicial process for the promotion of rights and protection when:
  - a) Having received the communications referred to in articles 47, 48, 49 and 50, it considers necessary the judicial application of promotion and protection;

b) Request the judicial assessment of the decision of the services for the protection of children and young people, under the terms of this law.

2. In the case provided for in paragraph b) of the previous number, the Public Prosecutor's Office, before requesting the opening of the judicial process, may request the child or young person's protection services to provide the process relating to the child or young person and request the clarifications that you have as convenient.

#### **Article 54**

##### **preliminary filing**

The Public Prosecutor's Office immediately archives, through a reasoned order, the communications it receives when it is manifested that there is no basis for it or that there is no need for intervention.

#### **Article 55**

##### **Request for civil guardianship measures**

The Public Prosecutor's Office requests the appropriate civil guardianship measures from the competent court, whenever it deems necessary, namely in the situations provided for in paragraph g) of article 49 of this law.

#### **Article 56**

##### **Application for court review**

1. The Public Prosecutor's Office requires a judicial assessment of the decision of the child and youth protection services when it understands that the applied measure is illegal or inadequate for promoting the rights and protection of the child or youth in danger.

2. The request for judicial review of the decision of the child and youth protection services indicates the reasons for the need for judicial intervention and is accompanied by the process of the child and youth protection services.

3. For the purposes of the provisions of the previous number, the Public Prosecutor's Office previously requests the respective process from the services for the protection of children and young people.

4. The request for judicial review must be submitted within 15 days after receiving communication of the decision of the child and youth protection services by the Public Prosecutor's Office and the child and youth protection services are made aware of it.

5. The person in charge of child and youth protection services is heard on the request of the Public Prosecutor's Office.

## **CHAPTER VI**

### **GENERAL PROCEDURAL PROVISIONS**

#### **Article 57**

##### **common provisions**

The provisions of this chapter apply to processes for the promotion of rights and protection, hereinafter referred to as promotion and protection processes, established in child and youth protection services or in the courts.

#### **Article 58**

##### **Individual and unique character of the process**

The promotion and protection process is individual, with a single process being organized for each child or young person.

#### **Article 59**

##### **territorial competence**

1. The services for the protection of children and young people or the court in the area where the child or young person resides at the time the communication of the situation is received or the judicial process is initiated are competent for the application of promotion and protection measures.
2. If the residence of the child or young person is not known, nor is it possible to determine, the child and young person protection services or the court of the place where the child was found are competent.
3. Without prejudice to the provisions of the previous numbers, the services for the protection of children and young people or the court of the place where the child or young person is found, carry out the urgencies considered urgent and take the necessary measures for their immediate protection.
4. If, after applying the promotion and protection measure, the child or young person changes residence for a period longer than three months, the case is referred to the child and youth protection services or to the court in the area of the new residence.
5. For the purposes of the provisions of the previous number, the execution of the foster care promotion and protection measure does not determine the change of residence of the sheltered child or young person.
6. Without prejudice to the provisions of the previous number, entities with competence in matters of childhood and youth with territorial competence in the area of the municipality where the child or young person is hosted provide protection services for children and young people who have applied the promotion and protection measure all collaboration necessary for the effective monitoring of the measure requested for this purpose.
7. Except as provided in no. 4, changes in fact that occur after the time of initiation of the process are irrelevant.

## **Article 60**

### **Joining of processes**

Without prejudice to the rules of territorial jurisdiction, when the situation of danger simultaneously involves more than one child or young person, a single process may be initiated and, having opened separate procedures, all of them may be joined to the one filed in firstly, if family relationships or specific dangerous situations justify it.

## **Article 61**

### **Combination of processes of different nature**

1. When, in relation to the same child or young person, processes of promotion and protection or relating to civil guardianship measures are successively initiated, they must run by attachment, being competent to hear them from the judge of the process initiated in the first place.
2. In order to comply with the provisions of the previous number, the judge requests the services for the protection of children and young people to inform him about any pending promotion and protection process or that may be instituted later in relation to the same child or young person.
3. The association referred to in no. 1 takes place regardless of the status or phase of the processes.

## **Article 62**

### **Child or young person accused in criminal proceedings**

1. When, in relation to the same child or young person, a promotion and protection process and criminal proceedings are running simultaneously, the services for the protection of children and young people or the court send a copy of the respective decision to the judicial authority competent for the criminal process, with the possibility of adding the information about the family and socio-professional insertion of the child or young person that it deems appropriate.
2. The elements referred to in the previous number are forwarded, ex officio or upon request, after notifying the child or young person of the order designating the day for the trial hearing.
3. When the child or young person is preventively arrested, the elements contained in paragraph 1 may be forwarded at any time, at the request of the latter or the defender, or with their consent.
4. The judicial authorities competent for criminal proceedings may request a social report or additional information relevant to the assessment and decision of the case from the services for the protection of children and young people.
5. The judicial authorities report to the entities referred to in articles 10, 11 and 12 the situations of children or young people accused in criminal proceedings who are in danger, forwarding them the elements they have and that show relevant to the assessment of the situation, under the terms of no. 2 of article 51

### **Article 63**

#### **Use of previous acts**

Child and youth protection services and the courts must refrain from ordering the repetition of steps already taken, namely social reports or medical examinations, except when the best interests of the child or young person require their repetition or it becomes necessary to ensure the adversarial principle,

### **Article 64**

#### **Hearing of children and young people**

1. Children and young people over 12 years old, or younger when their ability to understand the meaning of the intervention so advises, are heard by the child and youth protection services or by the judge about the situations that gave rise to the intervention and in relation to the application, review or termination of a prorogation and protection measure, and its opinion must be taken into account in determining its best interest
2. The child and young person have the right to be heard individually or accompanied by their parents, legal representative, lawyer of their choice or public defender or person they trust.

### **Article 65**

#### **Hearing of holders of parental authority**

1. The parents, the legal representative and the persons who have de facto custody of the child or young person are obligatorily heard about the situation that led to the intervention and regarding the application, revision or cessation of the promotion and protection measure.
2. The provisions of the previous number apply to situations of absence, even if in fact, due to the impossibility of contact due to lack of knowledge of the whereabouts, or any other cause of impossibility, and those of inhibition of the exercise of parental authority.

### **Article 66**

#### **Information and assistance**

1. The process must be carried out in a way that is understandable to the child or young person, considering their age and degree of intellectual and psychological development.
2. When hearing the child or young person and in the course of other procedural acts or steps that justify it, the services for the protection of children and young people or the judge may order the intervention or assistance of doctors, psychologists or other specialists or a person of the confidence of the child or young person, or determine the use of the technical means that seem appropriate to them.

## **Article 67**

### **exams**

- 1, Medical examinations that may offend the child's or young person's modesty are only ordered when it is deemed essential and their interest so requires, and must be carried out in the presence of one of the parents or a person the child or young person trusts, unless if the examinee does not wish to do so or his interest so requires.
2. The medical examinations referred to in the previous number are carried out by duly qualified medical personnel, with the necessary psychological support being guaranteed to the child or young person.
3. The provisions of articles 13 and 14 are correspondingly applicable to medical examinations, except in the urgent situations provided for in this law.
- 4 Examinations are of an urgent nature and, unless another deadline is required by their nature, the respective reports are presented within a maximum period of 30 days.
5. The child and youth protection services or the court may, when necessary to ensure the protection of the child or youth, request from the court a certificate of the reports of examinations carried out in cases relating to crimes of which they have been victims, which may be used as evidence.

## **Article 68**

### **Reserved character of the process**

1. The promotion and protection process is reserved.
2. Employees and technicians of child and youth protection services have access to the processes in which they intervene, the provisions of the
3. The parents, the legal representative and the persons who have de facto custody may consult the process in person or through a public defender or lawyer.
4. The child or young person can consult the process through their public defender or lawyer or in person if the judge or person responsible for the protection of children and young people authorizes it, taking into account their maturity, ability to understand and the nature of the facts.
5. Whoever manifests a legitimate interest may also consult the process, directly or through a public defender or lawyer, when authorized and under the conditions established in the order of the person in charge of child and youth protection services or the judge, as the case may be.
6. The processes of the services for the protection of children and young people are destroyed when the young person reaches the age of majority or, in the case of paragraph e) of n. 1 of article 45, when the promotion and protection measure ceases.
7. When the process has been archived under the terms of paragraph g) of no. 1 of the article

17.0, is destroyed five years after archiving.

#### **Article 69**

##### **Consultation for scientific purposes**

1. The services for the protection of children and young people or the court may authorize the consultation of processes by institutions accredited in the scientific field, with all those who have access to them being bound by a duty of secrecy in relation to what they become aware of.
2. Disclosure of any studies must be done in such a way as to make it impossible to identify the persons to whom the information relates.
3. For scientific purposes, with authorization from the person in charge of child and youth protection services or the judge, parts of the files may be published, provided that it is impossible to identify the child or youth, their family members and other persons referred to therein, as well as of any element that allows this identification,

#### **Article 70**

##### **Social Communication**

1. The media, whenever they publicize situations of children or young people in danger, cannot identify or transmit elements, sounds or images that allow their identification, under penalty of their agents committing the crime of disobedience.
2. Without prejudice to the provisions of the previous number, the media may report on the content of public acts of the judicial process of promotion and protection.
- 3, Whenever requested and without prejudice to the provisions of no. 0 1, the person in charge of child and youth protection services or the judge of the case inform the media of the facts, decision and circumstances necessary for their correct understanding.

#### **CHAPTER VII**

##### **EMERGENCY PROCEDURES**

#### **Article 71**

##### **Urgent procedures in the absence of consent**

1. When there is current or imminent danger to the life or physical integrity of the child or young person and there is opposition from the holders of parental authority or whoever has de facto custody, the services for the protection of children and young people take the appropriate measures for their immediate protection and request the intervention of the court or law enforcement agencies.
2. The entity that intervenes under the terms of the previous number immediately informs the Public Prosecution Service of the situations referred to therein or, when this is not possible, as soon as the cause of the impossibility ceases.
3. As long as it is not possible for the court to intervene, the police authorities will remove the child or young person from the danger they are in and ensure their protection.

urgent care in an appropriate place or in a host institution referred to in this law.

4. The Public Prosecutor's Office, upon receipt of the communication made by any of the entities referred to in the previous numbers, immediately requests the competent court to proceed with the judicial procedure under the terms of the following article.

#### **Article 72**

##### **Urgent court proceedings**

1. The court, at the request of the Public Ministry, when the situations referred to in the previous article are communicated to it, issues a provisional decision, within forty-eight hours, confirming the measures taken for the immediate protection of the child or young person, applying any one of the measures provided for in no. 0 1 of article 20 or determining what is convenient in relation to the fate of the child or young person.

2. For the purposes of the provisions of the previous article, the court carries out the summary and indispensable investigations and orders the necessary steps to ensure the execution of its decisions, being able to resort to the police entities and allowing the persons who are responsible for complying with its decisions to enter, during the day, in any home.

3. Once the provisional decision referred to in no. 1, the process follows its terms as a judicial process of promotion and protection.

#### **CHAPTER VIII**

##### **PROCESS IN CHILD AND YOUTH PROTECTION SERVICES**

#### **Article 73**

Initiative for the intervention of child and youth protection services Without prejudice to the provisions of articles 46 to 48, the child and youth protection services intervene:

- a) At the request of the child or young person, their parents, legal representative or persons who have de facto custody;
- b) On their own initiative, in dangerous situations that they become aware of in the exercise of their duties.



## **Article 74**

### **Information and hearing of interested parties**

1. When the child and youth protection services receive communication of the situation of danger or after taking summary steps to confirm it, they must contact the child or youth, the holders of parental authority or the person with whom the child or youth the young person resides, informing them of the situation and listening to them about it.
2. The services for the protection of children and young people must inform the persons referred to in the previous number of how their intervention is carried out, the measures they can take, the right not to authorize the intervention and its possible consequences and their right to do so. - be accompanied by a lawyer or public defender.
3. The summary measures referred to in no. 1 are intended to obtain elements that can confirm or clarify the danger situation.

## **Article 75**

### **lack of consent**

In the absence or withdrawal of the consents provided for in article 13, or if there is opposition from the minor, under the terms of article 14, the services for the protection of children and young people refrain from intervening and communicate the situation to the competent Public Ministry, forwarding the process or the elements they consider relevant to the assessment of the situation.

## **Article 76**

### **Diligence in situations of occasional custody**

1. When the child or young person is living with a person who does not hold parental authority, is not their legal representative, or does not have their de facto custody, the services for the protection of children and young people must act immediately, by all means at their disposal, in order to get in touch with the people who must give consent, so that they put an end to the dangerous situation or give consent for the intervention.
2. Until such time as contact with parents, legal representatives or whoever has de facto custody is possible and without prejudice to emergency procedures, child and youth protection services provide the child or youth with the means of adequate support, unless opposed by the person with whom they reside.

3. When there is opposition referred to in the previous number, the services for the protection of children and young people immediately communicate the situation to the Public Ministry.

### **Article 77**

#### **Process**

1. The process begins with the receipt of the written communication or with the registration of verbal communications or facts that the child and youth protection services become aware of.
2. The process of the protection services for children and young people includes the collection of information, the necessary steps and examinations that are necessary and adequate to the knowledge of the situation, the reasons for the decision, the application of the respective measure and its execution.
3. The process is organized in a simplified manner, recording in chronological order the acts and steps taken or requested by the child and youth protection services that support the practice of the acts set out in the previous number.
4. Acts performed by another entity at the behest of the child and youth protection services, namely at the level of the instruction of processes or monitoring of promotion and protection measures are part of the procedural activity of the child and youth protection services, being registered as acts of collaboration.
5. If there is doubt about the age of the child or young person, it is presumed that they are minors until their age is proven.

### **Article 78**

#### **Decision on the measure**

1. Once the elements on the situation of the child or young person have been gathered, the services for the protection of children and young people assess the case, archiving the process when the situation of danger is not confirmed or no longer exists, or decides, based on reason; applying the appropriate measure.
2. Faced with any proposal for intervention by child and youth protection services, the persons referred to in articles 13 and 14 may request a period, not exceeding eight days, to give consent or express non-opposition .
3. If there is agreement between the services for the protection of children and young people and the persons referred to in articles 13 and 14 regarding the measure to be adopted, the decision is

reduced to writing, taking the form of an agreement, pursuant to the provisions of articles 36.0 to 38.0, which is signed by the intervening parties.

4. If there is no agreement, and if the situation that justifies the application of the measure persists, the child and youth protection services refer the case to the Public Prosecutor's Office.

#### **Article 79**

##### **filing of the process**

When the measure ceases, the process is archived and can only be reopened if new facts occur that justify the application of a promotion and protection measure.

### **CHAPTER IX**

#### **THE JUDICIAL PROCESS OF PROMOTION AND PROTECTION**

#### **Article 80**

##### **Nature of the process**

The judicial process for the promotion of the rights and protection of children and young people in danger, hereinafter referred to as the judicial process for the promotion and protection, is of voluntary jurisdiction, and the court may freely investigate the facts, collect evidence, order inquiries and collect the information that it deems convenient, not being subject to strict legality criteria and must adopt, in each case, the solution it deems most convenient and opportune.

#### **Article 81**

##### **competent court**

1. It is incumbent upon the court of first instance in the area where the child or young person resides to instruct and judge the judicial process of promotion and protection.
2. For the purposes of the provisions of the previous number, the family and minors court is competent or, failing that, the civil court.

3. Without prejudice to the general rules for the distribution of cases, in the distribution of judicial processes for promotion and protection, preference should be given, if any, to the distribution to a judge with specific training in matters of childhood and youth.

#### **Article 82**

##### **urgent processes**

The judicial processes of promotion and protection are of an urgent nature, running during the judicial holidays.

#### **Article 83**

##### **legal assistance**

1. The parents, legal representative or whoever has de facto custody may, at any stage of the process, appoint a lawyer or request the intervention of a public defender to represent them, themselves or the child or young person.
2. The appointment of a patron to the child or young person is mandatory when their interests and those of their parents, legal representative or those who have de facto custody are conflicting and even when the child or young person with adequate maturity requests it to the court.
3. The appointment of the patron is carried out under the terms of the law that regulates the practice of law or under the terms of the Statute of the Public Defender's Office.
4. In the judicial debate, the constitution of a patron for the child or young person is mandatory.

#### **Article 84**

##### **Contradictory**

1. The child or young person, their parents, legal representative or whoever has de facto custody have the right to request diligence and offer means of proof.
2. In the judicial debate, written allegations may be presented and adversarial proceedings are ensured.
3. The contradictory as to the facts and the applicable measure is always ensured at all stages of the process, namely with a view to obtaining an agreement and in the judicial debate.

## **Article 85**

### **Procedural initiative**

1. Procedural initiative rests with the Public Ministry.
2. The parents, the legal representative, the persons who have de facto custody and the child or young person over the age of 12 may also request the intervention of the court in the case provided for in paragraph d) in no. 1 of article 15

## **Article 86**

### **process phases**

1. The promotion and protection process consists of the stages of instruction, judicial debate, decision and execution of the measure.
2. Once the initial application has been received, the judge issues an order opening the investigation or, if he considers that he has all the necessary elements, orders the Public Prosecutor's Office to be notified, the child or young person, the parents, the legal representative, and whoever has custody de facto of the child or young person, following the other terms provided therein.

## **Article 87**

### **specific rules**

1. The process is carried out in accordance with the rules provided for in the Code of Civil Procedure, with the hearings of the child or young person subject to the following rules:
  - a) They must be carried out with the minimum of formality possible and in accessible language, considering the understanding capacity and the age of the child or young person and the objective of the intervention, and be preceded by the provision of clear information on the meaning and scope of the same ;
  - b) With translation and/or interpretation support into a language that the child or young person understands, to be made available free of charge;
  - c) With adequate assistance to children and young people with disabilities, taking into account their special needs;
  - d) With the safeguard of the privacy of the child or young person, only people who the court expressly authorizes may attend, with the exception of reading the decision.
2. For the purposes of the preceding paragraph, the judge may:
  - a) Request the intervention and assistance of doctors, psychologists, social workers or other specialists or people the child or young person trusts;
  - b) Order, ex-officio or upon request, that the public prosecutor, the public defender, the lawyer and the court staff do not make use of the

professional attire during the audition, that the facilities are adapted in order to minimize the discomfort and fear of the child or young person;

c) Determining that the child or young person is not placed in direct contact with the person allegedly responsible for the situation of danger or any other person who may intimidate him, during the journey, while waiting and during the hearing, and may be accompanied by a person from the your confidence.

3. The judge may hear the child or young person individually, with the presence of the Public Ministry, when there are reasons to believe that the presence of other people may affect their spontaneity, well-being and emotional balance.

4. The hearing of the child or young person is carried out by the judge, and the Public Ministry and the lawyer or public defender may propose the formulation of additional questions.

### **Article 88**

#### **initial dispatch**

1. Once the instruction is declared open, the judge sets a date for the mandatory hearing:

a) The child or young person;

b) The parents, the legal representative or the person who has de facto custody of the child or young person.

2. In the same order, the judge, whenever he deems it convenient, may designate a day to hear the technicians who know the situation of the child or young person in order to provide the necessary clarifications.

3. With the notification of the designation of the date referred to in paragraph 1, the child or young person over the age of 12, the parents, the legal representative, whoever has de facto custody of the child or the young person, to, if they wish, request the carrying out of instructive steps or gather evidence.

### **Article 89**

#### **Information or social report**

1. The judge, if he deems it necessary, may use, as a means of obtaining evidence, information or the social report on the situation of the child or young person and their family.

2. The information and social report are requested by the judge from the services for the protection of children and young people, who send it to the court within eight and 30 days, respectively.

3. The judge may also hear the services for the protection of children and young people if he considers that the information or the social report is not clear or if he considers that complementary information is necessary.

### **Article 90**

#### **Duration**

1. The instruction of the promotion and protection process cannot exceed the period of four months.
2. The period provided for in the previous number may, ex officio or at duly substantiated request, be extended for another thirty days.

### **Article 91**

#### **closure of instruction**

1. The judge, after hearing the Public Ministry, declares the investigation closed and:
  - a) Decides to file the case;
  - b) Designates a day for a conference with a view to obtaining a promotion and protection agreement; or
  - c) When a negotiated solution proves to be manifestly unlikely, it determines the continuation of the process to carry out a judicial debate and orders the notification of the Public Prosecution Service, the child or young person, the parents, the legal representative and whoever has de facto custody of them .
2. When the impossibility of reaching an agreement on the measure of promotion and protection results from proven absence of both parents, or of one of them, when the other manifests his/her adherence to the measure of promotion and protection, the judge may waive the holding of the judicial debate.
3. The provisions of the previous number are applicable, with the necessary adaptations, to the legal representative and the holder of de facto custody of the child or young person.

### **Article 92**

#### **archiving**

The judge decides to archive the case when he concludes that, due to the situation of danger not being proven or no longer existing, the application of any measure of promotion and protection has become unnecessary, and it may be reopened if facts occur that justify the referred to action. application,

### **Article 93**

#### **negotiated decision**

The judge summons to the conference, with a view to obtaining a promotion and protection agreement, the Public Prosecution Service, the child or young person over 12 years old, the parents, the legal representative or whoever has de facto custody of the child or young person and the people and representatives of entities whose presence and subscription of the agreement is considered relevant.

### **Article 94**

#### **Civil guardianship agreement**

1. In the conference and verifying the legal assumptions, the judge ratifies the agreement reached in civil tutelary matters, which is included in an appendix.
2. If there is no agreement, the procedures provided for in the civil tutelary law are followed.

### **Article 95**

#### **Promotion and protection agreement**

1. The provisions of articles 36 to 38 are applicable to the promotion and protection agreement.
2. If there is no opposition from the Public Prosecutor's Office, the agreement is ratified by court decision.
3. The agreement is included in the minutes and is signed by all intervening parties.

### **Article 96**

#### **court debate**

1. If it has not been possible to obtain the promotion and protection agreement, or adequate civil protection, or when these prove to be manifestly unlikely, the judge orders to notify the Public Prosecutor's Office, the child or young person over 12 years of age, the parents, the legal representative, or whoever has de facto custody of the child or young person to claim, in writing, that they want to, and to present proof within a period of 10 days.
2. The Public Prosecutor's Office must make a written allegation and present evidence whenever it considers that the measure to be applied is one of those provided for in paragraphs e) to g) of no. 1 of article 20.
3. Once the allegations have been received and the evidence presented, the judge sets a day for the judicial debate and orders the notification of the persons who must attend.
4. With the notification of the date for the judicial debate, the parents, the legal representative or whoever has de facto custody of the child or young person are informed of the allegations and evidence presented by the Public Prosecutor's Office and, to the latter, of the remaining allegations and evidence presented.



5. For the purposes of reviewing the measures referred to in article 43, there is no judicial debate, except where:

- a) Replacement of the promotion and protection measure applied; or
- b) The extension of the execution of the placement measure.

#### **Article 97**

##### **Organization of the court debate**

1. The judicial debate is continuous, taking place without interruption or postponement until its conclusion, except for the necessary suspensions for food and rest of the participants.
2. The judicial debate cannot be postponed and begins with the production of evidence and hearing of the people present, the judge ordering the necessary steps so that those who are not present appear on the date designated for its continuation.
3. The reading of the decision is public, but the judicial debate can only be attended by persons expressly authorized by the court.

#### **Article 98**

##### **exam regime**

For the formation of the conviction of the court and for the reasoning of the decision, under penalty of nullity, only evidence that may have been contradicted during the judicial debate can be considered.

#### **Article 99**

##### **Documentation**

The hearing is always documented and, whenever technological means allow, the hearing must be recorded, with only the beginning and end of each statement, statement, information, clarification, request and respective response, order, decision and oral arguments.

#### **Article 100**

##### **Allegations**

Once the evidence has been produced, the judge grants the floor to the Public Ministry and the lawyers or public defenders for allegations, for thirty minutes each.

#### **Article 101**

##### **Decision**

1. Once the debate is over, the judge gathers to prepare the decision.
2. The decision begins with a brief report, in which the child or young person, their parents, legal representative, or the person who has de facto custody are identified, and a description of the procedure followed.

3. The report is followed by a statement of reasons, consisting of a list of proven and unproved facts, as well as their valuation and explanation of the reasons that justify the shelving or application of a promotion and protection measure, ending with the device and decision.

### **Article 102**

#### **Reading of the decision**

1. The decision is read by the judge, and may be dictated for the minutes immediately after the conclusion of the judicial debate.
2. In cases of particular complexity, the judicial debate may be suspended and a new day designated for reading the decision, within a maximum period of three days.

### **Article 103**

#### **decision notification**

The decision is notified to the Public Prosecutor's Office, the child or young person, the parents, the legal representative and whoever has de facto custody of the child or young person, containing information on the possibility, form and deadline for lodging the appeal.

### **Article 104**

#### **Resources**

1. Decisions that, definitively or provisionally, decide on the application, alteration or cessation of promotion and protection measures may be appealed.
2. The Public Ministry, the child or young person, the parents, the legal representative and whoever has de facto custody of the child or young person may appeal.
3. The appeal against a decision that has applied the measure provided for in subparagraph g) of no. 1 of article 20 is decided within a maximum period of 30 days, counting from the date of receipt of the records at the superior court.

### **Article 105**

#### **Resource processing and effect**

1. Appeals are processed and judged like grievances in civil matters, with a 10-days deadline for allegations and responses.
2. With the exception of an appeal against a decision that applies the measure provided for in subparagraph g) of no. 1 of article 20, which has suspensive effect, it is up to the appealed court to determine the effect of the appeal.

## **Article 106**

### **The execution of the measure**

In the judicial process of promotion and protection, the execution of the measure will be carried out under the terms of n. 2 and 3 of article 40.

## **Article 107**

### **Subsidiary right**

To the judicial process of promotion and protection, the norms related to the civil procedure of declaration in the common form are applied, with the necessary adaptations, in the phase of judicial debate and appeals.

## **CHAPTER X**

### **FINAL AND TRANSITIONAL PROVISIONS**

## **Article 108**

### **Reassessment of reception situations in an institution**

Within a maximum period of six months after the entry into force of this law, all situations and processes of children and young people placed in shelters are reassessed by the services for the protection of children and young people and by the Public Ministry, with a view to:

- a) Identify measures in the natural environment of life that may constitute an immediate alternative to their placement;
- b) Instruction of the promotion and protection procedure, in accordance with the provisions of this law.

## **Article 109**

### **Regulation**

The Government approves the necessary regulations for the implementation of this law.

## **Article 110**

### **Implementation**

This law enters into force 180 days after its publication.

Approved on February 7, 2023.

The President of the National Parliament,  
**Aniceto Longuinhos Guterres Lopes**

Promulgated on February 21, 2023.

Publish by:

The President of the Republic,

**José Ramos-Horta**