WORLD CSS World Conference on SOCIAL SCIENCES

4th World Conference on Social Sciences

03 - 05 June 2022 Oxford, United Kingdom

The discretionary power of social workers and judges in the Portuguese Legal System of Child protection: boundaries and paradoxes

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ABSTRACT

Social workers promote their activity in highly public areas, as the execution of public policies or in the intervention in judicial proceedings, often facing demands for practical requirements by the nature of the cases in which they are involved and by the organizations for whom they work. This practice assumed by the social workers is often guided by a creative reading of the rules, as a response to the unpredictable nature of the contexts in which they intervene that allows them to make professional judgements with a strong discretionary nature. In the Portuguese Legal System of Child Protection, the social worker's intervention is based fundamentally on the support to the judge's decision process, and it is formally presumed that the decisions of this professional are interpreted according to criteria of opportunity and convenience, assured only by the court. We intend to reflect, based on a documental analysis of historical-legal nature, on how the intervention of the social worker is influenced by the legal imposition of the judges who have a wide discretionary power that enables them to require the judicial diligences to the social worker, which ends up restraining and influencing their professional judgement process and the decisions they make in their everyday work.

Keywords: Decision-making; Discretionary power; Professional judgement.