



PROTECTION MEASURES APPLIED BY THE GUARDIANSHIP COUNCIL DUE TO CHILDREN AND ADOLESCENTS WHO ARE VICTIMS OF SEXUAL ABUSE



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ABSTRACT

This article aims to investigate and describe the protection measures applied by the Guardianship Council due to sexual abuse against children and adolescents, bringing into account the importance of the action of this body in guaranteeing the fundamental rights of children and adolescents who are victims of sexual violence. The present research is of a theoretical and documentary nature, based on the Statute of the Child and Adolescent (ECA), Law No. 13.431/2017, scientific articles and official publications, the successful initiatives in the prevention and response to sexual abuse will be analyzed, as well as the articulation and participation of the protection network formed by institutions such as schools, health services, social assistance and the justice system. The study highlights the relevance of the action and the challenges faced in the effective application of protective measures. It is concluded that the strengthening of the support network and the continuous training of guardianship counselors are essential to confront sexual violence against children and adolescents.

Keywords: Tutelary Council. Child sexual abuse. Protective measures. Protective net. Children's rights.

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INTRODUCTION

The Guardianship Council was created in Brazil from the enactment of the Statute of the Child and Adolescent (ECA), which was instituted by Law No. 8,069/1990, on July 13, 1990, its creation presented a milestone in the transition from the "Doctrine of Irregular Situation" that until then was in force at the time of the old Minors Code (Law No. 6,697/1979) with the transition to the Doctrine of Full Protection, which is based on the principles of the Federal Constitution (CRFB) of 1988 and the UN International Convention on the Rights of the Child (1989).

Before the ECA, children and adolescents were treated as "minors" and in most situations seen from a welfare or repressive perspective, those who were in an irregular situation as orphans, poor or involved in crime, could be hospitalized, removed from their family life or even deprived of their right to freedom, which often occurred without any legal process. There is a massive violation of the rights of minors.

Through the Federal Constitution of 1988, in article 227, it was established that it is the duty of the family, society and the State to ensure the rights of children and adolescents as absolute priority, bringing with them a new vision of childhood and adolescence as subjects of rights, such change created a space for the creation of the Statute of the Child and Adolescent (ECA), which consolidated this new doctrine.

It is within this perspective that the Tutelary Council was born, according to article 131 of the ECA, as an autonomous, permanent and non-jurisdictional body, charged by society with ensuring the fulfillment of the rights of children and adolescents. With the idealized objective for the protection of children and adolescents, bringing together and welcoming the service of the communities and acting in an articulated way with the protection network. The creation of Guardianship Councils in each municipality became mandatory, according to article 132 of the ECA, and there must be at least one per municipality, the members are elected by the community, which reinforces its legitimacy as an organ that represents society in the defense of children's rights.

Sexual violence against children and adolescents institutes a serious violation of human rights, bringing with it profound impacts on the physical or emotional and psychological integrity of the victims, in Brazil even with the advancement of legislation over the years, cases of child sexual abuse continue to be registered becoming a serious social problem, and an effective approach is needed from the institutions responsible for protection.

The Tutelary Council, created by the Statute of the Child and Adolescent ECA (Law No. 8,069/1990), is an extremely important body in the defense of the rights of children

and adolescents, as it has the responsibility of applying protection measures provided for in article 101 of the ECA, when the rights of minors are threatened or violated, in cases of sexual abuse, the Guardianship Council is responsible for taking the necessary measures to ensure the victim's safety, in addition to acting in conjunction with other institutions in the protection network, such as health services, social assistance and the justice system. The Guardianship Council plays an extremely important and fundamental responsibility in the application of protection measures in order to prevent, identify and intervene in cases of sexual abuse.

Among the most critical cases that need the intervention of the Guardianship Council are sexual abuse, which requires effective protection measures to ensure the safety and well-being of the victims, as well as has its attributions provided for in article 136 of the ECA, as described below:

- I – to assist children and adolescents in the cases provided for in arts. 98 and 105, applying the measures provided for in article 101, I to VII;
 - assist and advise parents or guardians, applying the measures provided for in article 129, I to VII;
- II – to promote the execution of its decisions, being able to do so: 66 Statute of the Child and Adolescent
 - a) request public services in the areas of health, education, social work, social security, labor and security;
 - b) to represent before the judicial authority in cases of unjustified non-compliance with its resolutions;
- III – forward to the Public Prosecutor's Office a report of fact that constitutes an administrative or criminal infraction against the rights of the child or adolescent;
- IV – to forward to the judicial authority the cases within its competence;
- V – provide the measure established by the judicial authority, among those provided for in article 101, from I to VI, for the adolescent perpetrator of an infraction;
- VI – issue notifications;
- VII – request birth and death certificates of a child or adolescent when necessary;
- VIII – advising the local Executive Branch in the preparation of the budget proposal for plans and programs to meet the rights of children and adolescents;
- IX – to represent, on behalf of the person and the family, against the violation of the rights provided for in article 220, § 3, item II, of the Federal Constitution;
- X – represent the Public Prosecutor's Office for the purpose of actions for loss or suspension of family power, after exhausting the possibilities of maintaining the child or adolescent with the natural family;
- XI – Promote and encourage, in the community and professional groups, dissemination and training actions for the recognition of symptoms of maltreatment in children and adolescents. (BRAZIL, 1990)

Through this, the guardianship council has the role of developing means in which they come to care for the rights of these children, as the body has the centrality in the resolution of suspicion or possible confirmations of violations of the rights of minors, since the body has the legitimacy to act in guaranteeing the rights of children and adolescents when these rights are violated

Law No. 13,431/2017 establishes the system to guarantee the rights of children and adolescents who are victims or witnesses of violence, reinforcing the importance of specialized care, it establishes specialized listening and special testimony, these being legal instruments that seek to safeguard and protect children and adolescents.

This article aims to investigate and describe the protection measures applied by the Guardianship Council due to cases of sexual abuse against children and adolescents. The specific objectives are: (1) to identify initiatives in the prevention and response to child sexual abuse; and (2) analyze the performance of the protection network formed by institutions such as schools, health services, social assistance and the justice system. The research is of a theoretical and documentary nature, based on current legislation, especially the Statute of the Child and Adolescent and Law No. 13,431/2017.

According to the ECA, the Guardianship Council has the competence to apply protection measures to children and adolescents at risk (Art. 98 and Art. 101). Such measures include, but are not limited to, referral to parents or guardians, through a term of responsibility; temporary guidance, support and monitoring; inclusion in a community or official program to help the family, children and adolescents; and the request for medical, psychological or psychiatric treatment, in an inpatient or outpatient regime. (BRASIL, 1990, art.101)

The intervention of the Guardianship Council must be immediate and multidisciplinary, considering the legal, psychological and social aspects of the case. Specialized listening, for example, is an essential practice that aims to minimize the victim's suffering, avoiding revictimization during the reporting and investigation process. This technique should be performed by trained professionals who can provide a safe and welcoming environment for the child or adolescent (OLIVEIRA, 2013).

THE FULL PROTECTION OF CHILDREN AND ADOLESCENTS IN BRAZIL: CONCEPT, LEGISLATION AND HISTORICAL CONTEXT

The protection of the rights of children and adolescents in Brazil is a recent achievement and being the result of a long historical trajectory marked by exclusion and the absence of legal guarantees, for a long time childhood was neglected, being seen as an inferior phase and subordinated to the interests of the family and the State. But this scenario began to change significantly with the enactment of the Federal Constitution of 1988, which recognized children and adolescents as subjects of rights and instituted the doctrine of full protection.

According to Oliveira (2013), this change represented a break with the old doctrine of irregular status, adopting a new perspective of recognizing childhood as an absolute priority.

In a context of sexual violence, full protection plays an essential role, as it recognizes and establishes the vulnerabilities of children and adolescents in situations of abuse and exploitation. Contrary to previous approaches, based on repression and welfare, the Doctrine of Integral Protection brings with it the emphasis on the need for preventive measures and shared responsibilities between the State, family and society. The ECA provides for specific actions that combat negligence and violence, including sexual violence, and highlights the obligation and importance of reporting and priority assistance to victims. Through this, it is clear that full protection not only directly combats sexual violence, but also promotes healthy and safe development, respecting the dignity and human rights of minors.

The protection of the rights of children and adolescents in Brazil is the result of a long and hard process of social struggles and advances in laws. From the Federal Constitution (CRFB) of 1988 and the enactment of the Statute of the Child and Adolescent (ECA), Brazil then began to adopt the Doctrine of Full Protection, bringing a new paradigm of care and protection with children and adolescents, centered on the guarantee and search for fundamental rights in the shared responsibility between the State, family and society.

In Brazil, it is in the Statute of the Child and Adolescent, which is instituted by Law No. 8,069/1990, (ECA). The legislation has great value and represents the consolidation of the Doctrine of Full Protection, which breaks with the irregular situation and recognizes children and adolescents as subjects of rights in a peculiar condition of development. This advance is reinforced by the implementation of the Rights Guarantee System (SGD), which establishes a protection network by holding the State, the family and society accountable. According to ALMEIDA (2018), the enactment of the ECA transformed the role of the State in relation to childhood, with emphasis on articulated action and centrality in ensuring family and community life. Law No. 13,431/2017 comes as a complement by creating an integrated system of listening and specialized care for children and adolescents who are victims or witnesses of violence, seeking to avoid revictimization and ensure the effectiveness of protective measures. According to Almeida (2018), although the legislation is advanced, its applicability faces obstacles in the daily practice of the Guardianship Councils, such as the absence of a defined flow between the SGD bodies and failures in institutional communication. The author emphasizes that counter-referral –

the response of the responsible bodies to the protective measures applied – is essential for the effective follow-up of cases and the restoration of victims' rights.

The stabilization of the human rights of children and adolescents, especially in the face of situations of sexual violence, has a requirement more than legal recognition, it demands effective articulation between the different sectors of public management. The Federal Constitution (CRFB) of 1988 and the Statute of the Child and Adolescent (ECA) laid the foundations for this protection, but its implementation still faces some resistance. According to Bidarra and Góes (2020), confronting these violations only becomes possible when the fragmented logic of public policies is broken and an intersectoral approach based on dialogue and co-responsibility between the actors involved is adopted.

Law No. 13,431/2017, by establishing the Rights Guarantee System for children and adolescents who are victims or witnesses of violence, brings the importance of forming intersectoral protection networks. According to the authors, experiences developed in municipalities such as Dois Vizinhos and Toledo (PR) demonstrate that the elaboration of joint protocols and interconnected care flows between health, social assistance, education and justice result in greater effectiveness in protective actions (BIDARRA; GÓES, 2020). The experiences reinforce that even legislation, although essential, can only be fully implemented through the coordinated and committed action of the professionals who are part of the Rights Guarantee System.

THE ROLE OF THE GUARDIANSHIP COUNCIL IN THE APPLICATION OF PROTECTION MEASURES IN CASES OF SEXUAL ABUSE

The Guardianship Council is an extremely important body in guaranteeing and protecting the rights of children and adolescents in Brazil, its legal provision is in article 131 of the Statute of the Child and Adolescent (Law No. 8,069/1990), it is a permanent, autonomous, non-jurisdictional body, which is zealous for the fulfillment of the rights guaranteed by child and adolescent legislation. Its work is especially relevant and focused on cases of sexual abuse, where rapid, humanized and articulated intervention with the protection network is indispensable.

According to article 136 of the ECA, the Guardianship Council is responsible for the attributions such as: assisting children and adolescents in situations of personal and social risk; apply protection measures provided for in article 101 of the ECA; request public services in the areas of health, education, social assistance, among others; and represent the Public Prosecutor's Office for the purpose of civil and criminal liability when a violation of the rights of the child is verified.

The work of the Guardianship Council is strategic in the defense of the rights of children and adolescents who are victims of sexual abuse, especially due to its legal attribution to apply protective measures provided for in the Statute of the Child and Adolescent (ECA). However, this function faces concrete challenges related to the scarcity of resources, precarious structure and difficulties in articulating with the protection network. According to Campos (2014), the Guardianship Councils still operate in limited conditions, which makes it difficult to refer victims to specialized services and compromises the effectiveness of protective measures.

And in addition, the effectiveness of the performance of the counselors is in a way directly linked to the existence of well-defined inter-institutional flows, continuing education and technical support. The absence of counter-referral by the services called prevents the adequate follow-up of the cases, contributing to the discontinuity of care and weakening of the protection of victims. Despite being supported by a robust legal framework, the Guardianship Council still faces structural obstacles that limit its ability to guarantee the rights of children and adolescents in situations of sexual violence. (CAMPOS, 2014).

The Guardianship Council, as provided for in article 131 of the Statute of the Child and Adolescent (ECA), has the responsibility to ensure that the rights of children and adolescents are respected and protected. And when there is suspicion or confirmation of sexual abuse, the Council takes measures to ensure the protection of the victim, whether these means are referral for psychological care, family monitoring and request for support from the public service network. Sometimes it is necessary to remove the child from family life through institutional care, which is a situation that can only be done in extreme and urgent situations. Even in these cases, the council needs to immediately notify the judicial authority, since according to paragraph 2 of article 101 of the ECA, this measure is the competence of the judge.

Law No. 13,431/2017 is a complement to this process by establishing specific and clear ways of listening to the child or adolescent victim of violence, such as specialized listening and special testimony, to prevent them from suffering again when reporting the facts. In view of this structure, the Guardianship Council has an articulating role, activating schools, health units, social assistance and the Public Prosecutor's Office. According to Murillo Digiácomo (2021), the focus of action should be, whenever possible, to keep the child with his family, offering support and guidance. Institutional care should only be used as a last resort, for a limited time, and with monitoring, reinforcing the principle of full protection provided for in Brazilian legislation.

CHALLENGES AND PERSPECTIVES IN THE IMPLEMENTATION OF PROTECTIVE MEASURES BY THE GUARDIANSHIP COUNCIL

In view of this, the protective measures carried out by the Guardianship Council face numerous historical obstacles, which are conceptual and structural and compromise the guarantee of full protection for children and adolescents. It happens that many of the extreme measures such as institutional care are applied improperly, without exhausting the alternatives provided for in the legislation, such as strengthening the family of origin or inclusion in social programs. According to Digiácomo (n.d.), there is still an institutional culture that considers foster care as an immediate solution, disregarding its exceptional and provisional character as provided for in article 101, paragraph 1, of the ECA. This inappropriate use violates the principle of family coexistence and demonstrates the need for greater technical training and articulation between the bodies of the protection network.

On the other hand, there are promising perspectives when observing the current legislation itself, which offers foundations for a more qualified performance of the Tutelary Council, it is highlighted that the Statute of the Child and Adolescent (ECA), especially after Law No. 12,010/2009, brought into account the importance of preventive action with families, establishing as priorities measures such as guidance, social promotion and family support before any withdrawal from family life. The guardianship council should act as a guarantor of rights, and not as an agent of institutionalization, and should apply measures that strengthen family ties and activate, whenever necessary, the judicial system for decisions involving the removal of the child from the home. DIGIÁCOMO (N.D.)

The role of the Guardianship Council is indivisible from the articulated functioning of the protection network, no protective measure applied in isolation achieves effective results if it is not accompanied by public policies and services that guarantee comprehensive support to the child, adolescent and family.

According to Digiácomo (n.d.), it is essential that the councils not only refer cases, but also carry out activities that stimulate and cover the proper functioning of health, education, social assistance, public security and the judiciary, as full protection depends directly on this integration. The logic of protection cannot be based on fragmented actions, but on coordinated inter-institutional responses.

In addition, it is worth mentioning that the legislation itself reinforces this interdependence. Law No. 8,069/90 establishes, in its article 88, item VI, that the policy of care for children and adolescents must ensure integration between the bodies of the Rights Guarantee System.

According to Digiácomo (n.d.), therefore, the guardianship council must act as a link between the services and society, acting with an active role in the articulation of the network and acting in a supervisory manner the compliance with the measures applied. This action requires constant dialogue, construction of service flows and mutual accountability between the parties involved in child and adolescent protection.

Although supported by a firm legal framework, the performance of the guardianship council has its difficulties to implement protective measures effectively, many of these challenges are related to the permanence of an institutional culture marked by welfare practices and the insufficiency of articulated laws. According to Lima (2022), although the ECA establishes the Council as an autonomous and permanent body, its performance is often limited by factors such as lack of resources, lack of technical knowledge, and lack of recognition by other bodies in the protection network. Such limitations compromise the guarantee of full protection recommended by the legislation.

However, the strengthening of the Guardianship Councils does not depend only on structural changes, but also on a conceptual advance in relation to protection. According to Lima (2022), overcoming the logic of simple punctual intervention requires that counselors be trained to act based on a deep understanding of the doctrine of full protection, articulating preventive, protective, and socio-educational actions. Such a perspective in a way expands the role of the council, transforming it into a strategic agent in the construction of public policies aimed at childhood and adolescence, especially in contexts of social vulnerability.

The effective performance of the Guardianship Council requires structure and autonomy, the strengthening of its function is a link between society and the public power and the services of the service network. As provided for in article 88 of the Statute of the Child and Adolescent, the services must be organized based on the integration of efforts between the different spheres of government and society. This means saying and recognizing that child protection is not the exclusive responsibility of one body, but a shared responsibility that requires an organized and planned way, cooperation and ethical commitment from the parties involved. Such absence is harmful to the agency, as this articulation contributes to the overload of the councils, which end up assuming attributions that should be fulfilled by other sectors of the network.

It is necessary to understand and understand that the guardianship council is not only an organ of response, but also of provocation and political occurrence, its legitimacy comes from the popular vote and its institutional role of ensuring the absolute priority of the rights of children and adolescents. Therefore, it should be recognized as an instance

of denunciation of the omissions of the State and of means of public policies that meet the real needs of the child and adolescent population. When the body has support, guaranteed autonomy and dialogue with the other bodies of the Rights Guarantee System, the council can fully exercise its mission: to transform violations into opportunities for care, prevention and reconstruction of family and community ties.

CONCLUSION

Concluding an important reflection on the role of the Guardianship Council in the face of cases of sexual abuse in the face of children and adolescents is also reaffirming the importance and urgency of a society that is truly committed to childhood and adolescence.

Each denunciation and intervention represents an interrupted story, a life marked by feelings of pain, silence and most of the time invisibility and oblivion. The Guardianship Council, even in the face of so many structural and institutional limitations, emerges as one of the closest and most welcoming voices of these victims, often being the only open door when the rest of the network fails.

But to ensure protection is not an isolated task, the child does not defend himself, he needs a support network and attentive adults, prepared institutions and effective public policies. It is necessary to go beyond the established protocol and start seeing the human being behind each case, welcoming with listening, care and commitment. Brazilian legislation offers solid paths – such as the Statute of the Child and Adolescent and Law No. 13,431/2017 – but it is concrete actions, in a network, with sensitivity and responsibility, that truly make protection effective.

May this work serve not only as a theoretical study, but as a call and a search for empathy, mobilization and the construction of more humanized and effective practices in the defense of the rights of children and adolescents. May the Guardianship Council continue to be resistance, presence and, above all, hope for those whose voices still struggle to be heard.

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