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The medicalization of family judicial conflicts: A path towards normalization

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Abstract

This article aims to provide a critical reflection on the process of medicalization of judicial family and children conflicts, exploring how the medical and social science (psychologists, psychiatrists, social workers) discourses and professionals are mingled in Portuguese civil guardianship proceedings. Through the content analysis of a set of judicial processes, we conclude that not only do medical assumptions resonate in the rules of child custody, but there is a tendency in these processes to reduce family conflicts to and treat them as pathological problems and to adopt medical and/or therapeutic and not "exclusively" judicial solutions. The aim is to normalize family and parental relationships that are outside the norm.

Key words

Medicalization; normalization; regulation of parental responsibilities

Resumen

Este artículo pretende ofrecer una reflexión crítica sobre el proceso de medicalización de los conflictos judiciales de la familia y la infancia, explorando cómo se mezclan los discursos y los profesionales de la medicina y las ciencias sociales (psicólogos, psiquiatras, trabajadores sociales) en los procesos de tutela civil portugueses. A través del análisis de contenido de un conjunto de procesos judiciales, concluimos que no sólo resuenan los supuestos médicos en las normas de custodia de los hijos, sino que existe una tendencia, en estos procesos, a reducir los conflictos familiares y tratarlos como problemas patológicos y a adoptar soluciones médicas y/o terapéuticas y no "exclusivamente" judiciales. El objetivo es normalizar las relaciones familiares y parentales que están fuera de la norma.

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Palabras clave

Medicalización; normalización; regulación de responsabilidades parentales

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1. Introduction

The judicial regulation of parental responsibilities[1] was historically viewed as a legal event accomplished by legal decision-makers through legal procedures. However, the trend of using indeterminate criteria, such as the "best interests of the child", reveals a profound change in parental responsibilities regulation and the decision-making process. There is a growing influence of medical and social science theories and professionals (psychologists, psychiatrists, social workers) in this area.

In this article, it is argued that there is a process of medicalization of family conflicts in civil guardianship proceedings in relation to the regulation of parental responsibilities. For this reason, the article adopts a broad definition of the concept of medicalization. Medicalization is understood here not only as the conversion of a social or moral problem into a disease or medical problem, but also as a process that includes defining a problem in medical terms. Medical language is used to describe it, a medical approach is used to understand it, or a medical intervention is done to treat it (Conrad 1992, 2007, Nye 2003). Furthermore, it is assumed that this is a comprehensive process that may or may not directly include medical professionals and medical treatments. Additionally, the article resorts to Canguilhem's (1998) and Michel Foucault's[2] (1977, 1978) reflections on normalization and disciplinary power to argue that as family law is increasingly medicalized, it assumes a disciplinary character, penetrating family relations, intervening in them, and seeking to shape them. The courts, supported by non-judicial professionals, seek to normalize behaviours that are outside the norm of "good divorce" or "good parent-child relationship", normalizing family and parent behaviours.

In Portugal, in the event of divorce, separation, annulment of marriage, and in cases where parents are not married or do not live together, parents may agree on the question of parental responsibility (which must be approved by the court or civil registrar), or, when they cannot reach an agreement, they may refer the matter to court and civil proceedings regulating parental responsibility. While most parents resolve parental responsibilities disputes privately, a substantial number also passes through the courts. In 2019, the judicial courts solved 35,360 cases relating to parental responsibilities (Direção-Geral da Política de Justiça – DGPJ – 2021). Furthermore, the court is advised by multidisciplinary technical teams (called EMAT), that provide information (about the family and children) and produce social reports, at the court's request.[3] The court may also appoint other professionals, such as doctors and psychologists, as court assessors in the civil proceedings to regulate parental responsibility. Finally, the decision on parental responsibility must always be taken on the basis of three fundamental aspects: the custody of the minor, the visitation regime and the maintenance due to the minor.

[1] Parental responsibilities are the powers and duties assigned to parents concerning their children. In Portugal, the court decision on the exercise of parental responsibility includes three fundamental aspects: the custody of the minor, the visitation regime and the maintenance due to the minor.

[2] Michel Foucault, although he rarely resorted to the term medicalization, wrote several essays relevant to the problem of medicalization. His contribution is considered relevant to this area, since he demonstrates the impact of medical discourses on people's lives (Foucault 1994, 2004/2010 - biopolitics and sexuality; Lupton 1997), but also in the law itself, in works such as *Discipline and Punish* (1977).

[3] The civil guardianship proceedings related to the regulation of parental responsibilities, and, in particular, the participation of different technicians and experts are currently governed by the General Regime of the Civil Guardianship Process, approved by Law no. 141/2015, of 8 September.

Despite the strong presence of psychologists, psychiatrists and social workers in Portuguese family courts, studies on the role of professional custody evaluators and the relationship between law and experts are scarce in Portugal. This article aims to understand the process of medicalization of family and child judicial conflicts in Portugal, discuss how the judicial regulation of parental responsibilities operates through "normalizing judgments" and how the family courts adopt therapeutic and not exclusively judicial solutions to intervene in parental responsibilities. The study is based on the content analysis of court-appointed assessments reports and judgments from 54 civil guardianship proceedings relating to the regulation of parental responsibilities of a Portuguese Family and Children Court. The empirical data are based on the fieldwork developed in the author's doctoral dissertation (Casaleiro 2017), which sought to understand the interaction between family and child law and other disciplines, between judges and court assessors, in parental responsibilities processes in the Portuguese courts and their contribution to the direct or indirect (re)production of gender (in)equalities.

This article begins by discussing the medicalization and normalization concepts and their application to family and children's law and justice. It then presents the Portuguese legal framework of the civil guardianship proceedings relating to parental responsibilities which govern the way different professionals (court assessors) participate in the proceedings. The next section reports the empirical findings, with a brief characterization of the proceedings sample, followed by a content analysis of the court-appointed assessments reports and judgments from civil guardianship proceedings relating to the regulation of parental responsibilities.

2. Medicalization and Family law

The concept of medicalization has been used by the social sciences since the late 1960s, with studies focusing, initially, on the medicalization of deviation and progressively applying it to a greater diversity of human problems that have entered the medical jurisdiction (Conrad 2007). However, most studies have neglected (with some exceptions, such as Moysés and Collares (2007) and Veitch (2012) the field of law and, in particular, family and children law.

In the literal or strict sense, medicalization means the "definition of a problem in medical terms". Nevertheless, the term has gained broader and more subtle meanings over the years and despite the proliferation of studies in different areas, there is no consensus on its definition (Conrad 1992, 2007, Nye 2003).

According to Nye (2003), there are soft and hard definitions of medicalization from the definition of Paul Weindling, as an extension of the scientific and rational values of medicine to a greater variety of social activities, to a more restricted definition such as that of Thomas Szasz, medicalization as converting a social or moral problem into a disease. Conrad (2007) proposes a broad conceptual framework that helps to clarify the meaning of medicalization, arguing that medicalization can occur on at least three different levels: the conceptual, the institutional and the interactional. At the conceptual level, medical vocabulary or models are used to define the problem at hand. At the institutional level, organizations can take a medical approach to treat a particular problem or doctors can function as benefit gatekeepers who are only legitimate in that

organization through medical certification, but where the day-to-day routine does not require doctors. At the interactional level, medicalization occurs as part of the doctor-patient interaction, when a doctor defines a problem as a doctor (e.g. gives a medical diagnosis) or treats a social problem with medical treatment (e.g. prescribing tranquillizers for unhappy family life).

The medicalization of family and child judicial conflicts occurs at a conceptual level and an institutional level and is only partially based on the action of doctors and paediatricians, depending on the action of lawyers, social movements, judges and public prosecutors. As Conrad (2007) points out, although most authors agree that medicalization refers to the process and the result of a human problem entering the jurisdiction of the medical profession, in certain instances medical professionals are only marginally involved in the process. The medicalization of family conflicts is mainly mediated by jurists, who draft the law, and by judges and public prosecutors, who conduct the civil proceedings relating to the regulation of parental responsibilities, assisted by court assessors.

At a conceptual level, doctors, paediatricians, psychologists and psychiatrists have participated and are participating in political and social struggles around the definition of the categories that frame private life and the family, and the law itself has relied on medical/psychological knowledge to reformulate the norms (Singly 2006). At the beginning of the 20th century, Western Societies law moved away from the automatic paternal right towards the maternal preference. This was supported by the emergence of psychological theories, which emphasized the importance of the mother's care in early childhood education (Neale and Smart 1997, Sottomayor 2011). This rule, which became known as the tender years' doctrine, was a legal presumption that directed the placement of children with their mothers during the formative years of development (Neale and Smart 1997, Boyd 2003). Afterwards, the movement towards the best interests of the child standard and the defence of joint custody –physical custody[4] and/or legal custody[5] – were also supported by the psychological theories which emphasized the importance of keeping the emotional ties and relationship between the child and both his or her parents (Boyd 2003).

As courts and legal decision-makers are confronted with the challenge of determining with which parent or how the child's interest will best be served, they turn increasingly to child custody evaluators for input. Although most Western jurisdictions have listed some factors relevant to this determination, according to Semple (2011) these factors are too broad, adding little to the vagueness of this term as an operative legal concept. Thus, a group of professionals, who traditionally had a supplemental role, was added to the custodial picture to assist judges in their decisions, assuming an increasingly important role at the institutional level of contemporary family justice (Fineman 1991). While judges retain the final authority, child custody evaluators are now part of the process in many Western jurisdictions. These experts have important fact-finding, therapeutic and settlement-inducing roles (Semple 2011).

[4] This establishes the amount of time each parent spends with children.

[5] This establishes each parent's legal authority to make major decisions for the child. These include decisions regarding education, religion, and health care.

Several studies have consistently found that although judges are free to disregard any of the assessor's recommendation, they accept over 90% of the court assessor recommendations concerning the child custody arrangement (Thèry 1989, Ottosen 2006, Bala and Antonacopoulos 2007, Casaleiro 2017). One of the studies also concluded that social workers' recommendations were accepted by judges significantly less often than recommendations from psychologists and psychiatrists (Semple 2011). In Portugal, Casaleiro (2017) revealed the extent and variety of the impact of the court-appointed assessments on civil proceedings related to parental responsibilities, which influenced the final judgment, and different procedural acts, such as other investigations and parent meetings. This study found a high concurrence rate between the assessments recommendation provided by EMAT and the judges' decisions (38 in 42 of court orders matched the court assessor recommendation regarding parental responsibilities). Moreover, the interviews revealed a close and trusting relationship between judges and public prosecutors in the family and children´s court and the court assessors.

2.1. The relation between medicalization and normalization in Family Law

The expanding influence of experts in family law and justice is linked to the process of normalization that Canguilhem (1998) had seen taking root in numerous spheres of social life with the restructuring of modern industrial society. Medicalization is the major expression "of a need for rationalization that was also emerging in politics, just as it was emerging in economics under the effect of the nascent industrial automation, and which ultimately resulted in what was later called normalization" (Canguilhem 1998, 199). From Canguilhem's point of view, the idea of normalization refers to the production process of social normality which began with the rationalization of the means to satisfy the political and economic needs of modern industrial societies. Normalization means the production of subjectivity following the needs of a given social system (Campesi 2008).

The expansion of disciplinary power is linked, in Foucault's perspective, to this general process of normalization identified by Canguilhem (Campesi 2008). Disciplinary power has techniques for controlling and training people, which are not based on strength and coercion, but constant vigilance, and which intervene in the body, to make it useful and docile. Disciplinary power exercised "not through law but through normalization, not through punishment but through control" (Foucault 1978, 89). The central strategies of disciplinary power are observation, examination, measurement and the comparison of individuals against an established norm. It is exercised not primarily through direct coercion or violence, but rather through persuading its subjects that certain ways of behaving and thinking are appropriate for them. Discipline(s) is (are) associated with standards that the subject must internalize or adopt in his/her behaviour – such as punctuality, cleanliness and respect. The rules set out the goals that those subject to discipline have to strive to achieve.

Foucault argues that, faced with the emergence of new disciplines, the law sought to control them by recoding them. Simultaneously, he also argues that the law is being colonized by the new disciplines (Foucault 1977, 170), when it is invaded by observation and evaluation practices. These include the investigation, the means of verifying or restoring facts, events and matrix empirical knowledge and natural sciences, and examination, a means of fixing or restoring the norm, rule and matrix of all psychologies,

sociologies, psychiatry and psychoanalysis (Foucault 1997). Scientific (medical) discourse has thus assumed an increasingly important role in the functioning of contemporary justice, particularly in juvenile and criminal justice.

According to Jacques Donzelot (1977), inspired by Michel Foucault, since the 18th century, a series of political technologies of family organization – "family police" – have proliferated for the protection of children, which aimed to establish a form of government through this institution, shaping and moulding individuals to industrial and capitalist society. The family is considered the prime place to promote the well-being and protection of children and, at the same time, in the event of failure, it is seen as a source of social problems and its "policing", namely through family courts, is considered the only guarantor of the correction of family or parental incompetence. The protection of childhood thus assumes a disciplinary, repressive character – from "family police" (Donzelot 1977) – insofar as it penetrates the family, intervening in it, and seeking to shape it.

In the judicial regulation of parental responsibilities, in particular, judges make individualized surveillance or observation and "normalizing judgments" of families and children behaviour, increasingly supported by experts, using minor penalties and rewards to create not docile bodies, but "docile families" (Casaleiro 2016). The judicial regulation of parental responsibilities establishes the characteristics of the parents that guarantee the child's best interests, just as the army or the school established, according to Foucault (1977), the characteristics of good soldiers or obedient children. For example, the custody of the child should be entrusted to the parent who encourages his/her physical, intellectual and moral development, who is more available to meet his/her needs, who has a deeper affective relationship with the child, and who is more willing to encourage the relationship with the other parent. However, it would be naïve, as Irène Théry (1989) puts it, to see the promotion and protection of the child's best interests only as a sign of the greater attention given to the needs, difficulties and rights of the child. The concept of "the child's best interests" necessarily develops into a general image of what a "good" post-divorce family organization should be, pointing to one or more models of family life after divorce.

The medicalization process transforms aspects of daily life into pathologies, restricting the range of what is considered acceptable or normal (Conrad 2007). What is considered normal or the normality in family relationships and divorce is deeply related to new dominant ideologies and models of family, maternity and paternity. The recognition of formal equality, the growing participation of women in the labour market and the dilution of fixed gender roles and the public/private division, together with the emergence of new socio-legal norms on sharing parental responsibilities had an impact on traditional conceptions about parenting (Boyd 2003, Collier and Sheldon 2008). However, the ideology of motherhood and fatherhood did not disappear, it just changed (Boyd 2003).

The ideal of family, despite the neutral gender references of "spouse" and "parent" and the growth in divorces, is still considered a social relationship, sanctioned by law and, preferably, by religion, which comprises a male and a female adult and their biological or adopted children, that must prevail even after separation. Divorced parents are encouraged to look at parenting as a life commitment in which they will share the same

rights, duties and obligations that they had while married, promoting what Collier and Sheldon (2008) call "responsible divorce". In other words, ideology continues to dictate that children should grow up in a nuclear family with a man and a woman, although in separate houses, and it is expected that the mothers who receive the custody of the children will continue to play the role of good mothers by being reasonable and facilitating contact between the children and the father (Boyd 2003). Additionally, it is expected that mothers put their child before their interests and that the male parents establish an affectionate and caring relationship with their children and are simultaneously their main economic support.

In sum, in western societies the judicial regulation of parental responsibilities is increasingly medicalized and courts, supported by different professionals (e.g. psychologists, paediatricians and social workers), intervene in family relations, seeking to normalize family and parent behaviours. In the following pages, I will explore the process of medicalization of family conflicts in Portugal, and discuss how the decision-making involved in parental responsibilities operates through "normalizing judgments", through the analysis of a sample of civil proceedings regulating parental responsibility.

3. Medicalization of the family conflicts in a Portuguese Family and Children Court

The process of medicalization of family disputes over children will now be discussed, based on an analysis of the assessment reports and judgments of 54 civil guardianship processes related to the regulation of parental responsibilities from a Portuguese family and children court. Family and children courts are specialized judicial courts of first instance, which are in charge of family and child matters. Since the last reform of the Judiciary Organization (judicial map), operated by Law No. 62/2013, and recently amended by Act no. 40-A/2016, there are 52 specialised sections, known as family and children courts.[6]

The selection of the family and children court was made taking in consideration the volume of litigation and the geographical circumscription. On one hand, the number of civil guardianship cases completed in this first instance judicial courts was close to the national average of civil guardianship cases by court in 2014 (600 cases). On the other hand, the family and children court selected has a wide geographical circumscription covering urban and rural areas, serving a diverse population socioeconomically. The family and children court will not be identified to guarantee the anonymity of the families and children involved in the proceedings. For the same reason, all names, case numbers and geographical references have been replaced by fictitious names and numbers and/or deleted.

The selection and collection of civil proceedings took place in the first instance family and children court, between June and July 2015. At the time, the Act on the Organization of Care for Minors (OTM) was in force, approved by Decree-Law no. 314/78, of 27 October, which was revoked by Law no. 141 / 2015, of 8 September, General Regime of

[6] These 52 courts do not cover the entire national territory, leaving that competence to the local divisions of general jurisdiction (in 30 localities) (Branco 2018).

the Civil Guardianship Process.[7] The selection and collection process was divided into two stages. Firstly, I consulted, selected and collected judgments from the judgment books. At this stage, it was decided to focus the analysis on civil guardianship proceedings related to the regulation, alteration or non-compliance of the parental responsibilities concluded in 2014. The exclusion criteria were: 1) proceedings where the parents had reached an agreement at the meeting set up by the judge, and 2) proceedings related exclusively to maintenance due to the minor. In the first case, this was because there was no intervention by the court assessors, and in the second, because the court assessors had a very limited role, and only investigated the socioeconomic situation of the parents. According to these criteria, 59 potentially relevant cases were initially identified from a total of 489. Following this phase, I consulted the full case files and collected procedural documents. Since four cases were transferred to the court in the child's new area of residence and in one of the cases the parties appealed to the second instance, a total of 54 cases and 961 procedural documents were collected.

3.1. The civil guardianship proceedings and court-appointed assessments: a brief characterization of the sample

In the total of 54 civil guardianship proceedings, 144 court-appointed assessments were recorded, which corresponds to an average of 2.67 assessments per case. The sample reveals diversity in the bodies and experts that carry out technical assessments, from EMAT and the National Institute of Legal Medicine and Forensic Sciences (INMLCF), to public health institutions and Community Service Center of Universities.

TABLE 1

	N	%
Social report	94	65.3
Information	6	4.2
Visit evaluation reports	21	14.6
Complementary evaluations (e.g. psychological and parenting skills assessments)	10	6.9
Others (international reports/medical information)	13	9
Total	**144**	**100**

Table 1. Court-appointed assessment.
(Source: Casaleiro 2017.)

Table 1 shows that the social reports prepared by EMAT represent more than half of all court-appointed assessments – 94 in 144 (65.3%), followed by far by the visit evaluation reports. The number of complementary evaluations, including psychological and psychiatric assessments and parenting skills assessments, is relatively low in the civil

[7] The new law introduced small procedural changes related to the participation of technical advice to the courts, which did not preclude (and may have even enhanced) the tendency of medicalization analysed here. One of the main differences between the two regimes is that Law no. 141/2015, of 8 September, gives preference to the oral testimony of the court assessors, restricts the realization and delimiting the object of the social reports prepared by the multidisciplinary technical teams (called EMAT). At the same time, with this legislative change, the intervention of EMAT was expanded with the creation of a specialist technical hearing, which may be imposed on parents as mandatory by the judge, in order to reach an agreement. Only if an agreement is not possible through mediation (if they accept it) or for a specialist technical hearing, do the statement of facts, the investigation, the hearing and the ruling follow.

guardianship proceedings, which is due to different factors. These assessments take longer to prepare compared to, for example, social reports, and require the parent's agreement to conduct them. The number and diversity of assessments and professionals/institutions appointed by the court reflect the trend towards the search for individualized responses, as the child custody laws have evolved towards the current standard, which dictates that the custody be given in the best interests of the child.

TABLE 2

	N	%
Up to 2 months	60	42.8
Between 3 to 4 months	39	27.8
Between 5 to 6 months	24	17.1
More than 6 months	17	12.1
Total	**140**	**100**
Unknown	4	

Table 3. Number of months between the court request and the delivery of the assessment. (Source: Casaleiro 2017.)

Most of the court-appointed assessments do not comply with the legally established period of 30 or 60 days for delivering the report, taking an average of 3.75 months, some even take longer than six months, impacting directly on the duration of the proceedings.

The court-appointed assessments usually include information on the parents' living situation and relationship with their children, together with recommendations on the three fundamental aspects of exercising parental responsibility: the custody of the minor, the visitation regime and the maintenance due to the minor.

TABLE 4

		N
Number of assessments without recommendations		45
Number of assessments with recommendations		98
Aspects of the recommendation	Visitation Regime	59
	Maintenance	24
	Physical Custody	55

Table 4. Assessments Recommendation. (Source: Casaleiro 2017.)

The parties have the right to know the information provided in the technical advice and other evidence and opinions included in the proceedings. They may also request clarification, add other evidence or apply for information to be requested. The judge can dismiss such applications by an unappealable order if he or she judges them to be unnecessary, impossible to fulfil or dilatory. However, the number of clarification requests is relatively low when compared to the total number of assessments in the sample, 37 for 144 judicial experts (cf. table 12). It should also be noted that the clarification requests concern a small set of proceedings, only 18 cases out of a total of 54. The exercise of the right to request clarification, add other evidence or apply for

information to be requested depends on legal representation, which not all parties have (64 out of 119 individuals), as this is a voluntary jurisdiction procedure.

3.2. The civil guardianship proceedings medicalized

In Portugal, the court will determine the child's residence and visitation rights according to the child's best interests. This means that the judge will determine the custody arrangement that best suits the child's needs, based on factors related to children and factors related to parents (Sottomayor 2011). The first, relating to children, encompass the child's physical, affective, intellectual and material needs, age, sex and degree of physical and psychological development, the continuity of their affective relationships, the child's adaptation to the extra-family environment of origin (school, community, friends, non-school activities), as well as the effects of a possible change of residence which causes a rupture with this environment, their social behaviour and preference expressed. The second, relating to the parents, include the parents' ability to meet the child's needs, the time available to care for them, the physical and mental health of the parents, the continuity of each parent's relationship with the child, the affection that each parent feels for the child and the stability of the environment that each can provide (Sottomayor 2011).

In this context, magistrates and court assessors from other areas incorporate the medical/psychological discourse regarding mental health and skills of parents and the development of children. As Moysés and Collares (2007) state, medicalization is performed not only by medicine, but by all sciences and other fields that, even without knowing it, employ the method or clinical discourse. In the social reports prepared by EMAT, it is common to read expressions like "The child demonstrates to be within the normal parameters for its age in terms of cognitive development". This argument is then used by the judges in the judicial decision.

In the case below, in which the father requested the physical custody of the son, the social report states that Henrique falls within the normal parameters for child development.

> Henrique is a child who is within normal parameters in terms of development. Henrique is clean and careful in his hygiene and clothing, which is appropriate for his age and seasons. He has no socialization problems, he is well connected with the peer group and adults. (...) For the Educator, and what she knows about the [child's situation], there are no indicators that suggest concern. Everything indicates that the child keeps to his daily routines and tasks in the execution of care are shared between the mother and the maternal grandparents. (Mother's Social Report, Case 105)

Subsequently, in the judgment the judge argues that:

> The child has attended the nursery since the age of 2 (...), and is currently in the classroom for 4/5 year-olds, where he is perfectly integrated. He has a good relationship with peers and falls within the normal cognitive parameters for his age; 17 - Regarding parents, at school, the minor does not exhibit any symptoms as a result of who he was with (father or mother) on the day just before going to the garden, which shows that he is a happy and peaceful child, both parents possessing good skills and skills as caregivers (…).
>
> Henrique is stable and well-integrated, and is a happy and peaceful child. All the evidence excludes the applicant's claim to establish the child's physical custody with

> the father. (...) [T]herefore, we believe Henrique should keep living with his mother. This is without prejudice to the possibility of extending the time spent with his father, which will be considered below. (Judgment, Case 105)

Note that the judge mentions that "minor does not exhibit any symptoms as a result of who he was with (father or mother) on the day just before going to the garden, which shows that he is a happy and peaceful child", which reveals a pathologizing of family relationships.

In the civil proceedings relating to the regulation of parental responsibilities, when the judges and court-appointed assessors weigh which arrangement will be in the "best interests" of the child, family and couple conflicts are, in general, approached as a pathological problem that has to be overcome. Parental conflict is never seen as a consequence of the pre- or post-divorce situation.

> The separation of the couple, although it happened some time ago, still leaves in both parents a great resentment due to the whole situation of conflict they experienced. (Father's social report, Case 129)

> At the relational level, there is an extreme conflict between the adults, with different accusations over time. This increases communication difficulties regarding parental responsibilities. Miguel, only 4 years old, is entitled to stability at different levels and security so that he can grow without ambiguity of affections, 'without dispute', and is able to have his father and mother in his life in a positive way. (Mother's social report, case 143)

As Théry (1989) notes and as can be seen in the excerpts, parental conflict is stigmatized as being harmful to the child and as a symptom of the inability to overcome the marital crisis.

> Concerning issues of particular importance in the life of the child: At this level, it seems essential that parents can establish cordial parental communication, centered not only on the discussion of issues of particular importance in Deborah's life but also, in aspects of her current life. Clearly and decisively, the issues that relate to the loving relationship experienced by the parents must not, in any way, contaminate parental communication, otherwise we are not safeguarding and protecting the child's interests, are making them traumatic and potentially disrupting meetings and contacts between both. (Mother's social report, Process 148)

The expert and judicial system seek to normalize family relationships after their rupture in the light of the "ideal" of a biological heterosexual nuclear family – father, mother and children – which is understood as the most appropriate place to raise a child, and of the ideal "post-divorce" family, the indissoluble family, in which the parents overcome the marital conflict to share the same rights, duties and obligations concerning the children. The legal, judicial and expert discourse on regulating parental responsibilities reinforces the principle of maintaining the child's bonds with both parents after their separation, and argues for the need for both parents to participate in the child's education in the family post-separation (Smart and Sevenhuijsen 1989, Fineman 1991).

It should be noted that the joint exercise of parental responsibilities is recommended by experts and established by the court regardless of the previous family experience, even in cases of domestic violence. In the following case, although the father was convicted of domestic violence and did not contact either the ex-wife or the daughter for several

months, the joint exercise of parental responsibilities and a visitation regime were established without any restrictions.

> [facts are given as proven] 4 - Following frequent discussions and deterioration of the marital relationship, including the defendant's alcoholism problems, who in this situation became violent, the applicant left the family home with the child in June 2013, and went to live with her sister, because of fear for her physical safety (...).
>
> In this specific case, it cannot be ignored that the minor has not had any contact with the defendant since June 2013, who also did not seek to resume contact with her. Considering the physical and emotional distance evidenced in the case file, it is necessary, in the interests of the child, to establish a regime of visits for the defendant, that is safe for the child, without overnight stays, to allow a gradual reconciliation between them (…). From the above, it appears that this is the solution that best satisfies the interests of the child. It is decided that the defendant will be able to visit her whenever he wishes, with respect for her hours of rest, after prior contact with her mother. (Judgment, Case 142)

Thus, as Bodelón (2012) points out, the principle of shared care and custody of children often becomes an imposition that does not consider previous inequalities, facilitating the emergence or replication of subtle gender inequalities associated with parental roles. The medicalization process focuses the source of the problem on the individual, neglecting social causes and, consequently, calls for individual medical intervention, instead of collective or social solutions (Conrad 2007).

It is mainly when parents "do not overcome parental conflict", when they do not reach an agreement, or when there is a rejection of one of the parental figures, contrary to what would be expected or "normal", that Public Prosecutors and judges ask for psychological and psychiatric assessments. In the light of psychological and psychiatric assessments and parental skills, experts from the different institutes (INML, Public Hospitals and the University Community Support Unit) follow similar protocols, which include consulting the procedural documents, interviews of parents and close family members and application of specific assessment instruments such as the Millon-III Multiaxial Clinical Inventory or the Young Scheme Questionnaire - YSQ S3.

Following the pathologizing of family and parental conflicts, courts also seek therapeutic solutions (sometimes on the advice of the court-assessors themselves) to promote dialogue between parents and/or recover and/or strengthen the biological link between the parent and the child through expert intervention. Take the example of the following process of non-compliance with the regulation of parental responsibilities brought by the father, Domingos, who never met his 8-year-old son, Diogo. Following the father's request to the court to gradually approach his son, the court took several steps, first through EMAT – supervised meetings at the Social Security facilities and the school – and then through the University Community Support Unit – intervention therapy.

> After hearing the parent and ascertaining that there has been no contact with the child by the applicant since 2004 and the child does not know him, the court ruled to establish a relationship between the child and the parent, and normalize the relationship between father and son. Several institutions were called to intervene and many more took steps with the aforementioned aim, namely assessments, hearings and follow-ups. Despite some temporary successes along the way, nothing had the intended results. In the final parents´ conference no new solutions emerged to solve the issue of visits / approaching

> the minor to the father. The father rejected the remaining one, according to the technicians then involved, although without any guarantee of results different from those previously tried: monitoring the parents in the Community Support Unit.
>
> (…) In the event of an incident of non-compliance, it follows that as regards the defendant nothing can now be imputed since she does not currently object to the father being with the minor. The possible refusal of the child to be with the father is due to past circumstances that are foreign to the mother's current behaviour. (Sentence, Case 103)

In the next process of regulating parental responsibilities, in which there was a dispute over the custody of the child, psychological support and therapeutic intervention to support the change is also being carried out by the University Community Support Unit.

> Fl. 1426 and 1427, (...) the minor's father came (...) requested clarification of the order that advocates '(...) a therapeutic process to bring the minor and his father closer, as suggested in the report.' (...) The Hon. Prosecutor clarified that the therapeutic process aims to bring the minor closer to the father, having been suggested by EMAT in page 1269. He further clarified that, in addition to the psychological assessment of the child (to assess the reasons for the child's refusal to be with the father), it is necessary to work on the communication issues between father and son, objectives they aim to achieve with the aforementioned therapeutic process. (Judicial Decision, Case 129)

To sum up, courts recognize, on the one hand, the difficulty (or even impossibility) of reaching a strictly judicial solution in certain cases, and, on the other hand, the added value of a medical and/or therapeutic approach to the judicialized family conflict. It is in this sense that authors such as Semple (2011) and Bala (2005; Bala and Antonacopoulos 2007) argue that, despite the limitations that assessments and recommendations may have, court-assessors are better equipped to, for example, interview children and parents or visit the home(s) than magistrates, and argue that they should maintain or even extend their intervention. They argue that the legal method is ideal for dealing with past events, but has difficulty dealing with hypothetical scenarios (e.g. which parent will provide the best conditions to establish contact with the other, etc.), functions for which the judiciary professionals are ill-prepared. The professionals responsible for the technical assessments have specialized techniques which are more suited to the "best interests of a child" standard than the judges' legal training (Semple 2011).

However, some studies have questioned the accuracy of court assessors' evaluations, showing a concern that non-judicial assessors do not intrude on decision-making that ought to be reserved for judges (Tippins and Wittmann 2005). Tippins and Wittman (2005) argue that the legal, socio-moral construct of "best interest" has no specific, operational definition in terms of psychological assessment, concluding that, as clinicians respond to the ultimate issues (e.g., who should be the custodial parent), the empirical foundation for such conclusions is tenuous or non-existent. Thus, the court may be basing its decision on the personal value judgements of court-assessors who happen to have professional credentials.

4. Conclusion

This article aimed to provide a critical reflection on the medicalization of judicialized family conflicts, and discuss how the medical and social science (psychologists,

psychiatrists, social workers) discourses and professionals are mingled in the Portuguese civil guardianship proceedings. The analyses point to two main conclusions.

First, the medicalization of family conflicts within the regulation of parental responsibilities is a process mediated by different actors who participate in the definition of legal norms and their practical application, such as judges and public prosecutors, in which medical professionals are not always directly involved. Thus, an intricate relationship is established between legal/judicial professionals and medical/ psychological professionals, both in terms of the creation of law and in its practical application. Secondly, it is concluded that not only do medical and psychological assumptions on the child's development resonate in the determination of the custody arrangement that best suits the child's needs, but there is also a tendency in these processes to reduce to and treat family conflicts as pathological problems and to adopt medical and/or therapeutic solutions and not "exclusively" judicial ones, especially when the family relationships do not comply with what is considered acceptable or normal.

This reflection on the medicalization and normalization of family conflicts gives rise to two interconnected questions. The first as to do with the reproduction of social inequalities, and the second with the objectivity and validity of the contribution of the court assessors to defining custody, visitation regime and maintenance. The analysis reveals how the attempt to normalize behaviours that are outside the norm of "good divorce" or "good parent-child relationship", whether it is the difficulty of overcoming marital conflict or the rejection of one of the parents, often hide problems and (pre-)existing social inequalities, and reproduce them. Specifically, the separation of the conjugal and parental experiences can put victims of domestic violence and their children at risk, by forcing the parents to communicate to make decisions regarding their child.

The medicalization process transforms aspects of daily life into pathologies, restricting the range of what is considered acceptable or normal (Conrad 2007). However, as Canguilhem's (1998) points out, the normal is not a static or peaceful concept, but a dynamic or polemical concept. Social normality is always based on contingent values; the order it produces is not inscribed in any a-historical necessity but always linked to political choices, and specific economic, technical and moral needs. Despite the extensive literature on how to conduct assessments, it is often impossible for a court assessor to make rigorous, research-based predictions about the effects of different custody regimes on a particular child. Moreover, the recommendations on which regime will be in a child's best interest are inevitably based, at least in part, on the personal values and experiences and clinical judgments of the experts (Tippins and Wittmann 2005), which is particularly serious if the opinion is perceived or represented as having the authority of science, or as neutral and objective elements. Court-appointed assessments, like any other form of knowledge, are neither neutral nor objective, they are real speeches, in which the assessors select and establish the methodologies and techniques to be adopted and define what is true and what is false, qualifying and disqualifying narratives. This does not mean that the relevance of the experts' contribution to the judicial decision is not recognized, especially considering their specialized training on family dynamics and the needs and specificities of the child(ren) that / the judiciary professionals do not obtain

in their traditional training. However, it is considered that only by recognizing the contingent and indeterminate character of judicial expertise and training of magistrates is it possible to reach decisions that are more just and appropriate to the specific needs of each child and family.

The current analysis presents two key limitations related to the empirical data used. The first limitation concerns the fact that the processes analysed took place before the last legal change, which requires future studies to understand if there was any transformation. The second limitation regards the limited scope of the sample collected in a single Portuguese Family Court, restricting the generalisability of the research findings. This article is, nevertheless, to the best of my knowledge, the first endeavour to address the medicalization process of the conflicts in the Portuguese judicial system. Medicalization presents two main challenges for the future regulation of parental responsibilities. First, the need for clearer statements by assessors in the reports about the limitations of existing research and about the limitations on an assessor's abilities to make reliable predictions. Second, the need to implement better training for judges and prosecutors about medical and social science research and its limitations. That is to say, if within the scope of civil guardianship proceedings for the regulation of parental responsibilities the "monopoly of the law to decide" is dissolving, the magistrates still have a crucial and indispensable role in the promotion of democratic and citizen access to law and justice to better serve the best interests of the children involved.

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