



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2007

Country: Portugal

National correspondent

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1. Demographic and economic data

1. 1. General information

1. 1. 1. Inhabitants and economic information

1) Number of inhabitants

10569592

2) Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level (in €)

| | Amount |
|-------------------------|-------------|
| State level | 70196000000 |
| Regional / entity level | |

3) Per capita GDP (in €)

14657

4) Average gross annual salary (in €)

15010

5) Exchange rate from national currency (non-Euro zone) to € on 1 January 2007

Please indicate the sources for the questions 1 to 4

Questions 1, 2 and 3 - Instituto Nacional de Estatística (National Statistics Institute)

Question 4 - Ministério do Trabalho e da Solidariedade Social (Labour Ministry and Social Welfare)/Programa de Estabilidade e Crescimento (Stability and Growth Program).

Questions 1, 2 and 3 - Provisional data

Question 1 - Population on the 31 December 2005

Question 4 - The figure corresponds to the average gross annual salary within the whole of the economic activity (Public Administration included).

1. 2. Budgetary data concerning judicial system

1. 2. 2. Budget (courts, public prosecution, legal aid, fees)

6) Total annual approved budget allocated to all courts (in €)

506493712,93

7) Please specify

It refers to amounts related to the functioning of the courts, including court personnel remuneration. It does not include investment expenses.

Please, also refer to question 8.

Question 6 - (budget allocated to all courts) - very important note - the decrease of about € 45 000 000 when 2006 is compared to 2004 is only due to the fact that the fees paid to lawyers on the grounds of legal aid (around € 45 000 000 per year) were previously paid by the courts and are now paid directly by the Ministry of Justice. As the Ministry now pays the fees directly to the lawyers there is no longer the need to transfer the annual amount of around € 45 000 000 to the courts budget, please consider writing these (important) note on the report.

8) Does the approved budget of the courts include the following items? Please give for each item (or some of them) a specification of the amount concerned

| | | |
|---|---|--------------|
| Annual public budget allocated to (gross) salaries | <input checked="" type="checkbox"/> Yes | 345675546 |
| Annual public budget allocated to computerisation (equipment, investments, maintenance) | <input checked="" type="checkbox"/> Yes | 4740390,26 |
| Annual public budget allocated to justice expenses | <input checked="" type="checkbox"/> Yes | 33746479,09 |
| Annual public budget allocated to court buildings (maintenance, operation costs) | <input checked="" type="checkbox"/> Yes | 18941113,15 |
| Annual public budget allocated to investments in new (court) buildings | <input type="checkbox"/> Yes | |
| Annual public budget allocated to training and education | <input type="checkbox"/> Yes | |
| Other (please specify): | <input checked="" type="checkbox"/> Yes | 103390184,43 |

9) Has the annual public budget of the courts changed (increased or decreased) over the last five years?

- Yes
 No

If yes, please specify (i.e. provide an indication of the increase or decrease of the budget over the last five years)

10) In general are litigants required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:

- for criminal cases?
 for other than criminal cases?

If yes, are there exceptions? Please specify:

Subjective exemptions:

The Public Prosecutor, in the actions, proceedings and appeals, when he acts on his own

behalf, in the defence of the rights and interests that the law confers to him,

Legal persons with public administrative purposes

Voluntary organisations

Any citizen, association or foundation, that takes part in the procedures concerning the defence of values and assets protected by the Constitution

The victims of working accidents and the carriers of professional illness, in the procedures of accident or illness, when represented or sponsored by the Public Prosecutor.

Objective exemptions:

In the adoption procedures

In the minors' jurisdiction procedures, should the costs be at their charge

In the procedures concerning the liquidation and partition of assets belonging to social welfare institutions and to syndicate bodies

In the deposits and withdrawals that have to be made by the parts and which are considered normal specific procedural steps, as well as the release of securities, in inventories and in the civil enforcement actions

In cases of value inspection for counting effects in what concerns the justice tax.

11) If yes, please specify the annual income of court fees (or taxes) received by the State (in €)

88647942,61

12) Total annual approved budget allocated to the whole justice system (in €)

1114856467

13) Total annual approved public budget allocated to legal aid (in €)

35829192

14) If possible, please specify

| | the annual public budget allocated to legal aid in criminal cases | the annual public budget allocated to legal aid in other court cases |
|--------|---|--|
| Amount | | |

15) Is the public budget allocated to legal aid included in the court budget ?

Yes

No

16) Total annual approved public budget allocated to the public prosecution system (in €)

17) Is the budget allocated to the public prosecution included in the court budget?

Yes

No

18) Authorities formally responsible for the budget allocated to the courts:

| | Preparation of the total court budget | Adoption of the total court budget | Management and allocation of the budget among the individual courts | Evaluation of the use of the budget at a national level |
|---------------------|---------------------------------------|-------------------------------------|---|---|
| Ministry of Justice | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Other ministry | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Parliament | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Supreme Court | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Judicial Council | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Courts | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Inspection body | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

19) If other Ministry and/or inspection body and/or other, please specify (in regards to question 18):

It is up to the Directorate-General for Justice Administration, in accordance with a fixed plafond, to make budget proposals upon instructions from the General-Secretary of the Ministry of Justice in order to remunerate court personnel and judges (at the 1st instance courts) and to deal with some other current expenses as well. It also makes investment budget proposals, which comprise the IT budget and other minor expenses.

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your budgetary system and the main reforms that have been implemented over the last two years
- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process

Please indicate the sources for the questions 6, 7, 13 et 16

Question 6 - Direcção-Geral da Administração da Justiça, Instituto de Gestão Financeira e Infra-estruturas da Justiça e Tribunais Superiores (Justice Administration Directorate-General, Financial and Infrastructures Management Institute and the High Courts)

Question 7 - Direcção-Geral da Administração da Justiça, Instituto de Gestão Financeira e Infra-estruturas da Justiça e Tribunais Superiores (Directorate-General for Justice Administration, Financial and Infrastructures Management Institute and the High Courts)

Question 12 - Dossier Justiça 2006

Question 13 - Instituto de Gestão Financeira e Infra-estruturas da Justiça (Financial and Infrastructures Management Institute)

Question 16 - Direcção-Geral do Orçamento (Budget Directorate-General)

2. Access to justice

2. 1. Legal aid

2. 1. 1. Principles

20) Does legal aid concerns:

| | Criminal cases | Other than criminal cases |
|-------------------------|-------------------------------------|-------------------------------------|
| Representation in court | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Legal advice | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Other | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

21) If other, please specify (in regards to question 20):

Total or partial exemption from court fees and other expenses related to the case payment by instalments of the court fees and of other expenses related to the case, payment by instalments of the assigned counsel's and of the appointed execution solicitor's salary, payment of the salary of the lawyer appointed by the court.

22) Does legal aid foresee the covering or the exoneration of court fees?

- Yes
 No

If yes, please specify:

The Law foresees the total or partial exemption from court fees and other expenses related to the case.

23) Can legal aid be granted for the fees that are related to the execution of judicial decisions?

- Yes
 No

If yes, please specify:

Legal aid, in accordance with the Law 34/2004, of 29 July, is applied both in the judicial courts as well as in the Peace courts. The civil enforcement actions are no exception. Within the scope of a civil enforcement procedure it is possible, in general terms, to require legal aid. Such includes the "total or partial exemption from justice fees and other expenses related to the procedure" [article 16, n. 1, item a)]. It should also be noted that legal aid encompasses the means by which the remuneration of the execution solicitor is made, the payment by instalments of justice fees and other expenses related to the procedure, and both the remuneration of the assigned counsel and of the appointed execution solicitor [item c) and d)].

24) Number of cases granted with legal aid provided by (national, regional, local) public authorities:

| | |
|-------|--------|
| Total | 163366 |
|-------|--------|

| | |
|---------------------------|--|
| Criminal cases | |
| Other than criminal cases | |

25) In a criminal case, can any individual who does not have sufficient financial means be assisted by a free of charge (or financed by public budget) lawyer?

- Yes
 No

26) Does your country have an income and asset test for granting legal aid:

| | No | Yes | Amount |
|--------------------------------|----|-----|--------|
| for criminal cases? | | X | |
| for other than criminal cases? | | X | |

27) In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action)?

- Yes
 No

28) If yes, is the decision for granting or refusing legal aid taken by:

- the court?
 an authority external to the court?
 a mixed decision-making authority (court and external)?

29) Is there a private system of legal expense insurance enabling individuals to finance court proceedings?

- Yes
 No

Please specify:

In Portugal, it is possible to contract a legal expenses insurance (which according to article 123/17 of the Decree-Law nr. 94-B/98, of the 17 April include the legal expenses arising from a judicial process and the representation of the insurance taker).

30) Do judicial decisions have an impact on who bears the legal costs which are paid by the parties

during the procedure in:

| | yes | no |
|----------------------------|-------------------------------------|--------------------------|
| criminal cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| other than criminal cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your legal aid system and the main reforms that have been implemented over the last two years

Question 26 - It is not possible to give the exact amount because factors, other than the income, are also taken into consideration, namely the ones related to other expenses of the person requesting legal aid.

Please indicate the sources for the questions 24 and 26

Question 24 - Ministério do Trabalho e da Solidariedade Social (Labour Ministry and Social Welfare)

Questions 25 and 26 - Direcção-Geral da Política de Justiça - Ministério da Justiça (Directorate-General for Justice Policy - Ministry of Justice)

2. 2. Users of the courts and victims

2. 2. 1. Rights of the users and victims

31) Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for the following, which the general public may have free of charge access to (Please specify the Internet addresses):

| | | |
|--|---|---|
| legal texts (e.g. codes, laws, regulations, etc.)? | <input checked="" type="checkbox"/> yes | www.dre.pt www.digesto.gov.pt www.legix.pt www.mj.gov.pt |
| case-law of the higher court/s? | <input checked="" type="checkbox"/> yes | www.dgsi.pt www.tribunalconstitucional.pt |
| other documents (for example forms)? | <input checked="" type="checkbox"/> yes | www.tribunaisnet.mj.pt |

32) Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding?

Yes

No

If yes, please specify:

33) Is there a public and free-of-charge specific information system to inform and to help victims of crimes?

Yes

No

If yes, please specify:

The Commission for the Protection of Crime Victims notifies the victims of violent crimes on requests for reimbursement by the State, and on requests for compensation in advance to victims of domestic violence. Such is done without any charge to the victims. There are also private associations that give support to crime victims.

34) Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:

| | Information mechanism | Hearing modalities | Procedural rights | Other |
|------------------------------|--------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| Victims of rape | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Victims of terrorism | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Children/Witnesses/Victims | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Victims of domestic violence | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Ethnic minorities | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Disabled persons | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Juvenile offenders | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Other | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

35) Does your country have a compensation procedure for victims of crimes?

Yes

No

36) If yes, does this compensation procedure consist in:

a public fund?

a court decision?

private fund?

If yes, which kind of cases does this procedure concern?

It applies to all cases in which intentional crimes occur that cause grievous bodily harm or death. Should any of these situations occur, the persons who have access to the compensation fund are, in accordance to the civil law, the victim himself or his/her legal heirs.

37) Are there studies to evaluate the recovery rate of the compensation awarded by courts to victims?

- Yes
 No

If yes, please specify:

38) Is there a specific role for the public prosecutor with respect to the (protection of the position and assistance of) victims?

- Yes
 No

If yes, please specify:

In the Penal Procedural Code and with respect to the inquest phase, there are mandatory rules for the public prosecutors. These rules concern the information due to victims of any type of crime, and in particular, the information regarding the victims' compensation rights and the way they can bring them into effect.

In fact, the mechanisms for victim information that go beyond the aforementioned civil nature derive from the Public Prosecutor's own organisational structure which encompasses public attendance done, in great part, by the prosecutors themselves.

In addition, at police level, specific units/services/departments have been set up to help victims of certain crimes and in particular of violent crimes, namely mistreatment, domestic violence and sexual abuse.

On the other hand and as regards the assistance provided to victims of crime during the proceedings, it should be noted the taking of evidence for future use (to be done in the presence of an instruction judge and especially designed for situations of serious illness or transfers abroad and in cases of victims of sexual crimes).

Besides, there are specific forms of hearing witnesses (including victims of crimes) such as the concealment of the witness, the taking of evidence in the absence of the defendant and the videoconference, all of them determined by the judge in the proceedings and on the basis of the circumstances or facts revealing threat and/or a high risk of coercion. To this effect, particular attention is given to their vulnerability in connection to their age.

As concerns the criminal procedure and the enforcement measures, attention should be drawn to the specific protection measure, applied by the courts, to victims of crimes, by reason of which the defendant cannot dwell in the area where the crime has occurred or where resides the victim or his/her family or even anyone upon whom new crimes may be committed against (see article 200, n. 1, indent c) of the Penal Procedural Code), another enforcement measure, applicable to the cases where the defendant does not

remain in preventive custody, is his/her withdrawal from the victim's residence (see article 16 of the Law n. 61/91, of 13 August).

39) Do victims of crimes have the right to contest a decision of the public prosecution to discontinue a case?

Yes

No

If yes, please specify:

At the inquest phase (and even at the judicial phase of the proceedings), the crime victim can always interrupt/stop the criminal proceedings whenever the facts of the investigation relate to certain types of crimes foreseen in law.

He/she may do it in relation to semi-public nature crimes or even private crimes, that is, those crimes in which the criminal procedure requires a complaint or a personal charge.

In these cases, the criminal procedure begins when the victim decides (claim/complaint) and, because the procedure is always dependent from that free will, it immediately stops whenever the victim so decides and clearly says so in the procedure.

Notwithstanding, the victim cannot interfere in the ongoing investigation, contest the public prosecutor's decision in relation to the conduct of the criminal proceeding, or suspend or disrupt the procedure in order to, later on, request its proceeding.

Once the investigation is finished, the Public Prosecutor files the procedure if no evidence of the crime is found, if there is evidence that the defendant has not committed the crime, if the proceeding is not legally admissible or if it has not been possible to obtain enough evidence of the crime or of its perpetrators.

When the Public Prosecutor decides to file the procedure, the victim may always "contest" the decision, once certain assumptions are observed, bearing in mind the progression of the proceedings.

Hence, the victim may:

- request hierarchical intervention in order to determine the charge or to proceed with the investigation (article 278 of the Penal Procedural Code)
- request the opening of the instruction phase, conducted by a judge, in order to judicially reaffirm the decision to file the inquiry (or to bring charges) with the purpose either to put, or not, the case before a court (article 286 and forth of the Penal Procedural Code)
- request the reopening of the inquiry, once new elements of proof occur which may annul the grounds invoked by the public prosecutor in the decision to file (article 279 of the Penal Procedural Code).

2. 2. 2. Confidence of citizens in their justice system

40) Is there a system for compensating users in the following circumstances:

excessive length of proceedings?

non execution of court decisions?

wrongful arrest?

wrongful condemnation?

If yes, please specify (fund, daily tariff):

Article 22 of the Constitution establishes the principle of liability of public bodies stating that «jointly with their officeholders, staff and agents, the state and all other public bodies shall be civilly liable for such actions or omissions in the performance of their functions as result in a breach of rights, freedoms or guarantees or in any loss to others». This principle constitutes the constitutional legal basis for answering affirmatively to the 3 questions above.

The Portuguese Constitution foresees, in article 20, nr. 4 that «everyone shall possess the right to secure a ruling in any suit to which he is a party, within a reasonable period

of time and by means of fair process».

The Decree-Law 48 051 (of the 21st November 1967) establishes the extra contractual liability of the state and other public bodies, determining that both the State and other public bodies may be civilly liable for the breaches in third parties' rights or interests, if those breaches derive from unlawful guilty acts practised by their organs or officeholders while in the performance of their functions and due to the performance of their functions. Based on these rules, the Portuguese Administrative Courts are competent to analyse cases of excessive length of proceedings according to article 4, nr 1, paragraph g) of the Law 107-D/2003, of the 31st December and to determine if any compensation is to be granted. A new Law, revoking the Decree-Law 48 051, is expected to enter into force very soon.

For instance, articles 159 and 166 of the Code of Procedure in the Administrative and Tax Courts foresee a compensation when a judicial decision is (legally or illegally) non-executed.

In accordance with n. 1, article 225 of the Penal Procedure Code (once carried out the dispositions foreseen in n. 5, article 27 of the Constitution of the Portuguese Republic) whoever has suffered an illegal arrest or has been under an obvious illegal preventive custody, may require, to the competent court, a compensation for the damages suffered due to the deprivation of liberty.

The second number of the same article defines that the n. 1 applies to those who have been under preventive custody, which, not being by itself illegal, may turn unjustified due to gross error in the appreciation of the submitted facts from which the decision depended. This does not apply to the cases in which the convicted person may have contributed, by fraud or negligence, towards that error.

The compensation for «wrongful condemnation» is imposed by n. 6, article 29 of the Constitution of the Portuguese Republic, and carried out by article 462 of the Penal Procedure Code, and determines that if a revised sentence has been condemnatory and the court that has revised the sentence acquits the defendant, that decision is considered null and the defendant returns to the previous legal situation prior to the condemnation. This sentence provides the defendant with compensation due to the damages suffered and orders the refunding of all the amounts related to the costs and fines he, the defendant, may have supported, the compensation is paid by the State, which will be responsible, in what concerns the defendant's rights, towards those that are accountable for the facts that may have determined the revised sentence.

41) Does your country have surveys aimed at users or legal professionals (judges, lawyers, officials, etc.) to measure their trust and/or satisfaction with the services delivered by the judiciary system?

- (Satisfaction) surveys aimed at judges
- (Satisfaction) surveys aimed at court staff
- (Satisfaction) surveys aimed at public prosecutors
- (Satisfaction) surveys aimed at lawyers
- (Satisfaction) surveys aimed at citizens (visitors of the court)
- (Satisfaction) surveys aimed at other clients of the courts

If possible, please specify their titles, how to find these surveys, etc:

Reports and surveys made by the "Portuguese Permanent Observatory for Justice" an institution created, upon agreement, between the Ministry of Justice and the University of Coimbra. An on-line version of these studies is available at <http://opj.ces.uc.pt/portugues/estudos/index.html>

42) If yes, please specify:

| | Yes (surveys at a regular interval: for example annual) | Yes (incidental surveys) |
|---------------------------|---|-------------------------------------|
| Surveys at national level | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Surveys at court level | <input type="checkbox"/> | <input type="checkbox"/> |

43) Is there a national or local procedure for making complaints about the performance (for example the length of proceedings) or the functioning (for example the treatment of a case by a judge) of the judicial system?

- Yes
 No

44) If yes, please specify:

| | Time limit to respond (Yes) | Time limit for dealing with the complaint (Yes) |
|---|-------------------------------------|---|
| Court concerned | <input type="checkbox"/> | <input type="checkbox"/> |
| Higher court | <input type="checkbox"/> | <input type="checkbox"/> |
| Ministry of Justice | <input type="checkbox"/> | <input type="checkbox"/> |
| High Council of the Judiciary | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Other external organisations (e.g. Ombudsman) | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

Can you give information elements concerning the efficiency of this complaint procedure?

Although a request or complaint can be filled before the court concerned or, on appeal, before a higher court, it is possible to present those complaints, if linked to disciplinary or administrative matters, to the pertinent High Council (to the High Council for the Administrative and Tax Courts, to the High Council of the Judiciary, to other courts and to the General Prosecutor Office if the complaint is addressed against an action or omission of a public prosecutor). The reports are available on www.conselhosuperiordamagistratura.pt. It is possible to address the Ombudsman but only on the same grounds as the High Council is able to intervene (art. 22, n. 2, Law 9/91, of April 9th). The Ombudsman's action should be made through the pertinent High Council (art. 22, n. 3, Law 9/91). The reports are available on www.provedor-jus.pt.

3. Organisation of the court system

3. 1. Functioning

3. 1. 1. Courts

45) Number of courts considered as legal entities (administrative structures) and geographic locations (please, complete the table)

| | Total number |
|--|--------------|
| First instance courts of general jurisdiction (legal entities) | 231 |
| Specialised first instance courts (legal entities) | 116 |
| All the courts (geographic locations) | 326 |

46) Please specify the different areas of specialisation (and, if possible, the number of courts concerned):

Criminal Instruction Courts- 5
 Family and Juvenile Courts - 19
 Labour Courts - 49
 Commerce Courts - 2
 Maritime Courts - 1
 Enforcement of Criminal Sanctions Courts - 4

47) Is there a change in the structure of the courts foreseen (for example a reduction of the number of courts (geographic locations) or a change in the powers of courts)?

Yes

No

If yes, please specify:

It is under public discussion the upcoming Law Proposal related to the new Law on the Organisation and Functioning of the Judicial Courts, which will introduce amendments at the level of the model of territorial organisation and management of the courts.

This reform has as main innovations:

- A new territorial judicial organisation matrix together with the definition of 35 new judicial circumscriptions (counties)
- A new model on the jurisdiction of the courts of first instance there shall only be a county court which will be organised into generic or specialised jurisdiction benches
- A new model on the management with the creation of the offices of President of the Court, Administrator of the Court and of the Consultative Council.

a) New territorial matrix

As regards the territorial organisation of the courts' network, this new diploma brings about deep changes as it presents a new territorial matrix on the judicial organisation which will re-dimension the present territorial matrix, the County.

Today, there are 231 counties courts in Portugal. With this reform, this division will be put aside, and there shall only be 35 new territorial circumscriptions (also designated as counties), drawn on the basis of NUTS III (Nomenclature of territorial units for statistical purposes).

The new counties will be grouped into 5 judicial districts, drawn on the basis of NUTS II (Nomenclature of territorial units for statistical purposes).

b) New model on jurisdiction

Linked to the re-dimension of territorial circumscription is the change of the model on the jurisdiction of the courts of first instance.

Thus, for each county, there shall only be a judicial court of first instance, the county court, which may be divided into generic or specialized jurisdiction benches.

In order to make it clearer, the distinction among (so far) the courts of specific or specialized jurisdiction was suppressed now there shall only be specialised benches. Such as it happens today with the courts of specialised jurisdiction, the following specialised jurisdiction courts are foreseen:

- Criminal instruction
- Family and Juvenile (which may function autonomously as Family Courts or Juvenile Courts or together
- Labour
- Commerce
- Maritime
- Enforcement of Sanctions
- Civil Enforcement
- Civil Benches
- Criminal Benches.

The Civil and Criminal Benches may also be divided, whenever the workload or the complexity so justifies, into three levels of judicial specialisation: High instance, Medium instance and Small instance.

With these changes one aims to maximise the number of specialised jurisdiction benches with the purpose to guarantee that such specialisation will be gradually present in all the counties (something that does not happen today).

By defining that there shall be just one court of first instance for each county (connected to the fact that, when compared with the present situation, the new counties do represent territorial areas significantly bigger) means that to each bench will be allocated a territorial jurisdiction which may be different from the territorial jurisdiction of the county where it is located. Hence, the benches will be distributed throughout their own county, bearing in mind factors such as the procedural workload, the existing facilities, the nature of the matter and the distance involved.

Through this way the territorial jurisdiction of the benches will comprise, at the outset, a territorial area inferior to the county. Notwithstanding, it is foreseen that, in order to guarantee a more flexible and efficient judicial answer, the benches of specialised jurisdiction may have jurisdiction in more than one county.

c) New model on the management

The new Law will also address the new model on the management of the courts, based on the office of a president for each county court, to be appointed by the High Council of Judicature he/she shall be assisted in his/her functions by an administrator and by a consultative council.

The president of the court shall have representation and management attributions, such as representing and managing the court, following up and assessing the court's activity and its procedural flow or following up on the performance of the judges and court personnel.

As regards the procedural management, the president may, among other attributions, define working methods and objectives for each organic unit, implement the simplifying and fast procedural measures and re-allocate the benches and personnel within the county scope.

Within the field of his functional attributions, the president shall put the judges and court personnel in office, authorize their holidays, and, whenever necessary, initiate disciplinary procedures against the court personnel.

The president shall also have administrative attributions, such as planning the needs for human resources or managing the use of the court's facilities (including the courtroom).

The court's administrator shall have those functions delegated to him by the Director-General of the Justice Administration, by the President of the Financial Management and Infra-Structure Institute as well as others foreseen in law.

The administrator can also delegate the management into the Justice Secretaries. However, this can only be done as regards each bench.

The consultative council shall assist the president and the court's administrator in the

exercise of administrative functions and is competent to issue proposals related to the administration and functioning of the Court.

Its constitution shall be the following: the president of the court, who presides, the coordinator public prosecutor, the court's administrator, a delegate from the Bar, a delegate from the Solicitors' Chamber, and a delegate of the courts' personnel and of the users of justice to be appointed by the president of the court.

This model of territorial organisation and of court management will be, first of all, applied at an experimental level, being then applicable to 3 counties in 2008.

48) Number of first instance courts competent for a case concerning:

| | Number |
|------------------------------------|--------|
| a debt collection for small claims | 231 |
| a dismissal | 59 |
| a robbery | 233 |

Please specify what is meant by small claims in your country (answer only if the definition has changed compared to the previous evaluation round):

In 2006, a small claim was a claim under € 14 963,94.

Please indicate the sources for the question 45

Question 45 - Directorate-General for the Administration of Justice (Direcção-Geral da Administração da Justiça) and Financial and Infrastructures Management Institute (Instituto de Gestão Financeira e Infra-estruturas da Justiça, I.P.)

3. 1. 2. Judges, courts staff

49) Number of professional judges sitting in courts (present the information in full time equivalent and for permanent posts)

1840

50) Number of professional judges sitting in courts on an occasional basis and who are paid as such:

| | Number |
|--------------------------------------|--------|
| gross figure | 0 |
| if possible, in full time equivalent | 0 |

51) Please specify (answer only if the information has changed compared to the previous evaluation round):

52) Number of non-professional judges (including lay judges and excluding jurees) who are not remunerated but who can possibly receive a simple defrayal of costs. Please specify (answer only if the information has changed compared to the previous evaluation round):

454 social judges.

For this question it was considered the figure of the social judge in actual service.

This number refers to the people designated as social judges, as published in the Official Journal. Being on those lists does not mean actually participating on the judicial decision making but only on the possibility of being called to participate in very specific proceedings, namely towards those cases foreseen both in the Law n. 166/99 of 14th September (article 30, n. 2 -Tutorial Educational Law) and in the Law n. 147/99 of 1st September (article 115- Protection of Minors and Juvenile in Danger Law) and they decide together with a presiding professional judge.

It is impossible to determine the quantity of non-professional judges who have actually participated in judgments in 2004. The number given corresponds to the persons designated as social judges, which does not mean that they have really acted as non-professional judges.

53) Does your judicial system include trial by jury with the participation of citizens?

Yes

No

If yes, for which type of case(s)?

Whenever a trial by jury is required by the Public Prosecution, the plaintiff or the defendant, it is up to a jury panel court to judge cases that refer to crimes against cultural identity and personal integrity and crimes against the State security or to those crimes in which the sanction, abstractedly applied, is greater than 8 years of imprisonment and which are not or cannot be judged by a singular court.

54) If possible, indicate the number of citizens who were involved in such juries for the year of reference?

55) Number of non-judge staff who are working in courts (present the information in full time equivalent and for permanent posts)

7187

56) If possible, could you distribute this staff according to the 4 following categories:

| | | |
|---|---|------|
| non-judge staff (Rechtspfleger), with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal | <input checked="" type="checkbox"/> Yes | 0 |
| non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars | <input checked="" type="checkbox"/> Yes | 6500 |
| staff in charge of different administrative tasks as well as of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management) | <input checked="" type="checkbox"/> Yes | 372 |
| technical staff | <input checked="" type="checkbox"/> Yes | 312 |

Please indicate the sources for the questions 49, 50, 52, 53 and 55

Questions 49, 50, 53 and 55 - Directorate-General for Justice Policy (Direcção-Geral da Política da Justiça)
 Question 52 - Ministry of Justice

3. 1. 3. Prosecutors**57) Number of public prosecutors (present the information in full time equivalent and for permanent posts)**

1321

58) Do any other persons have similar duties as public prosecutors? Yes No

If yes, please specify:

59) Number of staff (non prosecutors) attached to the public prosecution service (present the information in full time equivalent and for permanent posts)

1664

Please indicate the sources for the questions 57 and 59

Directorate-General for Justice Policy (Direcção-Geral da Política de Justiça)

3. 1. 4. Budget and New technologies**60) Who is entrusted with the individual court budget?**

| | Preparation of the budget | Arbitration and allocation of the budget | Day to day management of the budget | Evaluation and control of the use of the budget |
|--------------------------------|-------------------------------------|--|-------------------------------------|---|
| Management Board | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Court President | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Court administrative director | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Head of the court clerk office | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Other | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

61) You can indicate below:

- any useful comments for interpreting the data mentioned above
- if available an organization scheme with a description of the competencies of the different authorities responsible for the budget process in the court

The court official is entrusted with the issues related to the acquisition of goods and services. The remuneration of court personnel and judges (at the 1st instance courts) is in charge of the Justice Administration Directorate General.

62) For direct assistance to the judge/court clerk, what are the computer facilities used within the courts?

| | 100% of courts | +50% of courts | -50% of courts | - 10 % of courts |
|---------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Word processing | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Electronic data base of jurisprudence | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Electronic files | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| E-mail | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Internet connection | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

63) For administration and management, what are the computer facilities used within the courts?

| | 100% of courts | +50% of courts | -50% of courts | -10% of courts |
|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Case registration system | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Court management information system | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Financial information system | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

64) For the communication between the court and the parties, what are the computer facilities used within the courts?

| | 100% of courts | +50% of courts | -50% of courts | -10% of courts |
|---|--------------------------|-------------------------------------|-------------------------------------|--------------------------|
| Electronic web forms | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Special Website | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other electronic communication facilities | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

65) Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the courts and judiciary (answer only if this information has changed compared with the previous evaluation round)?

- Yes
 No

If yes, please specify the name and the address of this institution:

Directorate-General for Justice Policy
Avenida Óscar Monteiro Torres, 39
1000-216 Lisboa

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your judicial system and the main reforms that have been implemented over the last two years

Please indicate the sources for the questions 62, 63 and 64

Questions 62, 63 and 64 - Direcção-Geral da Administração da Justiça (Justice Administration Directorate-General)

3. 2. Monitoring and evaluation

3. 2. 1. Monitoring and Evaluation

66) Are the courts required to prepare an annual activity report?

- Yes
 No

67) Do you have a regular monitoring system of court activities concerning the:

- number of incoming cases?
 number of decisions?
 number of postponed cases?
 length of proceedings (timeframes)?
 other?

Please specify:

Closed cases

68) Do you have a regular system to evaluate the performance of each court?

- Yes
 No

Please specify:

There is a system, directed by the High Council of the Judiciary, that operates regular inspections to the performance of courts and to the performance of each judge. The inspections are made with a four year regularity.

69) Concerning court activities, have you defined performance indicators?

- Yes
 No

70) Please select the 4 main performance and quality indicators that are used for a proper functioning of courts.

- Incoming cases
 Length of proceedings (timeframes)
 Closed cases
 Pending cases and backlogs
 Productivity of judges and court staff
 Percentage of cases that are treated by a single sitting judge
 The enforcement of penal decisions
 Satisfaction of employees of the courts
 Satisfaction of clients (regarding the services delivered by the courts)
 Judicial and organisational quality of the courts
 The costs of the judicial procedures
 Other

Please specify:

71) Are there performance targets defined for individual judges?

- Yes
 No

72) Are there performance targets defined at the level of the courts?

- Yes
 No

73) Please specify who is responsible for setting the targets:

- executive power (for example the Ministry of Justice)
- legislative power
- judicial power (for example a High Judicial Council or a Higher Court)
- other

Please specify

74) Please specify the main targets applied:

75) Which authority is responsible for the evaluation of the performances of the courts:

- the High Council of judiciary
- the Ministry of Justice
- an Inspection authority
- the Supreme Court
- an external audit body
- other?

Other, please specify:

76) Are there quality standards (organisational quality and/or judicial quality policy) formulated for the courts (existence of a quality system for the judiciary)?

- Yes
- No

If yes, please specify:

77) Do you have specialised court staff which is entrusted with quality policy and/or quality systems for the judiciary?

- Yes
 No

78) Is there a system enabling to measure the backlogs and to detect the cases which are not processed within a reasonable timeframe for:

- civil cases?
 criminal cases?
 administrative cases?

79) Do you have a way of analysing waiting time during court procedures?

- Yes
 No

If yes, please specify:

80) Is there a system to evaluate the functioning of courts on the basis of an evaluation plan (timetable for visits) agreed a priori?

- Yes
 No

Please specify (including an indication of the frequency of the evaluation):

There is a system, directed by the High Council of the Judiciary, that operates regular inspections to the performance of courts and to the performance of each judge. The inspections are made with a four year regularity.

81) Is there a system for monitoring and evaluating the functioning of the prosecution services? Yes No

If yes, please specify:

Considering the explanatory note, we think that none of the proposed answers totally apply to the monitoring and evaluation of the Public Prosecutor's activity.

Nonetheless, if an answer is really required, one may always say yes.

Specifying:

There is not, in fact, an overall evaluation of the activity and functioning of the prosecution services, even though the General Prosecutor Office annually drafts and publishes a report on the several areas of its activity.

However, it should be mentioned that next to the High Council of the Public Prosecutor stands the Inspection Services, to whom inspections, inquiries and investigations to the prosecution services are entrusted. It not only verifies the disciplinary proceedings in accordance with the High Council's deliberation or upon the General Prosecutor's own recommendation but obtains information on the service and on the prosecutors' merit (articles 34 and 35 of the Public Prosecutor Statute) .

The High Council of the Public Prosecutor is in charge of the approval of the annual plan of ordinary inspections, which have the purpose to gather information on the prosecution services as well as information on the service and merit of its prosecutors.

The inspection to the prosecution services is made in order to have an in-depth knowledge on the state and organisation of the services thus inspected (in particular as regards their facilities, the procedural flow, the filling, adequateness and efficiency of their board of prosecutors and support personnel) and to garner indicators on the way the inspected services have functioned during that period of inspection, registering the needs and deficiencies and presenting, if so needed, proposals for their resolution.

The inspections to the service and merit of the prosecutors are made so as to not only obtain information on the way they perform their duties but to evaluate their own professional merit.

The evaluation parameters are the intellectual capacity, the way they perform their duties namely in hearings, the technical and legal ability, the legal works published, the work conditions, the work-load and the complexity of the task, the productivity and efficiency, the organisation, management and method, the on-schedule performance, the care and dedication, the civility and impartiality, the good-sense, maturity and sense of justice, the relationship with the other judicial operators, and the ability to articulate with the criminal police bodies.

Apart from the ordinary inspections, there are also extraordinary ones carried out by deliberation either of the High Council of the Public Prosecutor or the General Public Prosecutor and where, on a case-by-case basis, their scope and purpose are defined.

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your court monitoring and evaluation system

Please indicate the sources for the the question 70,71, 72 and 76

The High Council of the Judiciary («Conselho Superior da Magistratura»).

4. Fair trial

4. 1. Principles

4. 1. 1. General principles

82) What is the percentage of judgements in first instance criminal cases in which the suspect is not attending in person or not represented by a legal professional (i.e. lawyer) during a court session (in absentia judgements) ?

83) Is there a procedure to effectively challenge a judge if a party considers that the judge is not impartial?

Yes

No

If possible, number of successful challenges (in a year):

84) Please give the following data concerning the number of cases regarding Article 6 of the European Convention on Human Rights (on duration and non-execution), for the year of reference

| | Cases declared inadmissible by the Court | Friendly settlements | Judgements establishing a violation | Judgements establishing a non violation |
|---|--|----------------------|-------------------------------------|---|
| Civil proceedings - Article 6§1 (duration) | 0 | 0 | 0 | 0 |
| Civil proceedings - Article 6§1 (non-execution) | 0 | 0 | 0 | 0 |
| Criminal proceedings - Article 6§1 (duration) | 0 | 0 | 1 | 0 |

Please indicate the sources for the questions 82 and 84

Question 84 - Agent of the Portuguese Government

4. 2. Timeframes of proceedings

4. 2. 1. General information

85) Are there specific procedures for urgent matters as regards:

civil cases?

criminal cases?

administrative cases?

If yes, please specify:

The Civil Procedure Code, in several precepts, refers to the urgent character of certain acts and procedures. In accordance with article 382, the preventive proceedings are as such considered urgent.

The Penal Procedure Code equally addresses urgent procedures, namely those procedures with defendants held in custody.

The heading of Title IV of the Administrative Courts Procedure Code (article 97 and forth) is actually urgent procedures, being these applicable both to the pre-contractual disputes and to the summons.

86) Are there simplified procedures for:

- civil cases (small claims)?
- criminal cases (petty offences)?
- administrative cases?

If yes, please specify (for example if you have introduced a new law on simplified procedures):

The Decree-Law n. 269/98, of 1 September (amended several times) approves the proceedings related to pecuniary obligations arising out of contracts whose value does not exceed the ceiling set for the courts of first instance. As such it establishes a simplified regime for "small claims".

The Penal Procedure Code foresees summary and summary and fast proceedings. These are simplified procedures applicable to less serious crimes. In accordance with articles 255 and 256, those "detainees caught in the act for crimes punishable by a maximum term of imprisonment no greater than five years, even in case of misdemeanours" are tried in summary proceedings (n. 1). For that matter a judicial or police authority has to proceed with the detention [indent a)]: "the detention may also be effected by any other person if, within no more than two hours, the detainee is entrusted to one of the above mentioned authorities and these have drafted a summary notice related to the hand over" [indent b)]. Within the terms of the previous number, are also tried in summary proceedings, the "detainees caught in the act for crimes punishable by a maximum term of imprisonment greater than 5 years, even in case of misdemeanours, whenever the Public Prosecutor, in the accusation, decides that it should not be applied an imprisonment sentence greater than 5 years" (n. 2). In the terms of article 391-A (summary and fast proceedings) "in cases of crimes punishable with a fine or with a prison sentence no greater than 5 years, and if there is plain and enough evidence of the crime and its agent, the Public Prosecutor in the police report or after the summary inquiry, may decide on the charge to bring before a summary and fast proceeding" (n. 1). N. 2 of the same precept refers that "are also tried in summary and fast proceedings, in the terms of the previous number, the crimes punishable by a maximum imprisonment sentence greater than 5 years, even in case of misdemeanours, whenever the Public Prosecutor, in the accusation, decides that it should not be applied a prison sentence greater than 5 years". In the crimes punishable with a prison sentence no greater than 5 years or only with a fine, "the Public Prosecutor, on the defendant's initiative or after this one has been heard and when it decides that it should be applied a sentence or a non-custodial security measure, may require the court a summary and fast proceeding" (article 392, n. 1). Nonetheless, when the procedure is not subject to a private charge, the approval of the privy must take place (n. 2).

The Administrative Courts Procedure Code also foresees simplified proceedings. Thus, unless the Code provides for otherwise, to the common administrative actions as well as to their conduct the civil procedure forms will be applied (article 35). Hence, to the administrative procedures and within the scope of a common procedure, the summary and fast proceedings shall apply (article 461 of the Civil Procedure Code). These forms of procedures are characterised as holding a procedural "iter" much more simplified and of having time limits other than the ones foreseen in the common ordinary ones.

87) Do courts and lawyers have the possibility to conclude agreements on the modalities for processing cases (presentation of files, decisions on timeframes for lawyers to submit their conclusions and on dates of hearings)?

- Yes
- No

If yes, please specify:

4. 2. 2. Penal, civil and administrative law cases

88) Total number of cases in the first instance courts (litigious and non-litigious); (please complete the table)

| | Pending cases on 1 January 2006 | Incoming cases | Decisions | Pending cases on 31 December 2006 |
|---|---------------------------------|----------------|-----------|-----------------------------------|
| Total of civil, commercial and administrative law cases (1-7) | 1375716 | 575325 | 593718 | 1357323 |
| 1 Civil (and commercial) litigious cases* | 423227 | 282590 | 316649 | 389168 |
| 2 Civil (and commercial) non-litigious cases* | | | 8533 | |
| 3 Enforcement cases | 952489 | 292735 | 277069 | 968155 |
| 4 Land registry cases** | | | | |
| 5 Business register cases** | | | | |
| 6 Administrative law cases | | | | |
| 7 Other | | | | |
| Total criminal cases (8+9) | 201701 | 175856 | 169813 | 207744 |
| 8 Criminal cases (severe criminal offences) | 141509 | 115934 | 110977 | 146466 |
| 9 Misdemeanour cases (minor offences) | 60192 | 59922 | 58836 | 61278 |

89) * The cases mentioned in categories 3 to 5 (enforcement, land registry, business register) are excluded from this total and should be presented separately in the table. The cases mentioned in category 6 (administrative law cases) are also excluded from this total for the countries which have specialised administrative courts or units in the courts of general jurisdiction.

**** if applicable**

Note: for the criminal law cases there may be a problem of classification of cases between severe criminal law cases and misdemeanour cases. Some countries might have other ways of addressing misdemeanour offences (for example via administrative law procedure). Please indicate if possible what case categories are included under "severe criminal cases" and the cases included under "misdemeanour cases (minor offences)".

Explanation

- 1 - Includes civil cases (enforcement cases excluded), labour cases (labour accidents and other labour actions), civil cases of the Maritime Court and civil cases concerning juveniles
- 2 - Divorces (concluded cases)
- 3 - Civil and Labour enforcement cases
- 4 - Criminal cases
- 5 - Administrative offence and misdemeanour (contra-ordenações e transgressões)

Question 88 - (total number of cases in the first instance courts) - criterion used to distinguish severe criminal

offences from minor offences - Portugal has considered as severe criminal offences all criminal cases regardless their seriousness or abstract legal sanction which may be imposed, except misdemeanours and administrative offences (both included in the minor offences and the only categories which were counted as minor offences)

90) Total number of cases in the second instance (appeal) courts (litigious and non-litigious); (please complete the table)

| | Pending cases on 1 Jan. '06 | Incoming cases | Decisions on the merits | Pending cases on 31 Dec. '06 |
|---|-----------------------------|----------------|-------------------------|------------------------------|
| Total of civil, commercial and administrative law cases (1-7) | 8014 | 18756 | 18766 | 8004 |
| 1 Civil (and commercial) litigious cases* | | | | |
| 2 Civil (and commercial) non-litigious cases* | | | | |
| 3 Enforcement cases | | | | |
| 4 Land registry cases** | | | | |
| 5 Business register cases** | | | | |
| 6 Administrative law cases | | | | |
| 7 Other | | | | |
| Total criminal cases (8+9) | 6010 | 10986 | 10992 | 6004 |
| 8 Criminal cases (Severe criminal offences) | 6010 | 10986 | 10992 | 6004 |
| 9 Misdemeanour cases (minor offences) | | | | |

91) Total number of cases in the highest instance courts (litigious and non-litigious); (please complete the table)

| | Pending cases on 1 Jan. '06 | Incoming cases | Decisions on the merits | Pending cases on 31 Dec. '06 |
|---|-----------------------------|----------------|-------------------------|------------------------------|
| Total of civil, commercial and administrative law cases (1-7) | 886 | 3499 | 3562 | 823 |
| 1 Civil (and commercial) litigious cases* | | | | |
| 2 Civil (and commercial) non-litigious cases* | | | | |
| 3 Enforcement cases | | | | |
| 4 Land registry cases** | | | | |
| 5 Business register cases** | | | | |
| 6 Administrative law cases | | | | |
| 7 Other | | | | |
| Total criminal cases (8+9) | 302 | 1387 | 1405 | 284 |
| 8 Criminal cases (Severe criminal offences) | 302 | 1387 | 1405 | 284 |
| 9 Misdemeanour cases (minor offences) | | | | |

92) Number of divorce cases, employment dismissal cases, robbery cases and intentional homicide cases received and treated by first instance courts (complete the table)

| | | | | |
|--|--|--|--|--|
| | | | | |
|--|--|--|--|--|

| | | | | |
|----------------------------|-------|------|------|-------|
| Divorce cases | 10033 | 9524 | 9220 | 10337 |
| Employment dismissal cases | | | 2771 | |
| Robbery cases | | | 2029 | |
| Intentional homicide case | | | 202 | |

93) Average length of proceedings (from the date of lodging of court proceedings)

| | % of decisions subject to appeal | % pending cases more than 3 years | 1st instance | 2nd instance | Total procedure |
|----------------------------|----------------------------------|-----------------------------------|--------------|--------------|-----------------|
| Divorce cases | | | 325 | 114 | |
| Employment dismissal cases | | | 297 | 175 | |
| Robbery cases | | | 349 | 104 | |
| Intentional homicide | | | 363 | 132 | |

94) Where appropriate, please specify the specific procedure as regards divorce:

In accordance with the Portuguese Civil Code, litigious divorces can be required by any one of the spouses if one of them violates grievously the marriage rights and if that violation, given its seriousness or reiteration, endangers the preservation of the marriage life. It can also be invoked, as a fundament for litigious divorce, the amicable separation during a period of three consecutive years, the amicable separation for a year if the divorce has been required by one of the spouses without any opposition from the other, the alteration of one spouse's mental faculties if it has lasted more than three years and which, by its gravity, endangers the preservation of marriage life and the absence of one of the spouses for a period of no longer than two years without any news from the absentee himself.

The litigious divorce is required in court by one of the spouses against the other.

In the divorce proceedings there will always be a spouses' conciliation attempt. In this period, or at any other time during the procedure, the parties may decide upon the divorce or separation of spouses and properties by mutual agreement whenever the alleged reasons subsist.

If neither the attempt at conciliation nor the judge's attempt to obtain, on the part of the spouses, an agreement on the divorce or on the separation by mutual agreement, is successful, the judge can always arrive at an alimony accord, regulate the parental responsibility and decide, if necessary, towards the use of the family home during the pending of the case.

In the absence of one or of both the spouses and if it is not possible to reach a reconciliation or if the parties do not decide on the separation by mutual agreement, the judge will order the notification of the defendant so that he/she may be able to contest within 30 days.

If there is a counterstatement, the case will follow the terms of ordinary proceedings. If no counterstatement is made, the defendant will be notified in order to, within 10 days, present the number of witnesses, which cannot be more than 8, and to require any other piece of evidence. The judge immediately schedules a final hearing, once the length of time these diligences take is considered.

Once the discussion is ended, the collective court, when asked to judge the case, will appreciate all the facts and legal matters and the decision, taken by majority, will be transcribed in the records by the president, who will describe all the facts considered as proof and those not considered as such,

At any time during the proceedings, the judge, by his own initiative or at the request of one of the parties will, if thought convenient, settle a provisional regime towards the alimony, the regulation of parental responsibility and towards the use of the family home in order to do so, the judge can, previously, order all diligences considered necessary.

95) How is the length of proceedings calculated for the four case categories? (please give a description of the calculation method)

Length of time: it starts to be measured from the day the case enters a court until it reaches a final decision in

that instance, even if later there may occur an appeal on the decision before a higher court.

Data related to 2nd instance decisions refer not only to the appeal courts but to the Supreme High Court (3rd instance) as well.

96) Please describe the role and powers of the prosecutor in the criminal procedure (multiple options are possible):

- to conduct or supervise police investigation?
- to conduct investigation?
- when necessary, to demand investigation measures from the judge?
- to charge?
- to present the case in the court?
- to propose a sentence to the judge?
- to appeal?
- to supervise the enforcement procedure?
- to end the case by dropping it without the need for a judicial decision?
- to end the case by imposing or negotiating a penalty without a judicial decision?
- other significant powers?

Please specify:

The Public Prosecutor is the one who interposes the criminal action.

Its intervention in the criminal area, under the principle of legality, occurs in all the procedural phases.

Hence, it is entrusted to receive and investigate claims/complaints/requests of a criminal nature (even those that were reported to different police authorities), to conduct the inquest phase (compulsory but whose conduction falls entirely within its exclusive competence – with the exception of the judge intervention in certain acts where the rights, liberties and citizens' guarantees may be at risk – and which encompasses judicial research in order to investigate the crime, to determine its agents and responsibility in view of the decision on the charge), to interpose the claim and sustain its fundamentals in court, to interpose appeals (even if they benefit exclusively the defendant), and to promote the enforcement of the applicable sentences.

As regards the possibility of the Public Prosecutor to end a procedure without judicial decision, it should be noted, once again, that the conduction of the inquest falls entirely within its exclusive competence (the judge's intervention in this procedural phase is exceptional and limits itself to the acts related to the rights, liberties and citizens' guarantees), and it is up to the prosecution to file the procedure whenever there is enough evidence that the crime did not occur, that the defendant did not commit the crime, whenever the procedure is not legally admissible (e.g. due to the criminal procedure limitation periods), or where it has not been possible to obtain enough evidence of the crime or of its perpetrators.

Notwithstanding, the decision to file is bound to be judicially investigated whenever the defendant or his/her privy requires the opening of the instruction phase (optional). Such a procedure is entrusted to a criminal instruction judge.

With regard to the Public Prosecutor not being able to end a case by imposing a penalty without a judicial decision, it should be referred that, once the investigation is finished and enough evidence of the crime has been gathered, there are alternative mechanisms other than bringing the charge before the courts.

In fact, once there is enough evidence of the crime and its agent, the Public Prosecutor, given the circumstances and the grounds, may decide to provisionally suspend the case (conditional to the compliance, on the part of the defendant, of certain restraining measures), although its effect is always dependant on the approval of the defendant, his/her privy (if there is one) and of the instruction judge.

97) Does the prosecutor also have a role in civil and/or administrative cases?

Yes

No

If yes, please specify:

a) Civil area

As defined in its statute (articles 3, 5 and 6 of the Law n. 60/98, of 27 August) as well as in civil law (articles 15, 16, 17 and 20 of the Civil Procedural Code) the Public Prosecutor represents, in court, the State, the Autonomous Regions, the Local or Regional Authorities, the incapacitated and the disabled (including minors and non-imputable persons) those who are in an uncertain or unknown location and the workers and their families.

As concerns the civil juvenile area, attention is drawn to the care and protection cases, the judicial youth tutorial cases, the civil tutorial cases (where the actions on the regulation, inhibition and alteration of parental responsibility, of guardianship, adoption, judicial handing over of minors, and legal trust are included), to the special procedures authorising certain acts and the amicable separation/regulation of parental responsibility, and to the actions of official investigation (of paternity or maternity or both).

With respect to the labour area, it should be noted the relevant, steadfast and irreplaceable intervention of the Public Prosecutor in the cases concerning labour accidents and professional illness. It also intervenes in enforcement labour actions (related or not to fees or costs) and, while representing the workers, in individual working contracts procedures. It also intervenes in appeals contesting decisions delivered by administrative authorities in labour misdemeanours proceedings.

b) Administrative area

In accordance with articles 1 and 3 of the Law n. 60/98, of 27 August (EMP), with article 51 of the Statute of the Administrative and Tax Courts (ETAF) and with articles 9, n. 2, 11, n. 2, 62, 73, ns. 3 and 4 and article 85 of the Administrative Courts Procedural Code (CPTA), the Public Prosecutor represents the State in court (by proposing and contesting actions) and intervenes in public actions in the defence of public interest. Apart from being capable of, in some cases, and from the duty of, in other cases, requesting a declaration of illegality with compulsory general binding force, it can also propose and intervene in main proceedings and restraining orders where the defence of values, goods or interests constitutionally protected, such as public health, quality of life, the environment, the urban issues, the land management, the cultural patrimony and the State's, the Autonomous Regions' and the Local or Regional Authorities' property are at stake.

98) Functions of the public prosecutor in relation to criminal cases – please complete this table:

| | Received by the public prosecutor | Discontinued by the public prosecutor because the offender could not be identified | Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation | Discontinued by the public prosecutor for reason of opportunity | Concluded by a penalty, imposed or negotiated by the public prosecutor | Charged by the public prosecutor before the courts |
|---|-----------------------------------|--|---|---|--|--|
| Total number of 1st instance criminal cases | 491505 | 411835 | | | 3006 | 85098 |

You can indicate below:

- any useful comments for interpreting the data mentioned above

- the characteristics of your system concerning timeframes of proceedings and the main reforms that have been implemented over the last two years

In general

Incoming cases are all those cases received at the courts (new, distributed, reopened or coming from other courts) during a current year.

Pending cases refers to those cases which have not been completed in the previous year.

Question 92

«Incoming employment dismissal cases» – We cannot detach data concerning just individual working contracts dismissals from all the other contained in the same item.

«Pending cases – employment dismissals» - We cannot detach data concerning just individual working contracts dismissals from all the other contained in the same item.

«Decisions on the merits - employment dismissal cases» – This total does not consider collective dismissal cases.

Question 93

«Average length» – employment dismissal cases – The data given do not include collective dismissal cases.

«Average length» - Data related to 2nd instance decisions refer not only to the appeal courts but to the Supreme High Court (3rd instance) as well.

We have no way of knowing the percentage of decisions subject to appeal in a higher court. We cannot follow up the information at this stage.

The same applies to the percentage of pending cases of more than 3 years. This kind of data is only collected in completed cases.

Question 98 - The public prosecutor has no power to impose direct sanctions, nonetheless it can always, with the approval of the judge and of the defendant himself, apply certain injunctions and behaviour rules whenever the crime for which the defendant is prosecuted is punishable with less than 5 years of imprisonment or other than a prison sentence. If the defendant obeys all the injunctions and behaviour rules the case is filed.

The public prosecutor may also file the case if the crime for which the defendant is prosecuted allows the exemption from sentence, if all the conditions required are fulfilled and if it has the approval of the judge.

Question 98 - please be aware that the 411 835 cases reported as discontinued by the public prosecutor refer to a general clause of discontinuation and not to the fact that the offender could not be identified; this has a major impact in certain tables of the CEPEJ-GT-EVAL-2008-6 file which we analysed during last week meeting.

Please indicate the sources for the questions 92 to 94 and question 98

Questions 92, 94 and 98 - Directorate-General for Justice Policy (Direcção-Geral da Política de Justiça)

5. Career of judges and prosecutors

5. 1. Appointment and training

5. 1. 1. Recrutement, nomination and promotion

99) How are judges recruited?

- Through a competitive exam (for instance after a law degree)?
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

If other, please specify:

100) Are judges initially/at the beginning of their carrier recruited and nominated by:

- an authority composed of judges only?
- an authority composed of non-judges only?
- an authority composed of judges and non-judges?

101) Is the same authority competent for the promotion of judges?

- Yes
- No

If no, please specify which authority is competent for promoting judges:

The High Council of the Judiciary/High Council of the Administrative and Tax Courts
(Conselho Superior da Magistratura/Conselho Superior dos Tribunais Adminsitrativos e Fiscais).

102) Which procedures and criteria are used for promoting judges? (please specify).

In accordance with article 45-A, n. 1 of the Judicial Judges' Statute «the Circuit Courts' judges are appointed from among those judges with more than 10 years of service with a classification not inferior to Good with Distinction».

The following article refers to the promotion to High Judge. It states that «the filling of vacant places for High Court Judges is made by promotion, on the basis of curricula competition, having special regard to the merit of the Judges at 1st instance». The «competitors are the 60 most senior judges classified with Very Good or Good with Distinction if they declare not renouncing to the promotion» (article 47, n. 1). The gradation is made on the merit of the competitors, bearing in mind the service classification and the seniority (n. 2).

The vacant places are filled in a proportion of two to one classified respectively with Very Good and Good with Distinction (article 48, n. 1). The n. 3 refers that «should there not be enough competitors classified with Very Good, the vacant places would be filled by judges classified with Good with Distinction and vice-versa».

In accordance with article 50 «the access to the Supreme Court of Justice is made on the basis of curricula competition open to judicial judges, public prosecutors and other lawmen with merit».

As stated in article 51, n. 2, the required competitors «are the judges who, at the Courts of Appeal, are in the upper quarter of the seniority list and who declare not renouncing to the access». The Deputy-General Prosecutors, as voluntary competitors, may also compete if they have equal or greater seniority than the most recent Judge referred to in n. 2 and if they have a classification of Very Good or Good with Distinction [n. 3, item a)]. The lawmen with recognised merit and civic competence, with at least twenty years of professional activity, exclusively or in turn, in teaching or in the practice of law may also apply. It is counted up to 5 years at the most, the service time these lawmen have given to the judicial courts or to the public prosecution [item b)]. The gradation, as mentioned in article 52 «is made on the basis of the merit of each of the competitors, in each rank, bearing in mind the following factors:

- a) Previous service classifications
- b) The grade obtained in qualifications competitions or in admission courses in judicial posts
- c) University or pos-university Curriculum
- d) Scientific works produced
- e) Activity developed within the forensic or legal teaching scope
- f) Other factors regarding the competence of the competitors to the vacant posts»

The n. 2 of the same article refers that the filling of the vacant places will be done, in turn, in the following way:

- a) Three in every five vacant places are filled by Judges of the Courts of Appeal
- b) One in every five vacant places is filled by Deputy-General Prosecutors
- c) One in every five vacant places is filled by lawmen of recognised merit
- d) The vacant places not filled within the meaning of item b) are allocated to Judges, the ones not filled in the terms of item c), three in every four are attributed to Judges of the Courts of Appeal, and one in every four to Deputy-General Prosecutors.

Lastly, n. 3 refers that «in the appointment of judges to the Courts of Appeal and to Deputy-General Prosecutors, the seniority of each candidate, in each rank, must be taken into consideration».

103) How are prosecutors recruited?

- Through a competitive exam? (for example after a law degree)
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

If other, please specify:

104) Are prosecutors initially/at the beginning of their carrier recruited and nominated by:

- an authority composed of prosecutors only?
- an authority composed of non-prosecutors only?
- an authority composed of prosecutors and non-prosecutors?

105) Is the same authority formally responsible for the promotion of prosecutors?

- Yes
- No

If no, please specify which authority is competent for promoting prosecutors.

The High Council of the Prosecutors (Conselho Superior do Ministério Público).

106) Which procedures and criteria are used for promoting prosecutors (please specify)

The procedures and criteria used for promoting prosecutors are foreseen in articles 116, 117 and 121 of the Public Prosecutor's Statute.

As such, the access to the prosecution senior categories is done by promotion, having regard to the merit and seniority.

While the promotion to the category of General Deputy Prosecutor is made only by merit, the promotion to the category of General Prosecutor is made not only by merit but seniority.

This latter is conditional to a service classification not inferior to Good, as for the former (promotion by merit) it is conditional to a service classification of Very Good or Good with distinction.

Whenever there is more than one prosecutor to be promoted by merit, the vacant places are filled, in turn, in a ratio of three classified with Very Good to one classified with Good with distinction, and should they have the same classification, preference is given to the senior one.

On the other hand, the promotion to the category of General Prosecutor is made by competition or by order of seniority. Notwithstanding, only those prosecutors in a hierarchical lower category (Deputy Prosecutor) and 10 years of service may be promoted through competition.

The vacant places, as they become free, are filled, in turn, in a proportion of three to two, respectively by public competition and by order of seniority.

The candidates to competition who are not appointed that way may also be promoted by order of seniority if a declaration of withdrawal has not been delivered.

In the promotion by competition gains the prosecutor with a better service classification and, in the event of a tie, the senior one.

Should there be a vacant place for competition and no competitors the promotion is done by order of seniority. If the promotion is made by order of seniority, the vacant places are, in turn, filled in the proportion of three to one, respectively by merit and seniority.

107) Is the mandate given for an undetermined period for judges ?

- Yes

No

Are there exceptions? Please specify:

No.

108) Is the mandate given for an undetermined period for prosecutors?

Yes

No

Are there exceptions? Please specify:

No.

**109) If no, what is the length of the mandate?
Is it renewable?**

for judges

yes, please
specify the
length

for prosecutors

yes, please
specify the
length

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of the selection and nomination procedure of judges and prosecutors and the main reforms that have been implemented over the last two years

5. 1. 2. Training

**110) Nature of the training of judges.
Is it compulsory?**

Initial training

General in-service training

In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)

In-service training for management functions of the court (e.g. court president, court managers)

In-service training for the use of computer facilities in the court

111) Frequency of the training of judges:

| | Annual | Regular | Occasional |
|---|-------------------------------------|--------------------------|--------------------------|
| Initial training | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| General in-service training | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| In-service training for specialised judicial functions | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| In-service training for management functions of the court | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| In-service training for the use of computer facilities in the court | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

112) Nature of the training of prosecutors. Is it compulsory?

- Initial training
- General in-service training
- Specialised in-service training (e.g. specialised public prosecutor)
- In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers)
- In-service training for the use of computer facilities in the public prosecution service

113) Frequency of the training of prosecutors:

| | Annual | Regular | Occasional |
|--|-------------------------------------|--------------------------|--------------------------|
| Initial training | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| General in-service training | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Specialised in-service training | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| In-service training for management functions of the prosecution services | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| In-service training for the use of computer facilities in the public prosecution service | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

You can indicate below:

- any useful comments for interpreting the data mentioned above
- comments regarding the attention given to the curricula to the European Convention on Human Rights and the case law of the Court
- the characteristics of your training system for judges and prosecutors and the main reforms that have been implemented over the last two years

5. 2. Practice of the profession

5. 2. 1. Salaries

114) Salaries of judges and prosecutors (complete the table)

| | Gross annual salary (euro) | Net annual salary (euro) |
|--|----------------------------|--------------------------|
| | | |

| | | |
|--|----------|--|
| First instance professional judge at the beginning of his/her career | 33476,94 | |
| Judge of the Supreme Court or the Highest Appellate Court | 80478,44 | |
| Public prosecutor at the beginning of his/her career | 33476,94 | |
| Public prosecutor of the Supreme Court or the Highest Appellate Instance | 78134,42 | |

115) Do judges and public prosecutors have additional benefits?

| | Judges | Prosecutors |
|-------------------------|-------------------------------------|-------------------------------------|
| Reduced taxation | <input type="checkbox"/> | <input type="checkbox"/> |
| Special pension | <input type="checkbox"/> | <input type="checkbox"/> |
| Housing | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| Other financial benefit | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |

116) If other financial benefit, please specify:

A settlement subsidy and an allowance whenever the Judge/Public Prosecutor has to go abroad or anywhere within the national territory.

117) Can judges combine their work with any of the following other professions?

| | Yes with remuneration | Yes without remuneration | No |
|--------------------------|--------------------------|-------------------------------------|-------------------------------------|
| Teaching | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Research and publication | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Arbitrator | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Consultant | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Cultural function | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Other function | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

118) If other function, please specify:

119) Can prosecutors combine their work with any of the following other professions?

| | Yes with remuneration | Yes without remuneration | No |
|--------------------------|--------------------------|-------------------------------------|-------------------------------------|
| Teaching | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Research and publication | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Arbitrator | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Consultant | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Cultural function | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Other function | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

120) If other function, please specify:

121) Do judges receive bonus based on the fulfilment of quantitative objectives relating to the delivering of judgments?

Yes

No

If yes, please specify:

Please indicate the source for the question 114

The High Council of the Judiciary («Conselho Superior da Magistratura»).

5. 2. 2. Disciplinary procedures

122) Which authority is authorized to initiate disciplinary proceedings against judges and/or prosecutors? Please specify:

Judicial judges - the High Council of the Judiciary («Conselho Superior da Magistratura»)

Administrative and Tax Judges - The High Council of the Administrative and Tax Courts («Conselho Superior dos Tribunais Administrativos e Fiscais»)

Prosecutors - the High Council of the Prosecutors («Conselho Superior do Ministério Público»)

123) Which authority has the disciplinary power on judges and prosecutors? Please specify:

Judicial judges - the High Council of the Judiciary («Conselho Superior da Magistratura»)

Administrative and Tax Judges - The High Council of the Administrative and Tax Courts («Conselho Superior dos Tribunais Administrativos e Fiscais»)

Prosecutors - the High Council of the Prosecutors («Conselho Superior do Ministério Público»)

124) Types of disciplinary proceedings and sanctions against judges and prosecutors: number of disciplinary proceedings initiated

| | Judges | Prosecutors |
|----------------------------------|--------|-------------|
| Total number (1+2+3+4) | 26 | 24 |
| 1. Breach of professional ethics | 10 | |
| 2. Criminal offence | | |
| 3. Professional inadequacy | 16 | 3 |
| 4. Other | | 21 |

125) Types of disciplinary proceedings and sanctions against judges and prosecutors: number of sanctions pronounced

| | Judges | Prosecutors |
|--|--------|-------------|
| Total number (total 1 to 9) | 25 | 16 |
| 1. Reprimand | 6 | 5 |
| 2. Suspension | 3 | 1 |
| 3. Withdrawal of cases | 5 | |
| 4. Fine | 5 | 8 |
| 5. Temporary reduction of salary | | |
| 6. Degradation of post | | |
| 7. Transfer to another geographical (court) location | 2 | |
| 8. Dismissal | 4 | |
| 9. Other | | 2 |

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning disciplinary procedures for judges and prosecutors and the main reforms that have been implemented over the last two years

Within the meaning of the Public Prosecutor's Statute the prosecutors are subject to disciplinary responsibility (article 162), being the disciplinary proceeding independent from the criminal offence should that take place (article 165).

The reasons behind a disciplinary proceeding reside in acts, even if of mere misconduct, carried out by the prosecutors with breach of professional duties and the acts or omissions of their public life, or on which they may reflect, and which are not in accordance with the ethics and dignity required to the performance of their duties (article 163).

As such, it represents a disciplinary infraction, the violation of the duties of discretion, of impartiality, of care, obedience, loyalty, ethics, assiduity and punctuality, amongst others.

In accordance with the 2006 statistical data, 24 disciplinary proceedings were initiated, 3 for professional inadequacy and 21 for other reasons.

16 have been concluded with a sanction and 8 are still pending.

As concerns the types of sanctions, the Statute of the Public Prosecutor foresees in its article 166 the following: a) reprimand b) fine c) transfer d) suspension e) withdrawal from active service f) compulsory retirement g) dismissal.

Except for the reprimand, all the sanctions applied are always recorded.

6. Lawyers

6. 1. Statute of the profession

6. 1. 1. Profession

126) Total number of lawyers practising in your country

25753

127) Does this figure include legal advisors (solicitors or in-house counsellor) who cannot represent their clients in court?

- Yes
 No

128) Number of legal advisors?

129) Do lawyers have a monopoly of representation:

- Civil cases*
 Criminal cases - Defendant*
 Criminal cases - Victim*
 Administrative cases*

* If appropriate, please specify if it concerns first instance and appeal. And in case there is no monopoly, please specify the organisations or persons which may represent a client before a court (for example a NGO, family member, trade union, etc) and for which types of cases.

Solicitadores and trainee lawyers can provide legal advice and within certain limits – laid down in procedural law – represent clients before courts. Restrictions to their activity follow several criteria, which stem from the idea that Solicitadores should only perform minor “judicial/court related” acts or others that do not involve a question of law. Some of these criteria are:

- Possibility of appealing to a superior court (if it is always possible to appeal, the client must be represented by a lawyer)
- Monetary importance of the legal issue (above a certain amount clients must be represented by a lawyer)
- Area of law – in Criminal Law defendants must be represented by a lawyer (or a trainee lawyer in some cases) whereas in executive procedures clients may be represented by Solicitadores.

The Public Prosecutor usually represents the State (both in civil and administrative proceedings), and can also represent the incapacitated, the unidentified, the absent in an unknown location and, in labour cases, the workers.

130) Is the lawyer profession organised through:

- a national Bar?
 a regional Bar?
 a local Bar?

Please specify:

The Bar Association is the public association (nationwide) representing law graduates who practice law (advocacia) as a profession. www.oa.pt. The Bar Association comprises seven District Councils and seven Deontology Councils (with the same territorial limits of the District Councils).

Please indicate the source for the question 126

The Bar Association (Ordem dos Advogados).

6. 1. 2. Training

131) Is there a specific initial training and/or examination to enter the profession of lawyer?

- Yes
 No

132) Is there a mandatory general system for lawyers requiring continuing professional training?

- Yes
 No

133) Is the specialisation in some legal fields tied with a specific level of training/ qualification/ specific diploma or specific authorisations?

- Yes
 No

If yes, please specify:

A lawyer may attain recognition as a specialist lawyer and earn the right to use the respective title in a certain area of law through a procedure managed by the Bar Association, laid down in the Bar Regulation n.º 204/2006, of 30th October (Diário da República, II Série). This procedure aims to assess if the candidate has the appropriate professional and academic qualifications and requires a minimum of 10 year experience in the particular field of law and, as a rule, includes taking a public exam. Regulation n.º 204/2006, of 30th October revoked Regulation 15/2004, of 5th April.

6. 1. 3. Fees

134) Can users establish easily what the lawyers' fees will be?

- Yes

No

135) Are lawyers fees:

- regulated by law?
 regulated by the Bar association?
 freely negotiated?

6. 2. Evaluation

6. 2. 1. Complaints and sanctions

136) Have quality standards been formulated for lawyers?

- Yes
 No

137) If yes, who is responsible for formulating these quality standards:

- the Bar association?
 the legislature?
 other?

Please specify (including a description of the quality criteria used):

138) Is it possible to complain about :

- the performance of lawyers?
 the amount of fees?

Please specify:

Lawyers and trainee lawyers are under the disciplinary jurisdiction of the Bar Association. Besides disciplinary liability, lawyers are criminally liable and may be sued for damages. Under the Portuguese Bar Association Statute, all lawyers duly enrolled in the Portuguese Bar Association shall have a Professional Indemnity Insurance (PII) with a minimum coverage of € 50.000,00, through a Collective P.I.I. scheme guaranteed by the Bar Association (currently the insurance coverage guaranteed to each lawyer is € 125.000,00.).

139) Which authority is responsible for disciplinary procedures:

- the judge?
- the Ministry of Justice?
- a professional authority or other?

Please specify:

The Bar Association through the Deontology Councils (first instance) and the Superior Council (usually the instance of appeal). Lawyers can appeal against the disciplinary rulings of the Bar Association to the administrative courts.

**140) Disciplinary proceedings and sanctions against lawyers:
Disciplinary proceedings initiated**

| | Breach of professional ethics | Professional inadequacy | Criminal offence | Other |
|---------------|-------------------------------|-------------------------|------------------|-------|
| Annual number | | | | |

**141) Disciplinary proceedings and sanctions against lawyers:
Sanctions pronounced**

| | Reprimand | Suspension | Removal | Fine | Other |
|---------------|-----------|------------|---------|------|-------|
| Annual number | 65 | 30 | 1 | 89 | 104 |

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning the organisation of the Bar and the main reforms that have been implemented over the last two years

The Bar Association is a public association independent from the state

The main bodies of the Bar may be described as follows:

Bastonário - The President of Bar - also acts as the Chairperson of the General Council, of the Congress, and of the General Assembly.

The General Council - The management and regulatory body nationwide.

District Councils (Seven): Lisboa, Porto, Coimbra, Évora, Faro, Madeira e Açores - the management bodies within its territorial limits, responsible, amongst other tasks, for providing and encouraging the initial and ongoing training of lawyers and trainee lawyers.

Deontology Councils (Seven - same as mentioned above) – The bodies with first instance disciplinary jurisdiction over lawyers and trainee lawyers whose professional domicile is within the district.

Superior Council – The body with disciplinary jurisdiction as the instance of appeal (in certain cases also acts as a first instance jurisdiction). The Superior Council also has the competence to give its judgment (not binding) about bills presented to clients.

The rulings of the Bar Association can be contested in administrative courts.

For further details please see the Bar Association Statute passed by Law n.º 15/2005, of 26th January.
www.oa.pt / www.dre.pt

7. Alternative Dispute Resolution

7. 1. Mediation and other forms of ADR

7. 1. 1. Mediation

142) If appropriate, please specify, by type of cases, the organisation of judicial mediation:

| | Possibility of private mediation or court annexed mediation | Private mediator | Public authority | Judge | Prosecutor |
|--------------------------------|---|-------------------------------------|-------------------------------------|--------------------------|--------------------------|
| Civil and commercial cases | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Family law cases (ex. Divorce) | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Administrative cases | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Employment dismissals | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Criminal cases | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

143) Is there a possibility to receive legal aid for mediation procedures?

- Yes
- No

If yes, please specify:

144) Can you provide information about the number of accredited mediators?

- Yes
- No

If yes, please provide the number of mediators:

208

145) Can you provide information about the total number of judicial mediation procedures concerning:

civil cases? yes, number: 1706

family cases? yes, number: 13

administrative cases? yes, number:

employment dismissals?

yes,
number:

criminal cases?

yes,
number:

Please indicate the source for the question 145

Cabinet for the Alternative Dispute Resolution - Ministry of Justice

7. 1. 2. Other forms of alternative dispute resolution

146) Can you give information concerning other forms of alternative dispute resolution (e.g. Arbitration, conciliation)? Please specify:

There are 32 entities authorised by the Minister of Justice to carry out voluntary arbitrations of institutional character, covering different areas, such as commercial and industrial sectors, private and public works sector, intellectual property, urban rentals, motor vehicle accidents, consumer and sports.

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning ADR and the main reforms that have been implemented over the last two years

Labour Mediation System - resolve through mediation all labour disputes, with the exception of those related to labour accidents or unavailable rights.

8. Enforcement of court decisions

8. 1. Execution of decisions in civil matters

8. 1. 1. Functioning

147) Number of enforcement agents

534

148) Are enforcement agents:

- judges?
- bailiff practising as private profession ruled by public authorities?
- bailiff working in a public institution?
- other enforcement agents?

Please specify their status:

It is a mixed body that comprises both court officials and execution solicitors.

Even though entrusted with public duties, the execution solicitors work as private professionals.

Question 147 - Although in Portugal the enforcement agents can be bailiffs working in a public institution («oficiais de justiça») and «other enforcement agents» («solicitadores de execução»), for the purposes of question 147 only the number of «other enforcement agents» (534) was provided, as the «oficiais de justiça» can work for both the court services and the Public Prosecutor services and don't have exclusive enforcement tasks, this is an important note which we would appreciate to be mentioned.

149) Is there a specific initial training or examination to enter the profession of enforcement agent?

- Yes
- No

150) Is the profession of enforcement agent organised by?

- a national body?
- a regional body?
- a local body?

151) Can users establish easily what the fees of the enforcement agents will be?

- Yes
- No

152) Are enforcement fees:

regulated by law?

freely negotiated?

Please indicate the source for the question 147

Directorate-Genral for Justice Policy (Direcção-Geral da Política de Justiça).

Be aware that in question 147 only the number of «solicitadores de execução» is provided, the baillifs working in a public institution are excluded from that figure.

8. 1. 2. Supervision

153) Is there a body entrusted with the supervision and the control of the enforcement agents?

Yes

No

154) Which authority is responsible for the supervision and the control of enforcement agents:

a professional body?

the judge?

the Ministry of Justice?

the prosecutor?

other?

Please specify:

The judge (art. 809 of the Civil Procedure Code) and the Solicitors' Chamber that applies the disciplinary measures.

155) Have quality standards been formulated for enforcement agents?

Yes

No

If yes, who is responsible for formulating these quality standards and what are the quality criteria used?

The Solicitors' Chamber is the entity that rules the quality standards.

156) Do you have a specific mechanism for executing court decisions rendered against public authorities, including for monitoring the execution?

- Yes
 No

If yes, please specify:

The Procedural Code for the Administrative Courts has a special part dedicated to the enforcement of decisions against public authorities. Articles 157 to 179 regulate this matter. The regulation differs according to what is at stake. The Civil Procedure Code also applies to public institutions when these entities behave according to the civil rules.

Please indicate the sources for the questions 155 and 156

The Directorate-General for Justice Policy (Direcção-Geral da Política de Justiça) using data provided by the Solicitors' Chamber.

8. 1. 3. Complaints and sanctions

157) What are the main complaints of users concerning the enforcement procedure? (please indicate a maximum of 3)

- no execution at all?
 non execution of court decisions against public authorities?
 lack of information?
 excessive length?
 unlawful practices?
 insufficient supervision?
 excessive cost?
 other?

Please specify:

158) Has your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions – in particular as regards decisions against public authorities?

Yes

No

If yes, please specify:

The new legal system of the civil enforcement cases, introduced by the Decree-Law 38/2003, of March 8th, came into force on September 15th, 2003 and was put forward as a reply to the extensive jurisdiction of the courts and to the inflexibility of the civil enforcement cases scheme that hindered, within an acceptable timeframe, the rights of the creditors, thus making the fundamental access to justice more difficult.

Hence, in order to free the judge from procedural tasks that did not involve or concern the judicial function as well as in order to release the court officials from tasks outside the court itself, this reform has provided the execution solicitors with the initiative and the practise of acts considered necessary to the enforcement of civil cases.

Henceforth, the seizure of goods will gain precedence and, according to the nature of the execution title, its value, the type of goods and the previous notification of the sued party, it will spare, in general, with the summary decision and the former summons.

The seizure proceedings are therefore simplified or improved, as the execution solicitors have now, for instance, access to a database where they can look for collateral goods. The seizure of certain goods has started to be done by computer means, to seize bank accounts is also more effective and the seizure of mobile things, not subjected to registration, is now carried out through its effective apprehension.

The large roll of credit privileges has also become shorter (as the possibility of complaint has somewhat been restricted) and the sale of pawn or seized goods very rarely demands the interference of a judge.

In short, we can say that even though the system of enforcement of court or arbitral decisions has not suffered major amendments, this reform will surely have an echo on it as it will turn the proceedings, often pretty slow, more agile, and will not only allow the shortening of the procedural pending state but make the seizure of goods much easier.

159) Is there a system measuring the timeframes of the enforcement of decisions:

for civil cases?

for administrative cases?

160) As regards a decision on debts collection, can you estimate the average timeframe to notify the decision to the parties which live in the city where the court seats:

between 1 and 5 days

between 6 and 10 days

between 11 and 30 days

more

Please specify:

161) Disciplinary proceedings initiated against enforcement agents:

| | |
|-------------------------------|--|
| Breach of professional ethics | <input type="checkbox"/> yes, number: |
| Professional inadequacy | <input type="checkbox"/> yes, number: |
| Criminal offence | <input type="checkbox"/> yes, number: |
| Other | <input type="checkbox"/> yes, number: |

162) Sanctions pronounced against enforcement agents:

| | | |
|------------|---|----|
| Reprimand | <input checked="" type="checkbox"/> yes, number: | 61 |
| Suspension | <input checked="" type="checkbox"/> yes, number: | 96 |
| Dismissal | <input type="checkbox"/> yes, number: | |
| Fine | <input checked="" type="checkbox"/> yes, number: | 1 |
| Other | <input checked="" type="checkbox"/> yes, number: | 8 |

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your enforcement system of decisions in civil matters and the main reforms that have been implemented over the last two years

This information only concerns the execution solicitors and does not include court officials who may also have some duties towards the enforcement of cases.

The Solicitors' Chamber statute foresees that whenever a solicitor is dismissed (disassociated) for whatever reason, a disciplinary proceeding must be initiated in order to verify the existence of illicit behaviour on the part of the execution solicitor. Often, it is a cause of dismissal not delivering a report, foreseen in article 837° of the Civil Procedure Code, which is in itself a point of disagreement, bringing about discussions on whether its presentation is compulsory or if, on the contrary, it is a right of the creditor not to demand it, not presenting it, may, however, and as a consequence, bring about the application of fines.

Great part of the cases is filed either because there is no proof of disciplinary illegalities or because the execution solicitor has already been sanctioned with a fine.

Please indicate the sources for the questions 157 and 160

8. 2. Execution of decisions in criminal matters

8. 2. 1. Functioning

163) Is there a judge who is in charge of the enforcement of judgments?

- Yes
 No

If yes, please specify his/her functions and activities (e.g. Initiative or control functions). If no, please specify which authority is entrusted with the enforcement of judgements (e.g. prosecutor).

The Enforcement of Sanctions Court is the entity in charge of imprisonment orders. The article 91 of the Law of the organisation and functioning of the judicial courts determines that it is the Enforcement of Sanctions Court that has jurisdiction in matters concerning the enforcement of prison sentences, of sentences relatively undetermined and of the safety measures towards non-imputable inmates. So, it is up to these courts to concede the conditional release or parole and to decide on its repeal to decide on the revision of the prison sentence towards those inmates that are seriously ill to declare the end of the prison sentence, of the sentence relatively undetermined and of the safety measures towards non-imputable inmates to decide on the provisional annulment of facts and decisions registered in the criminal record to give sentence remission or decide on its repeal, as well as to enforce its decision and to concede amnesty and generic pardon to cases that are, even if in a transitory stage, within the office (vide n. 2, article 91).

Besides these functions, it is up to the judge of the enforcement of sanctions court to visit the prison establishments within his own jurisdiction, in order to know how the sentences are being enforced to be acquainted, upon his visit, with the inmates' pretensions, which are registered in a book open to that effect and to hear the opinion of the prison director to identify the inmates' appeals regarding the disciplinary proceedings which have inherent to them an imprisonment sanction in a disciplinary cell for a period longer than 8 days to concede and to cancel long precarious leaves to convoke and to preside over the technical council of the prison establishments whenever necessary or whereas the Law so determines and to practise all other acts foreseen in and conferred to him by law.

The Decree-Law n. 783/76, of 29th October, with the amendments introduced by the Decree-Laws n. 222/77, of 30th May and n. 204/78, of 24th July, regulates the functioning of the enforcement of sanctions courts.

164) As regards fines decided by a criminal court, are there studies to evaluate the effective recovery rate?

- Yes
 No

If yes, please specify:

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your enforcement system of decisions in criminal matters and the main reforms that have been implemented over the last two years

9. Notaries

9. 1. Statute

9. 1. 1. Functioning

165) Do you have notaries in your country? If no, go to question 170.

- Yes
 No

166) Is the status of notaries:

- | | | |
|---|---|-----|
| a private one (without control from public authorities)? | <input type="checkbox"/> yes, number: | |
| a status of private worker ruled by the public authorities? | <input checked="" type="checkbox"/> yes, number: | 351 |
| a public one? | <input checked="" type="checkbox"/> yes, number: | 31 |
| other? | <input type="checkbox"/> yes, number and specify: | |

167) Do notaries have duties:

- within the framework of civil procedure?
 in the field of legal advice?
 to authenticate legal deeds?
 other?

Please specify:

The notaries draw up public deeds, execute wills or testaments and do certify all facts that take place before them, etc (article 4 of the Code of Notaries and article 4 of the Statute of Notaries).

Please indicate the source for the question 166

Instituto dos Registos e do Notariado (Institute of Registries and Notaries)

9. 1. 2. Supervision

168) Is there an authority entrusted with the supervision and the control of the notaries?

- Yes
 No

169) Which authority is responsible for the supervision and the control of the notaries:

- a professional body?
 the judge?
 the Ministry of Justice?
 the prosecutor?
 other?

Please specify:

Notaries are disciplinary responsible before the Ministry of Justice in everything that regards the exercise of the activity, and before the professional body (Ordem dos Notários) in deontological manners [articles 57, 58, 60 of the Statute of the Notaries - Decree-Law 26/2004, of the 4th of February and article 3, nr. 1, letters i) and j) of the Decree-Law 27/2004, of the 4th February].

You can indicate below:

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your system of notaries and the main reforms that have been implemented over the last two years**

A main reform is now in progress to implement the status of the notary as a private worker. Presently, most notaries are private workers in this sense.

10. Functioning of justice

10. 1. Foreseen reforms

10. 1. 1. Reforms

170) Can you provide information on the current debate in your country regarding the functioning of justice? Are there reforms foreseen? (for example changes in legislation, changes in the structure of the judiciary, innovation programmes, etc). If yes, please specify.

First line of orientation:

To release the pressure on the courts

Concrete measures:

Measures that may assert a specific treatment, within the jurisdictional means, to those litigants that very often recur with similar proceedings to the courts, foreseeing that judicial decisions may comprise and join several procedures

Conception of a special experimental procedural regime (in a first phase) towards the speed, simplicity and flexibility of the procedures

To widen the territorial jurisdiction of the execution solicitor's competence

Second line of orientation:

Dematerialization of the acts and procedures within the justice system.

Concrete measures:

Dematerialization of judicial procedures (Citius project)

Continuation of the dematerialization of the administrative and legal procedures

Dematerialization of jurisdictional appeals

Dematerialization of the injunction procedure

Practise of judicial acts on-line

Creating online possibilities of contact and promotion of acts within the field of the Registries and Notaries Public (enterprise on the spot; patent on the spot, online enterprise and so on)

Implementation of automatic means, so that the procedure can circulate electronically within the court as well as between courts

Establishment of more complete and effective management means for those who manage the work of the courts

Development and adaptation of computer software

In-service training to all judicial operators

Users' information

Judicial operators' incentives regarding the use of information technology.

Third line of orientation:

To promote alternative dispute resolutions

Concrete measures:

Development and reinforcement of the Peace Judges

Establishment of new arbitration centres

Victim-agressor mediation

Administrative arbitration.

Fourth line of orientation:

To proceed with the enforcement action reform

Fifth line of orientation:

Implementation of the reform of the appeal regime.

Concrete measures:

To simplify the procedure in the court where the appeal "ad quo"

To simplify the procedure in the high court

To qualify the role of the Supreme High Court, in order to avoid its commitment towards recurring similar disputes and in order that it may perform a consistent case law

To adopt a system of dispute resolutions form concerning jurisdictional conflicts

To revise the value of the cases that is applicable within the jurisdiction of the courts.

Sixth th line of orientation:

Follow up on the administrative justice reform

Concrete measures:

Evaluation of the new procedural norms

Adaptation of the administrative procedural norms and tax proceedings/procedures concerning the new administrative justice reform

Seventh line of orientation:

Redefining the judicial map

Eighth line of orientation:

Simplification of acts and procedures

Concrete measures:

Elimination of unnecessary acts within the Registries and the Notary Publics

Simplification of acts of administrative control