

Youth justice, ‘education in the law’ and the (in)visibility of digital citizenship

Maria João Leote de Carvalho

CICS.NOVA - Interdisciplinary Centre of Social Sciences,
NOVA School of Social Sciences and Humanities

The need for change in youth justice

In this era of innovation and technological progress – the 4th Industrial Revolution (Schwab, 2017) –, network connectivity, mobile and wireless, allows the liaison between individuals in any space and at any time. This liaison has become an essential part of everyday life and its impacts are felt in all fields of children’s and young people’s social life (Castro et al., 2018). The digitalisation of society (Castells, 2009), accelerated and reinforced as a result of the pandemic that has affected the population on a global scale in recent months, puts youth justice systems under greater pressure in the face of emerging issues and dilemmas. Among these, particular attention should be given to the promotion of digital citizenship in contexts of deprivation of liberty (Carvalho, 2019).

Nanotechnology and sensor technology, Artificial Intelligence and 5G networks (next-generation telecommunications networks) harness new technological ecosystems marked by the convergence between physical objects and virtual environments, such as the ‘Internet of Things’ (IoT). In the globalised information society of ‘clouds’ and ‘cookies’, rights and citizenship acquire a renewed importance, inseparable from interconnection between risks and opportunities

in the individualised, varied and increasingly complex uses of online digital technologies.

The most diverse equipment, technologies, digital environments – particularly the internet –, apps and media realities occupy a central place in socialization during childhood and youth, facilitating access to information, entertainment, communication and social relations (Castro, 2017). The development of individuals' social identity is increasingly intertwined with the identity(ies) built on the digital level by the standardization of the internet in everyday life for children and young people. In Portugal, most children no longer seem to pay attention to the difference between offline and online environments (Ponte & Baptista, 2019). This orientation highlights the importance of digital citizenship for the younger generations, especially in life contexts marked by social and/or digital exclusion factors.

The social construction of technology (Leukfeldt & Holt, 2020) and citizenship among socially at-risk populations gains a new visibility as structural inequalities repeatedly tend to correspond to inequalities in digital competences, to differentiated social opportunity structures in the participation of individuals and social groups in online virtual and technological spaces.

In this sense, it is important to remember that children and young people do not acquire digital literacy naturally or automatically; that is, they are not born digital (Ponte, 2016). What everyone does is influenced by the opportunities that platforms and technologies offer in a process mediated by the family, peers, school, and community. These opportunities are inseparable from values and norms, social conditions, the national context (technological infrastructures, education system, and public policies) and trends in the transnational cultural industry (Simões et al., 2014; Ponte et al., 2018). As Simões et al. (2014, p. 7) highlight “the social context of Internet access marks the experiences of children and young people on the network. In particular, this context marks the conditions that allow them to take advantage of opportunities and the conditions in which they are exposed to risks”.

The complexity of social life in contemporary settings is expressed in the coexistence of various forms and experiences of delinquency in which, in addition to the association with individual trajectories and differentiated social contexts, the weight of the presence or use of online digital technologies gains visibility. A trend that brings increased demands to the intervention of youth justice.

What's changing in youth justice? How does it change?

The starting point for the establishment of youth justice systems is the conception that children who have committed facts qualified by criminal law as a crime – when compared with adults in a similar situation – have specific needs that require different responses, educational measures or sanctions from those applied to adults. According to a set of international standards of the United Nations and the Council of Europe, the judicial system must ensure that measures and sanctions are complied with on the basis of a 'perspective of realisation of the Rights of the Child' that defines rehabilitation, socialization and education as fundamental principles (Carvalho, 2019).

In Portugal, this system takes the form of the application of the Educational Guardianship Law (LTE, Law n.º 4/2015, of 15th of January, first amendment to the Law n.º 166/99, of 14th of September) to children who, between the ages of 12 and 16, have committed facts qualified by criminal law as a crime. The Portuguese youth justice system differs from most other countries of the European Union, giving less importance to the fact committed than to the need for the young person to be educated about the fundamental values of the community that have been violated by the illicit act. It is therefore considered as a third way, between a model of protection and a criminal or punitive model. The youth justice measures applied by the courts aim to socialise and educate children and young people in the values protected by criminal law, in a process called 'education in the law', which means empowering them with the necessary skills and knowledge for their development and participation in society in a responsible manner.

Results of the preliminary analysis of information collected in youth justice proceedings consulted in Family and Children Courts in the Metropolitan Area of Lisbon under the project "YO&JUST – Delinquency and Criminality in Juvenile and Criminal Justice in Portugal", funded by the Foundation for Science and Technology (SFRH/BPD/116119/2016), allow us to highlight three challenges that youth justice confronts in the face of the social construction of technology in the present time.

The emergence of cyber delinquency : (new) practices and profiles

The first challenge identified relates to changes in the registered delinquent practices and sociodemographic profiles of offenders as a result of the increasing

use of digital technologies. Cyber delinquency, as a category reported to commit facts qualified by criminal law as a crime using online information and communication technologies by children (Rokven et al., 2018), is a growing reality both in scale and complexity (Kranenbarg et al., 2019). Actions that are associated with different levels of digital citizenship because those who practice them are not always fully aware that their online acts constitute illicit facts. Additionally, many do not have the perception of the dimension of the impacts on the victims and of the audiences they reach.

The accessibility and ease of use of online digital technologies, together with the power they confer on those who use them, significantly shape the lives of children and young people and offer unique opportunities for delinquency (Brewer et al., 2018). Some of these actions are transposed from the physical (offline) context to the online context, changing form and scope, and similar types of actions and dynamics can be maintained; the difference is that they are now carried out using digital technologies that once did not exist or were not accessible. Another part configures a set of new criminal offenses, which are only committed aiming at or using digital equipment and environments; that is, their existence depends exclusively on the technological component (i.e. hacking, DDos attacks, etc.) (Wall 2007).

If it is true that it is in online digital environments that panoply of crimes against children and youth is committed, the reality is that also in this setting that some young people reveal themselves as authors of new (and old) delinquent practices. The concrete changes due to the prevalence of forms of socialisation that have changed from physical territories to virtual territories, due to the access and use of online digital technologies, lead to the transformation and reconfiguration of social relations, with special focus on family and peer relations (Ponte, 2016). This also leads to new forms of sociodigital construction of violence, easily disseminated and accessible anywhere in the world to the social and public groups for whom other (previous) models of violence did not reach (Carvalho, 2018).

Currently, one of the biggest changes is that the potential economic damage of online youth delinquency is significantly higher than offline. For example, what often starts out as a simple 'play by violating rules of a video game, under the guidance of easily accessible online tutorials that do not require specific technical knowledge, can quickly escalate to other practices, such as hacking, reaching people, equipment and businesses on a global scale with high personal and material damages.

Models of violence emerge in each generation and become a reference for children and young people, so this is not a new social problem. The substantial change lies in the way these models are currently social and digitally constructed and disseminated anywhere in the world, significantly broadening the spectrum of children and young people to whom they may reach, distant in most cases from adequate parental or educational supervision or monitoring (Carvalho, 2019). In this sense, the first analysis of a sample of youth justice proceedings shows a change in socio-demographic profiles, by reducing the presence of traditionally dominant profiles – socially disadvantaged youth – in close connection with the significant broadening of the social spectrum and basic school qualifications of young people to whom a judicial measure is applied. More qualified and integrated in school, some with educational paths of excellence, socially integrated in their communities and with apparently higher levels of family support have been more frequently identified in relation to online delinquent practices.

From criminal investigation to the assessment of the need for 'education in the law'

The second challenge in this field refers to the growing complexity of criminal investigation and profiling of children and young people coming into contact with the youth justice system. In this context, the cases of those who cross the double condition of victim and aggressor are frequent in the court proceedings analysed, in an incessant exchange of roles that is difficult to ascertain.

The new reality of cyber delinquency, by the nature of digital technological involvement, imposes the need for an in-depth critical analysis of the appropriateness of the categories, tools and models for assessing the profile of the youth offender used today, an emerging concern in different countries' justice systems. The challenges are intense and highly demanding for the jurisdiction of the family, children and youth, which has to evolve in an increasingly articulated manner with various specialised actors, called upon for each case, given the multidimensional essence of these situations. One of the main constraints at present in Portugal arises from the scarcity of specialised human resources in the area, on the most diverse levels of intervention, and from the degree of digital literacy of the professionals in charge of the process of the young person assessment conducted by the DGRSP – Directorate-General for Reinsertion and Prison Services with the involvement of other services and entities from

the community. These factors can affect the identification, understanding and definition of risks, opportunities and responses for each case.

There are also questions about the material resources and equipment required, whether there are sufficient numbers throughout the country, and also whether these are properly updated and capable of integrating the continuous software updates without which their operability is jeopardized. Moreover, in the criminal investigation of illicit facts online an increased technical knowledge is required for the application of procedures and mechanisms aimed at obtaining criminal evidence, only possible through the cooperation between different entities, public and private, national and often international.

There are, therefore, many questions that arise for judicial intervention in the search for more effective measures. This is a central concern in the scientific and legal debate that is progressing internationally on youth justice (Brewer et al., 2018; Rovken et al., 2018; Carvalho, 2019).

In the court proceedings already analysed in the project YO&JUST, doubts are raised regarding the effectiveness of the process of assessing the risk profile of a child or young person based on the current scientific instrument used in the Portuguese youth justice system as it needs to be reformulated and scientifically validated to meet the profound changes in the ways of life in childhood and youth in the last decade. The integration of information on the uses and consumption of the new media, with particular emphasis on the relationship of the child or young person with the Internet, is crucial for the implementation of judicial measures aimed at meeting the specific need of the type of delinquent behaviour.

Online platforms are key instances of socialisation through which opportunities for change can also be triggered in actions and measures that aim to be more effective in disrupting a deviant path. In sum, a question at the heart of the current scientific debate, raised by several authors (Rovken et al., 2018; Brewer et al., 2018) and also raised in this study (Carvalho, 2019), is the need to assess the effectiveness of current models and assessment tools in relation to new digital risks, more associated with certain profiles of cyber delinquency. This is an open question that needs to be further explored.

Deprivation of liberty, ‘education in the law’ and digital citizenship

The idea that youth justice can promote appropriate institutional environments that facilitate the rehabilitation of young people is easier said than done

(Mackenzie, 2006). The promotion of digital citizenship in the context of deprivation of liberty - one of the objectives of the *DiCi-Educa project - Educational centres with digital and civic competences* at the origin of this publication - is urgent in the implementation of the Portuguese custodial youth justice measure in an Educational Centre¹, otherwise the principle of "education in the law", which sustains it, will end up emptying in the face of increased electronic involvement in the lives of children, youth and families (Carvalho, 2018).

Children and young people today have never experienced a world without online digital technologies. It is essential to realise that today's connectivity, mobile and wireless, is growing, crossing systems of multiple producers, distributors and consumers, in a dilution of physical boundaries that are blurring in the new virtual territories. Children's lifestyles quickly spread throughout the world, assuming a character of universality and, for the majority of children and young people, identity references are made through common standards and logic of action, regardless of the point on the planet where they live. At the same time, the knowledge and digital competences put into play by the use of these means are being acquired and developed at younger ages, in an almost intuitive perspective, where they increasingly move into the condition of producer, leaving aside a mere positioning as receiver or consumer.

It is within this framework that arises the need to contribute to the design of strategies and programmes that can respond to the imperative need to build up the digital citizenship of those who are in the process of being incarcerated, at the risk of becoming a social group at higher risk of being left behind in the acquisition of civic and digital competences that are fundamental requirements for entering a globalised and increasingly digitised labour market and society.

The rehabilitation based on the fundamental principle of 'education in the law', established in the Educational Guardianship Law, should imply a broader concept of education in which digital citizenship must necessarily fit (Carvalho, 2015). From a strictly legal point of view, at the heart of this guiding principle is a purpose of rehabilitation aimed at young people, as subjects of rights.

In a context of deprivation of liberty, intervention is structured around the confrontation of two visions of the world - institutional and institutionalised - which can converge if adequate opportunities are promoted to understand what rehabilitation really means for the young people themselves. Without the implementation of this guideline, the purpose of rehabilitation may be

1 Educational Centres are the youth justice institutions for enforcement of measures of deprivation of liberty in the Portuguese youth justice system.

achieved in a vacuum and the probability of positive results will be lower (Carvalho, 2015).

It is in this context that the discussion on digital citizenship and the development of digital skills, which covers both young people and professionals who deal with them, is placed. Unlike what happens in other European Union countries, in Portugal children and young people have more digital skills and a level of technological informational literacy clearly higher than that of adults, which can be reflected in the intervention and relationships in an Educational Centre.

In information societies like the one we live in, the construction of the so-called digital generation does not develop or cover all children and young people in the same way, and ends up being reflected in the perceptions of risk and (un)security that go through their respective life contexts. At present, the youth justice intervention has necessarily to attend the conflicts and power relations emerging in digital environments young people bring with them at the entrance in the Educational Centre, many times as active consumers and economic agents that mobilize several market niches and technological consumptions. The purpose of admission to a custody grounded on the goal of rehabilitation of the young people depends on a paradox: the aim is to achieve responsible autonomy, but it must be implemented in a context of strongly regulated deprivation of liberty. This apparently contradictory balance, between the need for formal social control and the demand for empowerment of young people (Carvalho, 2015), calls for more involvement and responsibility of the community in the whole process and should include formal, non-formal and informal education for digital technologies.

In this context, it is undeniable that security is a basic concern – it must always be present in the consideration of access to and use of online digital technologies, which requires creativity and a demanding and simultaneous flexible planning, as demonstrated by the experience of the DiCi-Educa research team –, but it cannot be dissociated from the educational and rehabilitation dimensions underlying the core principles of youth justice.

However, if security issues prevail over educational purposes, the consequences of this policy and institutional choice on young people's perceptions may lead to this – usefulness of time spent in detention in the Educational Centre, compromising rehabilitation goals (Neves, 2007).

In societies marked by risk aversion (Gill, 2007), which, so often, promotes a distorted parental and institutional hypervigilance that prevents children and young people from knowing and experience how to deal with the risks that arise

in their lives, online risks – but not only that – the importance of training all those who work in this area on the contours of the socio-digital construction of delinquency requires a permanent updating of knowledge on the transformations of the spaces and processes of socialization in childhood and youth today.

In a time of unprecedented uncertainty and risk in the face of emerging global threats, online digital technologies are gaining space and meaning in social life. Thus empowering children, young people, but also professionals dealing with them in daily life in youth justice contexts, in digital security and media education should be a priority.

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