



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2011

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 (if possible on 1 January 2011)

10 636 979

2) Total of annual public expenditure at state level and where appropriate, public expenditure at regional or federal entity level (in €) - (If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP)

	Amount
State level	88 726 400 000
Regional / federal entity level (total for all regions / federal entities)	NA

3) Per capita GDP (in €)

16 245

4) Average gross annual salary (in €)

20 500

5) Exchange rate from national currency (non-Euro zone) to € on 1 January 2011

A.1

Please indicate the sources for questions 1 to 4 and give comments concerning the interpretation of the figures supplied if appropriate:

Question 1 - this value refers to 31 December 2010.

Question 4 - the value of the average gross annual salary is still provisional.

Sources for questions 1, 2 and 3 - National Statistics Institute (Instituto Nacional de Estatística)

Sources for question 4 - Ministry of Solidarity and Social Welfare (Ministério da Solidariedade Social)

1. 2. Budgetary data concerning judicial system

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

6) Annual approved public budget allocated to the functioning of all courts, in € (if possible without the budget of the public prosecution services and without the budget of legal aid):

TOTAL annual approved budget allocated to the functioning of all courts (1 + 2 + 3 + 4 + 5 + 6 + 7)	<input checked="" type="checkbox"/> Yes	528 943 165
1. Annual public budget allocated to (gross) salaries	<input checked="" type="checkbox"/> Yes	429 475 486
2. Annual public budget allocated to computerisation (equipment, investments, maintenance)	<input checked="" type="checkbox"/> Yes	10 565 978
3. Annual public budget allocated to justice expenses (expertise, interpretation, etc), without legal aid. NB: this does not concern the taxes and fees to be paid by the parties.	<input checked="" type="checkbox"/> Yes	27 544 641
4. Annual public budget allocated to court buildings (maintenance, operating costs)	<input checked="" type="checkbox"/> Yes	38 762 543
5. Annual public budget allocated to investments in new (court) buildings		NAP
6. Annual public budget allocated to training and education	<input checked="" type="checkbox"/> Yes	22 594 517

7. Other (please specify):

NA

7) If you cannot separate the budget of the public prosecution services and the budget of legal aid from the budget allocated to all courts, please indicate it clearly. If "other", please specify:

8) Are litigants in general 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 to the rule to pay court a tax or fee? Please provide comments on those exceptions:

Accordinging the Regulation of Procedural Costs,

1 – The following persons are exempt from costs::

- a) The Public Prosecutor in actions, proceedings and appeals, when acting on his own behalf, in the defense of the rights and interests that the law confers to him;
- b) Any citizen, association or foundation, that takes part in procedures concerning the defense of values and assets protected by the Constitution;
- c) Magistrates and vowels of the High Superior Council that are not judges, in any actions which they are party by the exercise of their functions;
- d) Members of government, general-directors, secretaries-general, chief inspectors and similar and other public servants, as well as responsables for mission structures, committees and working groups, when personally demanded in the exercise of their functions, whatever the form of the process;
- e) Political parties, whose benefits are not suspended;
- f) Legal persons with public administrative purposes;
- g) Victims of working accidents and carriers of professional illness, in the procedures of accident or illness, when represented by the Public Prosecutor or by the syndicate;
- i) Persons in minors' jurisdiction procedures, should the costs be at their charge;
- j) Defendants arrested, in custody or serving a sentence of imprisonment in prison;
- l) Adults lacking legal capacity, absentees (ausentes e incapazes) when represented by the prosecutor, even if the procedures are carried in the Civil Registry Registries;
- m) The plaintiff and the defendant sued in civil claims for damages filed in criminal proceedings, when their value is less than certain amount;
- n) The Motor Guarantee Fund (Fundo de Garantia Automóvel), when it acts in its right of subrogation under the legal regime of compulsory motor vehicle liability;
- o) The Wage Guarantee Fund (Fundo de Garantia Salarial) in insolvency proceedings;
- p) Social Security Financial Stabilisation Fund (Fundo de Estabilização Financeira da Segurança Social) in proceedings concerning the rights of workers, taxpayers and the assets of the Fund;
- q) Certificate of Retirement Fund (Fundo dos Certificados de Reforma) in proceedings concerning the rights of members, beneficiaries and the assets of the Fund;
- r) Municipalities, when proposing the judicial declaration of annulations provided for in the legal system for the conversion of the urban areas of illegal origin, in substitution of the Public Prosecutor;
- s) In cases of value inspection for counting effects in what concerns the tax justice.
- t) Civil or commercial companies, cooperatives and limited liability individual establishments that are insolvent or in the recovery process of the company;

2.The following are also exempt:

- a) The mandatory pension redemptions;
- b) Urgent administrative proceedings related to some electoral processes;
- c) All processes that run before the Court of Execution of Punishment (Tribunal de Execução de Penas), where the prisoner is in a situation of economic failure;
- d) In the procedures concerning the liquidation and partition of assets belonging to social welfare institutions and to syndicate bodies
- f) Children proceedings, such as guardianship, adoption and others.
- g) Inventory proceedings initiated under Law 29/2009 of 29 June.

9) Annual income of court taxes or fees received by the State (in €)

217 961 874

10) Annual approved public budget allocated to the whole justice system, in €(this global budget does not include only the court system as defined under question 6, but also the prison system, the judicial protection of juveniles, the operation of the Ministry of Justice, etc.)

 NA

1 693 952 793

11) Please indicate the budgetary elements that are included in the whole justice system. If "other", please specify in the "comment" box below.

Court system	Yes
Legal aid	No
Public prosecution services	Yes
Prison system	Yes
Probation services	Yes
Council of the judiciary	Yes
Judicial protection of juveniles	Yes
Functioning of the Ministry of Justice	Yes
Refugees and asylum seekers services	No
Other	Yes

Comment :

"Other" includes the Criminal Investigation Police (Policia Judiciária).

12) Annual approved public budget allocated to legal aid, in €- If one or several data are not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Total annual approved public budget allocated to legal aid (12.1 + 12.2)	12.1 Annual public budget allocated to legal aid in criminal law cases	12.2 Annual public budget allocated to legal aid in non criminal law cases
Amount (in €)	51641260	NA	NA

13) Total annual approved public budget allocated to the public prosecution services (in €). Please indicate in the "comment" box below any useful information to explain the figures provided.

 Amount

119 901 622

Comment :

14) Authorities formally responsible for the budgets allocated to the courts (multiple options possible) :

	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	Yes	Yes	Yes	Yes
Other ministry	No	No	No	No
Parliament	No	Yes	No	No
Supreme Court	No	No	No	No
Judicial Council	No	No	No	No
Courts	No	No	No	No
Inspection body	No	No	No	No
Other	No	No	No	No

15) If any other Ministry and/or inspection body and/or other, please specify (considering question 14):

NA

A.2

You can indicate below:

- **any useful comments for interpreting the data mentioned in this chapter**
- **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**

Q6#2#3 : The increase of 24.95% of the annual approved budget of the courts allocated to computerization between 2008 and 2010 was due to a major political investment in this area. Between 2008 and 2010, there was a large investment in what concerns computer innovations. One of the governments' key objectives was to consolidate, strengthen and expand the computer applications available to the justice's agents, such as the CITIUS application (case management program). Please check answer to question 182 of the 2008 Report (Foreseen Reforms).

Q9 : The increase of 64.28% of the annual income of taxes or fees was due to an increase in the amount of fees and to a change of the criteria adopted in the reported data.

a) Thus, the data reported regarding 2008 were:

- on one hand, the ones observed in 2006;
- on the other hand, were based on a restrictive approach on the concept of court fees – there were only considered the fees from the civil, administrative and penal courts.

b) In contrast, the data reported regarding 2010 considered as income of the courts, all revenues that accrue to the Ministry of Justice that are charged in the courts.

Q10 : This growth (21.99%) was the result of a political decision and was due to a large investment in IT applications.

Q12 : Regarding the variation (+ 41.75%) between the budgeted amounts for legal aid, two factors contributed to this increase:

- According to the 1st report monitoring the system of access to law, the amendments to Law 34/2004 of 29 July made by Law 47/2007, of 28 August granted a greater effectiveness to the fundamental right of access to the law and to the courts and revealed a very marked increase in the granting of legal protection.

- On the other hand, the elimination of the discretionary nature of setting fees, the table being set in the maximum amounts, and the fact that the service is no longer provided by trainee lawyers, who had a reduction in their salary, also contributed to the increased amounts budgeted.

Please indicate the sources for answering the questions 6, 9, 10, 11, 12 and 13.

Question 6,9 and 12 - Financial and Infrastructures Management Institut (Instituto de Gestão Financeira e Infraestruturas da Justiça)

Question 10, 11 and 13 – Dossier Justiça 2010

2. Access to Justice and to all courts

2. 1. Legal aid

2. 1. 1. Principles

16) Does legal aid apply to:

	Criminal cases	Other than criminal cases
Representation in court	Yes	Yes
Legal advice	Yes	Yes

17) Does legal aid include the coverage of or the exemption from court fees?

Yes

No

If yes, please specify:

Portuguese law foresees the total or partial exemption from court fees and other expenses related to the case

18) Can legal aid be granted for the fees that are related to the enforcement of judicial decisions (e.g. fees of an enforcement agent)?

Yes

No

If yes, please specify:

Please see answer to question 17.

19) Can legal aid be granted for other costs (different from questions 16 to 18, e.g. fees of technical advisors or experts, costs of other legal professionals (notaries), travel costs etc ? If yes, please specify it in the "comment" box below).

	Criminal cases	Other than criminal cases
	Yes	Yes

Comment :

Please see answer to question 17.

20) Number of cases referred to the court and for which legal aid has been granted. Please specify in the "comment" box below, when appropriate. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

[This question concerns only the annual number of cases for which legal aid has been granted to those referring a case to a court. It does not concern legal advice provided for cases that are not brought before the court.]

	Number
Total	150511
in criminal cases	NA
other than criminal cases	NA

Comment :

21) In criminal cases, can individuals who do not have sufficient financial means be assisted by a free of charge (or financed by a public budget) lawyer? Please specify in the "comment" box below.

--	--

Accused individuals	Yes
Victims	Yes

Comment :

Legal protection may be granted for the resolution of any type of legal dispute or litigation and legal aid does not depend on any prior assessment of the purpose and complexity of the action to be commenced or already brought, its merit or the type of proceedings.

22) If yes, are individuals free to choose their lawyer within the framework of the legal aid system

Yes

No

23) Does your country have an income and assets evaluation for granting legal aid to the applicant ?

Please provide in the "comment" box below any information to explain the figures provided.

If you have such a system but no data available, please indicate NA. If you do not have such a system, please indicate NAP.

	amount of annual income (if possible for one person) in €	amount of assets in €
for criminal cases	yes	NA
for other than criminal cases?	yes	NA

Comment :

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

24) In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action or no chance of success)?

Yes

No

If yes, please explain the exact criteria for denying legal aid:

25) Is the decision to grant or refuse legal aid taken by :

the court?

an authority external to the court?

a mixed decision-making authority (court and external bodies)?

26) Is there a private system of legal expense insurance enabling individuals (this does not concern companies or other legal persons) to finance court proceedings?

Yes

No

If appropriate, please inform about the current development of such insurances in your country; is it a growing phenomenon?

The court proceedings expenses are included in the legal expense insurance coverage, in particular defence and representation of the policy holder, as well as expenses originating in a judicial or administrative proceeding.

The legal expense insurance legal framework is established by articles 167 to 172 of Decree-Law 72/2008, of 16 April, which came into force on the 1st January 2009.

The legal framework results from the transposition of Council Directive 87/334/EEC of 22 June 1987, on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance.

This insurance legal framework has reached a high degree of maturation on the technical point of view, its market has stabilized in terms of the Portuguese insurance market. This is also associated with the subscription of other major risks, particularly in the context of motor vehicle insurance.

27) Can judicial decisions direct how legal costs, paid by the parties during the procedure, will be shared, in:

criminal cases?	Yes
other than criminal cases?	Yes

B.1

You can indicate below:

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

Please indicate the sources for answering the questions 20 and 23

Question 20 - Ministry of Solidarity and Social Welfare (Ministério da Solidariedade e Segurança Social)

Question 23 - Directorate-General for Justice Policy (Direcção-Geral da Política da Justiça)

2. 2. Users of the courts and victims

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

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

The websites mentioned could appear in particular on the internet website of the CEPEJ. Please specify in the "comment" box below what documents and information the addresses for "other documents" include:

- | | | |
|---|---|--|
| <input type="checkbox"/> legal texts (e.g. codes, laws, regulations, etc.)? Internet address(es): | <input checked="" type="checkbox"/> Yes | www.dre.pt; www.dgsi.pt;
www.dgpj.mj.pt; www.pgdlisboa.pt |
| <input type="checkbox"/> case-law of the higher court/s? Internet address(es): | <input checked="" type="checkbox"/> Yes | www.citius.mj.pt
www.pgdlisboa.pt; www.dgsi.pt |
| <input type="checkbox"/> other documents (e.g. downloadable forms, online registration)? | <input checked="" type="checkbox"/> Yes | www.citius.mj.pt |

Comment :

The Citius website includes several on line services, downloadable forms and a case-management system.

29) Is there an obligation to provide information to the parties concerning the foreseeable timeframes of proceedings?

- Yes
 No

If yes, please specify:

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

- 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.

31) Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons. If "other vulnerable person" and/or "other special arrangements", please specify it in the "comment" box below.

[This question does not concern the police investigation phase of the procedure and does not concern compensation mechanisms for victims of criminal offences, which are addressed under questions 32 to 34.]

	Information mechanism	Special arrangements in court hearings	Other
Victims of rape	No	Yes	Yes
Victims of terrorism	No	Yes	Yes
Children (witnesses or victims)	No	Yes	Yes
Victims of domestic violence	Yes	Yes	Yes
Ethnic minorities	No	No	No
Disabled persons	No	Yes	Yes
Juvenile offenders	No	Yes	Yes
Other (e.g. victims of human trafficking)	No	Yes	Yes

Comment :

Victims of human trafficking are afforded special protection through a number of procedural arrangements, such as the exclusion of trial publicity, restrictions to the revelation of their identity in the media or pro memoriam statements, also allowed when a witness is seriously ill or is going abroad

32) Does your country allocate compensation for victims of crime?

- Yes
 No

If yes, for which kind of offences

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 the victim himself and his/her legal heirs.

33) If yes, does this compensation consist in:

- a public fund?
 damages to be paid by the responsible person (decided by a court decision)?
 a private fund?

34) Are there studies that evaluate the recovery rate of the damages awarded by courts to victims?

- Yes
 No

If yes, please inform about the recovery rate, the title of the studies, the frequency of the studies and the coordinating body:

35) Do public prosecutors have a specific role with respect to the victims (protection and assistance)?

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).

36) Do victims of crime have the right to dispute a public prosecutor's decision to discontinue a case?

Please verify the consistency of your answer with that of question 105 regarding the possibility for a public prosecutor "to discontinue a case without needing a judicial decision".

Yes

No

NAP (the public prosecutor cannot decide to discontinue a case on his/her own. A judicial decision is needed).

If necessary, please specify:

At the inquest phase (and even at the judicial phase of the proceedings), the crime victim can always suspend/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 depends on a complaint lodged by the victim and 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

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

- excessive length of proceedings?
- non execution of court decisions?
- wrongful arrest?
- wrongful condemnation?

Where appropriate, please give details on the compensation procedure, the number of cases, the result of the procedures and the existing mechanism for calculating the compensation (e.g. the amount per day for unjustified detentions or convictions):

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 Law 67/2007 (of the 31st December 2007) establishes the extra contractual liability of the state and other public bodies. Its article 12 expressly foresees compensation in case of illegal damages caused by the administration of justice, namely for excessive length of procedures.

Articles 159 and 166 of the Code of Procedure in the Administrative and Tax Courts also foresees 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) states that 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 number 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.

38) Does your country have surveys aimed at legal professionals and court users to measure their trust and/or satisfaction with the services delivered by the judicial system? (multiple options possible)

- (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 the parties
- (Satisfaction) surveys aimed at other court users (e.g. jurors, witnesses, experts, interpreters, representatives of governmental agencies)
- (Satisfaction) surveys aimed at victims

If possible, please specify their titles, object and websites where they can be consulted:

39) If possible, please specify:

	Surveys at a regular interval (for example annual)	Occasional surveys
Surveys at national level	No	Yes
Surveys at court level	No	Yes

40) Is there a national or local procedure for making complaints about the functioning of the judicial system (for example the treatment of a case by a judge or the duration of a proceeding)?

Yes No

41) Please specify which authority is responsible for dealing with such complaints and inform whether there is or not a time limit to respond and/or a time limit for dealing with the complaint (multiple options possible). Please give information concerning the efficiency of this complaint procedure in the "comment" box below.

	Time limit to respond (e.g. to acknowledge receipt of the complaint, to provide information on the follow-up to be given to the complaint, etc.)	Time limit for dealing with the complaint	No time limits
Court concerned	No	No	Yes
Higher court	No	No	Yes
Ministry of Justice	No	No	Yes
High Council of the Judiciary	Yes	No	No
Other external bodies (e.g. Ombudsman)	Yes	No	No

Comment :

Complaints made at the High Council of the Judiciary are analysed and answered in a short period of time.

The intervention of the concerned court may occur only within each process. The higher court has no intervention

- Although the Statute of the Portuguese Ombudsman does not provide a deadline (to reply to the complainant or to conclude the analysis of the complaint), there are internal regulations that provide:
- Immediate preliminary assessment;
- 8 days for computer processing of data;
- Immediate dispatch to the complainant of a letter acknowledging receipt of the complaint;
- 30 days to hear the entity addressed;
- Review the matter within 30 days from receipt of the explanations of the appropriate entity;
- Maximum period of 12 months for a final decision, unless otherwise authorized.

3. Organisation of the court system

3. 1. Functioning

3. 1. 1. Courts

42) Number of courts considered as legal entities (administrative structures) and geographic locations. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Total number
42.1 First instance courts of general jurisdiction (legal entities)	217
42.2 First instance specialised Courts (legal entities)	109
42.3 All the Courts (geographic locations) (this includes 1st instance courts of general jurisdiction, first instance specialised courts, all second instance courts and courts of appeal and all supreme courts)	336

43) Number (legal entities) of first instance specialised courts (or specific judicial order). If "other specialised 1st instance courts", please specify it in the "comment" box below. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

Total (must be the same as the data given under question 42.2)	109
Commercial courts	4
Labour courts	48
Family courts	27
Rent and tenancies courts	NAP
Enforcement of criminal sanctions courts	4
Administrative courts	17
Insurance and / or social welfare courts	NAP
Military courts	NAP
Other specialised 1st instance courts	9

Comment :

Criminal Instruction Courts: 5

Maritime Courts:1

Enforcement Courts : 3

44) Is there a foreseen change in the structure of courts [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:

In 2009, due to the ongoing reform of the judiciary chart, three pilot jurisdictions were created (Baixo Vouga, Grande Lisboa-Noroeste e Alentejo Litoral). Please check, «inter alia» the Law 52/2008, of the 28 August, the Decree-Law 25/2009, of the 26 January and the Decree-Law 28/2009, of the 28 January.

45) Number of first instance courts (geographic locations) competent for the following cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Number of courts
a debt collection for small claims	1
a dismissal	56
a robbery	229

Please give the definition for small claims and indicate the monetary value of a small claim:

This procedure applies whenever a party wishes to confer an enforceable status on a request for fulfillment of pecuniary obligations arising from contracts amounting to no more than €15 000.

Since the establishment of the Order for Payment "one stop shop" (Balcão Nacional de Injuções) the debt collection is now centralized. The Balcão Nacional de Injuções, is a General Secretariat with exclusive competence in what concerns the electronic debt collection of small claims.

Q45 (comments to the table 5.7) : Small civil claims procedure applies whenever a party wishes to confer an enforceable status on a request for fulfillment of pecuniary obligations arising from contracts amounting to no more than €15 000. Portugal only has 1 court for debt collection of small claims because since the establishment of the Order for Payment "one stop shop" (Balcão Nacional de Injuções) the debt collection is centralized. The Balcão Nacional de Injuções, is a General Secretariat with exclusive competence in what concerns the electronic debt collection of small claims. Notwithstanding the existence of the Balcão Nacional de Injuções, that deals exclusively with electronic debt collection, Portuguese first instance courts are still competent and available for the collection of small claims debts. However, the huge majority of small claims is procedures is dealt by the Balcão Nacional de Injuções as the parties prefer the electronic debt collection.

Please indicate the sources for answering questions 42, 43 and 45:

Question 42 and 43 -Directorate-General of Justice Administration (Direcção-Geral da Administração da Justiça).
Question 45 - Directorate General for Justice Policy (Direcção-Geral da Política da Justiça)

3. 1. 2. Judges and non-judge staff

46) Number of professional judges sitting in courts (if possible on 31 December 2010)

(please give the information in full-time equivalent and for permanent posts actually filled for all types of courts - general jurisdiction and specialised courts). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

Please provide in the "comment" box below any useful comment for interpreting the data above.

[Please make sure that public prosecutors and their staff are excluded from the following figures (they will be part of questions 55-60). If a distinction between staff attached to judges and staff attached to prosecutors cannot be made, please indicate it clearly.

Please indicate the number of posts that are actually filled at the date of reference and not the theoretical budgetary posts.]

	Total	Males	Females
Total number of professional judges (1 + 2 + 3)	1956	880	1076
1. Number of first instance professional judges	1449	511	938
2. Number of second instance (court of appeal) professional judges	422	290	132
3. Number of supreme court professional judges	85	79	6

Comment :

47) Number of court presidents (professional judges). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Total	Males	Females
Total number of court presidents (1 + 2 + 3)	NA	NA	NA
1. Number of first			

instance court presidents	NA	NA	NA
2. Number of second instance (court of appeal) court presidents	NA	NA	NA
3. Number of supreme court presidents	NA	NA	NA

48) Number of professional judges sitting in courts on an occasional basis and who are paid as such (if possible on 31 December 2010). If necessary, please provide in the "comment" box below any information to explain the answer under question 48.

Gross figure NAP
 If possible, in full-time equivalent NAP

Comment :

49) Number of non-professional judges who are not remunerated but who can possibly receive a simple defrayal of costs (if possible on 31 December 2010) (e.g. lay judges and "juges consulaires", but not arbitrators and persons sitting in a jury).

Gross figure NA

50) 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.

51) Number of citizens who were involved in such juries for the year of reference:

NA

52) Number of non-judge staff who are working in courts for judges (if possible on 31 December 2010) (this data should not include the staff working for public prosecutors; see question 60) (please give the information in full-time equivalent and for permanent posts actually filled). If "other non-judge staff", please specify it in the "comment" box below.

Total non-judge staff working in courts (1 + 2 + 3 + 4 + 5)	<input checked="" type="checkbox"/> Yes	6631
1. Rechtspfleger (or similar bodies) with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal		NAP
2. Non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, court recording, helping to draft the decisions) such as registrars	<input checked="" type="checkbox"/> Yes	6010
3. Staff in charge of different administrative tasks and 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	339
4. Technical staff	<input checked="" type="checkbox"/> Yes	273
5. Other non-judge staff	<input checked="" type="checkbox"/> Yes	9

Comment :

This information is not available

53) If there are Rechtspfleger (or similar bodies) in your judicial system, please describe briefly their status and duties:

NAP

54) Have the courts delegated certain services, which fall within their powers, to private providers (e.g. IT services, training of staff, security, archives, cleaning)?

Yes

No

If yes, please specify:

The courts have partially delegated services such as cleaning and IT services

C.1

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter

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

Please indicate the sources for answering questions 46, 47, 48, 49 and 52

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

3. 1. 3. Public prosecutors and staff

55) Number of public prosecutors (if possible on 31 December 2010) (please give the information in full-time equivalent and for permanent posts actually filled, for all types of courts – ordinary and specialised jurisdictions). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. Please provide in the "comment" box below any useful information for interpreting the data.

	Total	Males	Females
Total number of prosecutors (1 + 2 + 3)	1 475	609	866
1. Number of prosecutors at first instance level	1 393	557	836
2. Number of prosecutors at second instance (court of appeal) level	74	49	25
3. Number of prosecutors at supreme court level	8	3	5

Comment :

56) Number of heads of prosecution offices. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. Please provide in the "comment" box below any useful information for interpreting the data.

	Total	Males	Females
Total number of heads of prosecution offices (1 + 2 + 3)	NA	NA	NA
1. Number of heads of prosecution offices at first instance level	NA	NA	NA
2. Number of heads of prosecution offices at second instance (court of appeal) level	NA	NA	NA
3. Number of heads of prosecution offices at supreme court level	NA	NA	NA

Comment :

57) Do other persons have similar duties to public prosecutors?

Yes No

Number (full-time equivalent)

58) If yes, please specify their title and function:

These persons are recruited to face problems arising from lack or insufficiency of staff of judges in certain services/towns where you can not name any prosecutor. They are substitutes for Deputy Prosecutors, commonly known and designated as "representantes".

According the Prosecutors Statute, Deputy Prosecutors, in their absence, may be replaced by substitutes who are not magistrates, to hold office for more than 15 days. These substitutes are entitled to remuneration, between one third and the total salary of the Prosecutors salary.

Substitutes to Deputy Prosecutors, though not prosecutors, are appointed to exercise the functions that are legally assigned to them. According article 74, n.2 from the Statute, the provisions of the Statute shall apply, mutatis mutandis, to the substitutes for the prosecutors.

59) If yes, is their number included in the number of public prosecutors that you have indicated under question 55? Yes No**60) Number of staff (non-public prosecutors) attached to the public prosecution service (if possible on 31 December 2010) (without the number of non-judge staff, see question 52) (in full-time equivalent and for permanent posts actually filled).**

Number

 Yes

1 756

C.2**You can indicate below:**

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

Regarding questions 57 and 59, that concern other persons with similar duties to public prosecutors, it is not possible to indicate their number or indicate if they are included in the number of public prosecutors, because in our statistics it is not possible to separate the data relating to these persons.

Please indicate the sources for answering questions 55, 56 and 60

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

3. 1. 4. Court budget and new technologies**61) Who is entrusted with responsibilities related to the budget within the court? If "other", please specify it in the "comment" box below.**

	Preparation of the budget	Arbitration and allocation	Day to day management of the budget	Evaluation and control of the use of the budget
Management Board	No	No	No	No
Court President	No	No	No	No
Court administrative director	No	No	No	No
Head of the court clerk office	Yes	No	Yes	No
Other	No	Yes	No	Yes

Comment :

The remuneration of court personnel and judges (at the 1st instance courts) is the responsibility of the Directorate-General for Justice Administration (Direcção-Geral da Administração da Justiça).

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

Word processing	100% of courts
Electronic data base of jurisprudence	100% of courts
Electronic files	100% of courts
E-mail	100% of courts
Internet connection	100% of courts

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

Case registration system	100% of courts
Court management information system	100% of courts
Financial information system	100% of courts
Videoconferencing	100% of courts

64) For the electronic communication and exchange of information between the courts and their environment, what are the computer facilities used by the courts?

Electronic web forms	100% of courts
Website	100% of courts
Follow-up of cases online	100% of courts
Electronic registers	100% of courts
Electronic processing of small claims	100% of courts
Electronic processing of undisputed debt recovery	100% of courts
Electronic submission of claims	100% of courts
Videoconferencing	100% of courts
Other electronic communication facilities	100% of courts

65) The use of videoconferencing in the courts (details on question 65). Please indicate in the "comment" box below any clarification on the legal framework and the development of videoconferencing in your country.

	65.1 In criminal cases, do courts or prosecution offices use videoconferencing for hearings in the presence of defendants or witnesses?	65.2 Can such court hearing be held in the police station and/or in the prison?	65.3 Is there any specific legislation on the conditions for using videoconferencing in the courts / prosecution offices, especially in order to protect the rights of the defence?	65.4 Is videoconferencing used in other than criminal cases?
	Yes	No	Yes	Yes

Comment :

In Portugal, videoconferencing is widely used in the courts.

In civil cases, the Portuguese Civil Procedure Code establishes in article 621 that witnesses testify at the final hearing in person or by videoconferencing except in the following circumstances:

- When evidence is taken at an earlier stage (this can be done when there is a well founded fear that it may be impossible or very difficult to collect testimony from a certain person) ;
- Evidence is taken by rogatory letters sent to a Portuguese consulate which does not have technical means for evidence to be given through videoconferencing;
- Evidence is taken in a person's residence or service headquarters (prerogative granted to the President of the Republic and foreign diplomatic agents under conditions of reciprocity);
- It is impossible for them to appear in court;
- The prerogative to testify first in writing is used or the judge authorises testimony to be given in this way in light of the impossibility or serious difficulty in appearing in court. The parties must agree to this.

Also, witnesses resident outside the legal district, or the respective island in the case of the autonomous regions, are

presented by the parties when the witnesses themselves have stated they will be available. Alternatively, they can be heard by videoconferencing in the courtroom from the district court of their area of residence or, if that court does not have the necessary means for videoconferencing, from the main court of the legal district of their area of residence.

When witnesses reside outside the country they can also be heard by videoconferencing if the court abroad has the necessary means for videoconferencing.

In criminal proceedings, experts from official entities, laboratories or other official entities can be heard by videoconferencing at their place of work if it's technically possible (article 158, article 317 and 350 of the Penal Procedure Code)

The use of teleconference is also allowed for other special cases, such as protection of witnesses (Law 93/99, July 14) and domestic violence (Law 112/2009, September 16).

Within the European Union, Member States have agreed that work on facilitating videoconferencing should continue. In the future, where appropriate, other tools should be placed in the European e-Justice Portal for that purpose.

C.3

You can indicate below:

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

3. 2. Performance and evaluation

3. 2. 1. Performance and evaluation

66) Is there a centralised institution that is responsible for collecting statistical data regarding the functioning of the courts and judiciary?

Yes

No

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

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

67) Are individual courts required to prepare an annual activity report (that includes, for example, data on the number of cases processed or pending cases, the number of judges and administrative staff, targets and assessment of the activity)?

Yes

No

68) Do you have, within the courts, a regular monitoring system of court activities concerning:

The monitoring system aims to assess the day-to-day activity of the courts (namely, what the courts produce) thanks in particular to data collections and statistical analysis (see also questions 80 and 81).

number of incoming cases?

number of decisions delivered?

number of postponed cases?

length of proceedings (timeframes)?

other?

If other, please specify:

69) Do you have a system to evaluate regularly the activity (in terms of performance and output) of each court?

The evaluation system refers to the performance of the court systems with prospective concerns, using indicators and targets. The evaluation may be of more qualitative nature (see questions 69-77). It does not refer to the evaluation of the overall (good) functioning of the court (see question 82).

Yes

No

Please specify:

Every month a data collection of all courts is assembled. In addition, in first degree courts the electronical procedures allow a daily basis analysis. The website is very exhaustive and can be consulted in http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow_633918141195530467.

Every 4 years we have a complete analysis to the work of all courts, with the local inspectors made by judges appointed by the Judicial Council.

70) Concerning court activities, have you defined performance and quality indicators (if no, please skip to question 72)

Yes

No

71) Please select the 4 main performance and quality indicators that have been defined:

- incoming cases
- length of proceedings (timeframes)
- closed cases
- pending cases and backlogs
- productivity of judges and court staff
- percentage of cases that are processed by a single sitting judge
- enforcement of penal decisions
- satisfaction of court staff
- satisfaction of users (regarding the services delivered by the courts)
- judicial quality and organisational quality of the courts
- costs of the judicial procedures
- other:

If other, please specify:

72) Are there quantitative performance targets (for instance a number of cases to be addressed in a month) defined for each judge?

Yes

No

73) Who is responsible for setting the targets for each judge?

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

If other, please specify:

74) Are there performance targets defined at the level of the court (if no please skip to question 77)?

Yes

No

75) Who is responsible for setting the targets for the courts?:

- executive power (for example the ministry of Justice)?
- legislative power
- judicial power (for example a High Judicial Council, Higher Court)
- other

If other, please specify:

76) Please specify the main targets applied to the courts:

77) Who is responsible for evaluating the performance of the courts (see questions 69 to 76)? (multiple options possible)

- High Council of judiciary
- Ministry of justice
- inspection authority
- Supreme Court
- external audit body
- other

If other, please specify:

78) Are quality standards determined for the whole judicial system (are there quality systems for the judiciary and/or judicial quality policies)?

- Yes
- No

If yes, please specify:

79) Do you have specialised court staff that is entrusted with these quality standards?

- Yes
- No

80) Do you monitor backlogs and cases that are not processed within a reasonable timeframe for:

- in civil law cases
- in criminal law cases
- in administrative law cases

81) Do you monitor waiting time during court procedures?

- Yes
- No

If yes, please specify:

82) Is there a system to evaluate the overall (smooth) functioning of courts on the basis of an evaluation plan (plan of visits) agreed beforehand?

This question does not concern the specific evaluation of performance indicators.

- Yes
- No

Please specify the frequency of the evaluation:

Every four years

83) Is there a system for monitoring and evaluating the performance of the public prosecution service?

Yes

No

If yes, please give further details:

Considering the explanatory note, we think that none of the proposed answers totally applies to the monitoring and evaluation of the Public Prosecutor's activity. Nonetheless if an answer is required one can always answer yes. Specifying, there is no global evaluation of the activity and functioning of the public prosecutor service. Although the Attorney General's Office does publish an annual report on the activities that fall under its jurisdiction. The Superior Council of the Public Prosecution Service is in charge of approving an annual plan of inspections aiming at collecting information on the service and on the merits of its prosecutors. The inspections to the services aim mainly at giving a better knowledge of the state and organization of the inspected services (namely regarding their installation, the procedural movement, the adequacy and efficiency of the magistrates and supporting personnel) and to collect indicators as to the

C.4

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your court monitoring and evaluation systems

Question 80, in Portugal backlogs are only monitored in superior courts and by initiative of the parties following a proper legal procedure.

Question 81 - We generally do not monitor waiting time during court procedures, but in some courts this is a usual procedure.

Question 83-Considering the explanatory note, we think that none of the proposed answers totally applies 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 no global evaluation of the activity and functioning of the Public Prosecution Service, although the Attorney General's Office does publish an annual report on the activities that fall under its jurisdiction.

The Superior Council of the Public Prosecution Service is in charge of approving an annual plan of inspections aiming at collecting information on the service and on the merits of its prosecutors.

The inspections to the services aim mainly at giving a better knowledge of the state and organization of the inspected services (namely regarding their installation, the procedural movement, the adequacy and efficiency of the magistrates and supporting personnel) and to collect indications as to the way in which the inspected services worked during the period covered by the inspection, recording the needs and deficiencies and presenting proposals to resolve them, if that is the case.

Regarding the inspections made to the services and to the merit of the public prosecutors they aim at evaluating the professional merit and to obtain information on the way in which they perform their duties.

The parameters for the evaluation of the service are the intellectual ability, the way in which their duties are performed, namely during the court hearings, the juridical and technical quality of their work, the legal papers they have published, the working conditions, the volume and complexity of the service, the productivity and efficiency, the organization, management and method, the punctuality in the fulfillment of their duties, the zeal and dedication, the urbanity, the impartiality and exemption, the common sense, maturity and sense of justice, the relationship with the other legal agents, the capacity to articulate their work with the organs of criminal police.

Besides the ordinary inspections, there are also extraordinary inspections, in result of deliberation from the Superior Council of the Public Prosecution Service or the Attorney General, the respective scope and finality being established case by case.

4. Fair trial

4. 1. Principles

4. 1. 1. General information

84) Percentage of first instance criminal in absentia judgments (cases in which the suspect is not attending the hearing in person nor represented by a legal professional)?

NA

85) 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):

86) Number of cases regarding Article 6 of the European Convention of Human Rights on duration and non-execution. If data is not available, please indicate NA.

	Cases declared inadmissible by the Court	Friendly settlements	Judgements establishing a violation	Judgements establishing a non violation
Civil proceedings - Article 6§1 (duration)	NA	13	10	0
Civil proceedings - Article 6§1 (non-execution)	NA	0	0	0
Criminal proceedings - Article 6§1 (duration)	NA	0	0	0

Please indicate the sources:

Portuguese Agent for the Court of Human Rights

D.1

You can indicate below any useful comments for interpreting the data mentioned in this chapter

4. 2. Timeframes of proceedings

4. 2. 1. General information

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

civil cases?

criminal cases?

administrative cases?

there is no specific procedure

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 Title IV of the Administrative Courts Procedure Code (article 97 and forth) also refers to urgent procedures, being these applicable to electoral disputes, pre-contractual disputes and to summons.

88) Are there simplified procedures for:

civil cases (small disputes)?

criminal cases (small offences)?

- administrative cases?
 there is no simplified procedure

If yes, please specify:

The Decree-Law 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 misdemeanors" 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 handover" [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 misdemeanors, 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). Number 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 misdemeanors, 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.

89) Do courts and lawyers have the possibility to conclude agreements on arrangements 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. Caseflow management and timeframes of judicial proceedings

90) Comment:

The national correspondents are invited to pay special attention to the quality of the answers to questions 91 to 102 regarding case flow management and timeframes of judicial proceedings. The CEPEJ agreed that the subsequent data would be processed and published only if answers from a significant number of member states – taking into account the data presented in the previous report – are given, enabling a useful comparison between the systems.

91) First instance courts: number of other than criminal cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

Note 1: cases mentioned in categories 3 to 5 (enforcement, land registry, business register) should be

presented separately in the table. Cases mentioned in category 6 (administrative law) should also be separately mentioned for the countries which have specialised administrative courts or separate administrative law procedures or are able to distinguish in another way between administrative law cases and civil law cases.

Note 2: check if the figures submitted are (horizontally and vertically) consistent. Horizontal consistent data means: "(pending cases on 1 January 2010 + incoming cases) – resolved cases" should give the correct number of pending cases on 31 December 2010. Vertical consistency of data means that the sum of the individual case categories 1 to 7 should reflect the total number of other than criminal law cases.

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total of other than criminal law cases (1+2+3+4+5+6+7)*	1 493 108	589 286	520 085	1 562 309
1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)*	372 085	314 317	320 267	366 135
2. Civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)*	NA	NA	NA	NA
3. Enforcement cases	1 121 023	274 969	199 818	1 196 174
4. Land registry cases**	NAP	NAP	NAP	NAP
5. Business register cases**	NAP	NAP	NAP	NAP
6. Administrative law cases (litigious and non-litigious)	NA	NA	NA	NA
7. Other cases (e.g. insolvency registry cases)	NA	NA	NA	NA

92) If courts deal with "civil (and commercial) non-litigious cases", please indicate the case categories included:

The question regarding civil (and commercial) litigious cases" includes the case-flow of civil justice, civil, labour and juvenile justice.

93) If "other cases", please indicate the case categories included:

94) First instance courts: number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

Note: please check if the figures submitted are (horizontally and vertically) consistent. Horizontal consistent data means that: "(pending cases on 1 January 2010 + incoming cases) – resolved cases" should give the correct number of pending cases on 31 December 2010. Vertical consistency of data means that the sum of the categories 8 and 9 for criminal cases should reflect the total number of criminal cases.

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total criminal cases (8+9)	106 682	115 466	121 623	100 525
8. Criminal cases (severe criminal offences)	95 732	107 234	112 271	90 695
9. Misdemeanour and / or minor offences cases	10 950	8 232	9 352	9 830

95) The classification of cases between severe criminal cases and misdemeanour and/or minor criminal cases may be difficult. Some countries might have other ways of addressing misdemeanour offences (for example via administrative law procedures).

Please indicate, if feasible, what case categories are included under "severe criminal cases" and the cases included under "misdemeanour and /or minor criminal cases".

Question 94 –"The severe criminal cases" includes all criminal processes. The "Misdemeanour and minor criminal cases" includes criminal and labour-criminal transgressions.

96) Comments on questions 91 to 95. You can indicate, for instance, the specific situation in your country, give explanations on NA or NAP answers or explain the calculation of the total number of other than criminal law cases or differences in horizontal consistency, etc.

Question 91.1 Civil (and commercial) litigious cases includes the case flow of civil justice, civil-labour and juvenile justice.

Question 91.3. (Enforcement cases) includes de case-flow of civil justice and civil-labour enforcement.

Question 94 regarding criminal cases includes the case-flow of criminal cases, criminal and labour-criminal transgressions

97) Second instance courts: total number of "other than criminal law" cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

Note: the total of "other than criminal" cases includes all of the following categories (categories 1 to 7).

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total of other than criminal law cases (1+2+3+4+5+6+7)	6 399	18 099	18 009	6 492
1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)*	NA	NA	NA	NA
2. Civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)*	NA	NA	NA	NA
3. Enforcement cases	NA	NA	NA	NA
4. Land registry cases	NAP	NAP	NAP	NAP
5. Business register cases	NAP	NAP	NAP	NAP
6. Administrative law cases (litigious and non-litigious)	NA	NA	NA	NA
7. Other cases (e.g. insolvency registry cases)	NA	NA	NA	NA

98) Second instance courts: total number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total criminal cases (8+9)	3 945	13 654	13 614	3 985
8. Criminal cases (Severe criminal offences)	3 945	13 654	13 614	3 985
9. Misdemeanour and/or minor offences cases	NA	NA	NA	NA

Comment :

Question 97, includes the case-flow civil and labour in second instance courts.

Question 98 includes the case flow of criminal processes in second instance courts

99) Highest instance courts: total number of "other than criminal law" cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

Note: the total of "other than criminal law cases" includes all of the following categories (categories 1 to 7).

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total of other than criminal law cases (1+2+3+4+5+6+7)	706	2 579	2 716	569

1. Civil (and commercial) litigious cases (if feasible without administrative law cases, see category 6)	NA	NA	NA	NA
2. Civil (and commercial) non-litigious cases, e.g. uncontested payment orders, request for a change of name, etc. (if feasible without administrative law cases; without enforcement cases, registration cases and other cases, see categories 3-7)	NA	NA	NA	NA
3. Enforcement cases	NA	NA	NA	NA
4. Land registry cases	NAP	NAP	NAP	NAP
5. Business register cases	NAP	NAP	NAP	NAP
6. Administrative law cases (litigious and non-litigious)	NAP	NAP	NAP	NAP
7. Other cases (e.g. insolvency registry cases)	NA	NA	NA	NA

100) Highest instance courts: total number of criminal law cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Dec. '10
Total criminal cases (8+9)	122	822	932	72
8. Criminal cases (severe criminal offences)	122	822	932	72
9. Misdemeanour cases (minor offences)	NA	NA	NA	NA

Comment :

Question 99- includes the case-flow of civil and labour process (litigious and non litigious cases) in highest court.

Question 100- includes the case-flow of criminal cases in highest instance court.

101) Number of litigious divorce cases, employment dismissal cases, robbery cases and intentional homicide cases received and processed by first instance courts. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Pending cases on 1 Jan. '10	Incoming cases	Resolved cases	Pending cases on 31 Jan. '10
Litigious divorce cases	9 917	10 640	11 419	9 138
Employment dismissal cases	7 161	7 754	7 120	7 795
Robbery cases	NA	NA	2 860	NA
Intentional homicide	NA	NA	151	NA

102) Average length of proceedings, in days (from the date the application for judicial review is lodged). If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

[The average length of proceedings has to be calculated from the date the application for judicial review is lodged to the date the judgment is made, without taking into account the enforcement procedure. New: the question concerns first, second and third instance proceedings.]

	% of decisions subject to appeal	% pending cases more than 3 years	Average length in 1st instance (in days)	Average length in 2nd instance (in days)	Average length in 3rd instance (in days)	Average total length of the total procedure (in days)
Litigious divorce cases	NA	NA	300	120	90	NA
Employment dismissal cases	NA	NA	300	150	180	NA
Robbery cases	NA	NA	330	60	60	NA
Intentional homicide	NA	NA	360	90	60	NA

103) Where appropriate, please inform about the specific procedure as regards divorce cases (litigious and

non-litigious):

Separation and divorce by mutual consent (non-litigious) are applied for at the civil registry office for the area in which either of the spouses is resident or at another office chosen and expressly designated by both spouses. Other applications are submitted to the Family Proceedings Court or, if no such court exists, to the district court having territorial jurisdiction. Territorial jurisdiction is defined according to the domicile or residence of the applicant (the person bringing the action).

A contested divorce (litigious) involves an application known as an initial application, which sets out the facts deemed to point to the need for the dissolution of the marriage. The evidence may be submitted immediately. The marriage certificate and the birth certificates of joint children must accompany this application.

104) How is the length of proceedings calculated for the four case categories? Please give a description of the calculation method.

The average length of proceedings is calculated from the date of the application for judicial review. We take the average duration of the proceedings in months for each crime and multiply it by 30 days. This method is used for all instance proceedings.

105) Role and powers of the public prosecutor in the criminal procedure (multiple options possible):

- to conduct or supervise police investigation
- to conduct investigations
- 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 enforcement procedure
- to discontinue a case without requiring a judicial decision (ensure consistency with question 36!)
- to end the case by imposing or negotiating a penalty or measure without requiring a judicial decision
- other significant powers

If "other significant powers", please specify:

The Public Prosecution Service is the organ responsible for the penal action. Its intervention in the penal area, always guided by the principle of lawfulness, occurs in all the procedural stages.

It is the Service's responsibility to receive denunciations; to decide on the follow up of the denunciations/complaints/penal notifications (even those that are brought before the different police forces); to lead the stage of inquest (of compulsory nature and which management is of its sole responsibility – except for the occasional intervention of the judge for the practice of certain acts whenever the rights, freedoms and guarantees of the citizens are at stake -, and that comprises the set of diligences that aim at investigating the commission of a crime, to determine its agents and respective responsibility, regarding the decision on the accusation); to deduce accusation and to support it in trial; to present appeals (even if in the exclusive interest of the defendant); to promote the enforcement of the applied sentences.

As to the possibility of the Public Prosecution Service to close a case without a judicial decision, we must point out that the management of the inquest is of its sole responsibility (the intervention of the judge, at this stage, is exceptional and is limited to the practice of certain acts concerning the rights, freedoms and guarantees of the citizens). The case should, therefore, be filed whenever enough proof has been collected as that the crime was not committed nor the defendant has committed it, that the procedure is legally admissible (namely due to the prescription of the penal procedure), or in the cases where it was not possible to obtain enough evidence that the crime occurred or of who committed it.

However, the decision to file is liable of being verified judicially whenever the defendant or the assistant request the opening of the stage of finding of facts (optional), which falls under the jurisdiction of the judge.

In what concerns the impossibility of the Public Prosecution to close the case, without a court decision, due to the imposition of a penal measure, we point out that once the investigation has ended and once enough evidence has been collected as to the fact that a crime has been committed, there are alternative mechanisms to the deduction of the accusation. In effect, once enough evidence has been collected as to the fact that a crime has been committed and as to who was the perpetrator, the Public Prosecution Service may decide on the temporary suspension of the case (conditioned to the fulfillment by the defendant of several payment orders) but that always depends on the agreement of the defendant, of the assistant (in case there is one) and of the judge.

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

Yes

No

If yes, please specify:

In the civil area the Public Prosecution Service, in accordance to the provisions of its Statute (Law 60/98, of 27 August, art. 3, 5 and 6) and in the civil law (Code of Civil Procedure, art. 15, 16, 17 and 20) has the responsibility of representing, at the courts, the State, the Autonomous Regions, the autarchies, the incapable (including minors and interdicted), the uncertain, the absent, the workers and their families. Regarding the area of minors and family, we point out the promotion and protection cases, the tutelary cases, the civil tutelary cases (including paternity regulation actions, tutelary actions, adoption, and judicial delivery of minors), special cases of divorce by mutual consent/paternity regulation, unofficial inquiry actions (paternity, maternity or others).

Concerning the labor area, we stand out the relevant and irreplaceable intervention of the Public Prosecution Service in the cases of work accidents and professional diseases. Besides these, it also intervenes in the labor executive cases (for judicial costs or not) and, as representative of the workers, in the proposition of labor actions. It also intervenes in the appeals of impugnation of decisions issued by administrative authorities in cases of labor actions.

In the administrative field, the Public Prosecution Service (according to the provisions of Law 60/98, of 27 August, art. 1 and 3, in the Statute of the Administrative and Tax Courts, art. 51, and in the Procedural Code of the Administrative Courts, art. 9, n.2, art.11, n.2, art. 62, 73, ns. 3 and 4 and art. 85) represents the State in the courts (presenting and contesting actions) and intervenes in the public actions, that is, in the propositions in defense of diffuse interests and of the community.

Besides having the power and in some cases the duty, of requiring the unlawfulness with legal force, it also has legitimacy to propose and to intervene in cases where the defense of property, assets or interests protected by the Constitution is at stake, such as public health, quality of life, environment, urbanism, planning of the national territory, cultural patrimony and assets belonging to the State, to the Autonomous Regions and to the local autarchies.

107) Case proceedings managed by the public prosecutor: total number of 1st instance criminal cases. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Received by the public prosecutor	Cases discontinued by the public prosecutor (see 108 below)	Cases concluded by a penalty or a measure imposed or negotiated by the public prosecutor	Cases charged by the public prosecutor before the courts
Total number of 1st instance criminal cases	555 006	NA	NA	74 961

108) Total cases which were discontinued by the public prosecutor. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

	Number
Total cases which were discontinued by the public prosecutor (1+2+3)	NA
1. Discontinued by the public prosecutor because the offender could not be identified	NA
2. Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation	NA
3. Discontinued by the public prosecutor for reasons of opportunity	NA

109) Do the figures include traffic offence cases?

Yes

No

D.2

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter**
- the characteristics of your system concerning timeframes of proceedings and the main reforms that have been implemented over the last two years**

Q94#1#1 : The decrease of 43.99% of the Total criminal law cases / Pending cases on 1 Jan.'10 between 2008 and 2010 observed in the overall total of pending criminal cases has to do with the fact that, in 2008, the misdemeanour cases, included in the category "misdemeanour and/or minor criminal cases ", have shown a very high number of completed cases, by virtue of a streamlining measure that has converted these acts into administrative offences. As such, the overall total of pending criminal cases in 2010 has substantially decreased, due to the increase of completed/resolved misdemeanours in 2008.

Q94#2#1 : The decrease of 20.29% cases between 2008 and 2010 in the overall total of incoming criminal cases is mainly due to the conversion, in 2008, of the misdemeanours cases, included in the category "misdemeanour and/or minor criminal cases ", into administrative offences. Hence, the number of incoming criminal cases in 2008 has substantially decreased.

Q94#3#1 : The decrease of 42.60% between 2008 and 2010 in the overall total of completed/resolved criminal cases has to do with the fact that, in 2008, the misdemeanour cases, included in the category "misdemeanour and/or minor criminal cases ", have shown a very high number of completed cases, by virtue of a streamlining measure that has turned these acts into administrative offences.

Q99#4#1 : The decrease of 24.64% of the Total of other than criminal law cases / Pending cases on 31 Dec.'10 between 2008 and 2010 is due to the amendment carried out on the legal regime of the civil appeals (Decree-Law 303/2007, of 24 August) that has adopted measures designed to streamline the access to the Supreme Court of Justice. As a paradigmatic example of these measures, it should be referred that the value of the upper limit set for the High Courts has increased. Thus, in 2010, and compared with 2008, there has been a decrease in the number of incoming cases, followed by an increase in the number of completed cases greater than the number of incoming cases, which has led to a decrease in the number of pending cases.

Q100#1#1 : The decrease of 55.96% of the Total criminal law cases / Pending cases on 1 Jan.'10 between 2008 and 2010 is mainly due to an amendment that has occurred in the Criminal Procedure Code, carried out by Law 48/2007, which, among others, adopted measures designed to streamline the access to the Supreme Court of Justice. As a result, in the years 2008 and 2009, there has been a decrease in the number of incoming criminal cases. On the other hand, the number of completed cases has been greater than the number of incoming cases, which led to a decrease in the number of pending cases in the aforesaid period.

Q100#2#1 : The decrease of 35.68% of the Total criminal law cases / Incoming cases between 2008 and 2010 is mainly due to an amendment that has occurred in the Criminal Procedure Code, carried out by the Law 48/2007, which, among others, adopted measures designed to streamline the access to the Supreme Court of Justice.

Q100#3#1 : The decrease of 31.07% of the Total criminal law cases / Resolved cases between 2008 and 2010 has to do with an amendment that has occurred in the Criminal Procedure Code, carried out by the Law 48/2007, which, among others, adopted measures designed to streamline the access to the Supreme Court of Justice. As such, a decrease in the number of incoming criminal cases and a reduced number of pending cases has led to a decrease in the number of cases awaiting resolution, in 2010.

Q100#4#1 : The decrease of 50.68% of the Total criminal law cases / Pending cases on 31 Dec.'10 between 2008 and 2010 is mainly due to an amendment that has occurred in the Criminal Procedure Code, carried out by the Law 48/2007, which, among others, adopted measures designed to streamline the access to the Supreme Court of Justice. As such, there has been a decrease in the number of incoming criminal cases in the years 2008 and 2009. On the other hand, the number of completed/resolved cases has been greater than the number of incoming cases, which led to a decrease in the number of pending cases in the aforesaid period.

4) On chapter 9 (enforcement cases) on 9.4.3 (litigious and non-litigious civil (commercial) cases compared) under figure 9.10 (Clearance rate of litigious cases in 2006, 2008 and 2010. Evolution of the clearance rate between 2006 and 2010, in %)

Portugal would like the following comment to be added:

When comparing 2006 and 2010 values, Portugal appears with a decrease of 4,6 % in the clearance rate. This decrease doesn't reflect a trend but is explained by the introduction, in 2006, of exceptional measures to relieve the courts that have resulted in a significant improvement of the clearance rate.

5) Also on chapter 9, subchapter 9.7 (enforcement cases (non-criminal litigious cases)(, under figure 9.17 we would like the following comment to be added:

The explanation for the high figures for the disposition time of enforcement cases in Portugal lays in the fact that we have a mixed and very different enforcement system. Although enforcement agents, mostly liberal professionals, can be asked to play an important role, the court gets involved in any collection - even in those carried out by liberal professionals - from the beginning until its very end or extinction (either by the payment of the debt or by the conclusion that the claim is uncollectible). Therefore, in Portugal, also for statistic purposes, all the cases remain in a record - with more or less interventions of the court - until they are concluded.

In the commented report, we believe that it would be useful to include a reference to the different systems of enforcement and explain that in some enforcement systems, such as the one in Portugal, enforcement cases take

longer because they only end with the payment of the debt, whereas in other systems, enforcement cases can consist only of a single intervention of the court for a specific question or issue (for example, a permission to enter a residency).

Please indicate the sources for answering the questions 91, 94, 97, 98, 99, 100, 101, 102, 107 and 108.

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

5. Career of judges and public prosecutors

5. 1. Recrutement and promotion

5. 1. 1. Recrutement and promotion

110) How are judges recruited?

- Mainly through a competitive exam (for instance, following a university degree in law)
- Mainly through a recruitment procedure for legal professionals with long-time working experience in the legal field (for example lawyers)
- A combination of both (competitive exam and working experience)
- Other

If other, please specify:

111) Authority(ies) in charge: are judges initially/at the beginning of their carrier recruited and nominated by:

[This question strictly concerns the authority entrusted with the decision to recruit (not the authority formally responsible for the nomination if different from the former)].

- An authority made up of judges only?
- An authority made up of non-judges only?
- An authority made up of judges and non-judges?

Please indicate the name of the authority(ies) involved in the whole procedure of recruitment and nomination of judges. If there are several authorities, please describe their respective roles:

The Centre for Judicial Studies (Centro de Estudos Judiciários) is the entity in charge of the recruitment procedure, in this procedure not only judges are involved but also other persons, such as psychologists, law professors and prosecutors.

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

- Yes
- No

If no, which authority is competent for the promotion of judges ?

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

113) Which procedures and criteria are used for promoting judges? Please specify.

The criteria for promoting judges are based in merit and seniority. They consist in an evaluation of the activity of the judges every four years. The procedures for promoting are public and open

114) Is there a system of qualitative individual assessment of the judges' activity?

- Yes
- No

115) Is the status of prosecution services:

- Indépendant?
- Under the authority of the Minister of justice ?
- Other?

Please specify:

According to the Constitution, the Attorney General's Office is the highest office of the Public Prosecution and is chaired by the Attorney General's Office. (article 220, n.1 and 2 of the Portuguese Constitution and article 9 of the Statute of the Public Prosecution).

116) How are public prosecutors recruited?

- Mainly through a competitive exam (for instance, following a university degree in law)
- Mainly through a recruitment procedure for legal professionals with long-time working experience in the legal field (for example lawyers)
- A combination of both (competitive exam and working experience)
- Other

If "other", please specify:

117) Authority(ies) in charge: are public prosecutors initially/at the beginning of their carrier recruited by:

[This question concerns the authority entrusted with the responsibility to recruit only (not the authority formally responsible for the nomination if different from the former).]

- An authority composed of public prosecutors only?
- An authority composed of non-public prosecutors only?
- An authority composed of public prosecutors and non-public prosecutors?

Please indicate the name of the authority(ies) involved in the whole procedure of recruitment and nomination of public prosecutors. If there are several authorities, please describe their respective roles:

The Centre for Judicial Studies (Centro de Estudos Judiciários) is the entity in charge for prosecutors' recruitment, in the recruitment not only judges are involved but also other persons, such as psychologists, law professors and judges.

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

- Yes
- No

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

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

119) Which procedures and criteria are used for promoting public prosecutors? Please specify:

Access to the higher ranks of the Public Prosecution Service is made by promotion, which occurs by merit and by seniority.

While the promotion to Deputy Attorney General is made only by merit, the category of Attorney General can only be achieved through both merit and seniority.

In order to achieve a promotion by seniority one has to have a classification of non less than Good and in the case of the promotion by merit the requirement is the classification of Very Good or Good with distinction.

In case there is more than one prosecutor in conditions to be promoted for merit, the openings are occupied, successively in the proportion of three for the classifications of Very Good and one for the classifications of Good with distinction and, in case of equal classifications, the preference goes to the one with longer service time.

On the other hand the promotion to public prosecutor can be made by competition or according to the list of seniority, seeing that the public prosecutors can only be promoted in this way in case they have a minimum of 10 years of service.

The openings are occupied, by order of vacancy, successively in the proportion of three by way of competition and two according to the order of list of seniority. The candidates to the competition that are not promoted in that way can also be promoted according to the order of the list of seniority, in case they did not present a declaration of waiver.

The promotion by competition is attributed to the candidate with the highest classification and, in case of equality, to the one with longer service time.

In the cases where an opening must be occupied by competition and there are no candidates, the promotion is made according to the order of the list of seniority.

When there is place to a promotion according to the order of the list of seniority, the openings are occupied successively, in the proportion of three by merit and one by seniority.

120) Is there a system of qualitative individual assessment of the public prosecutors' activity?

- Yes
 No

121) Are judges appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?

- Yes
 No

If yes, are there exceptions? (e.g. dismissal as a disciplinary sanction)? Please specify:

Source to question 121 - High Council of Judiciary

122) If there is a probation period for judges (e.g. before being appointed "for life"), how long is this period? If the situation is not applicable in your country, please indicate NAP.

	Duration of probation period (in years)
	2

123) Are public prosecutors appointed to office for an undetermined period (i.e. "for life" = until the official age of retirement)?

- Yes
 No

If yes, are there exceptions (e.g. dismissal as a disciplinary sanction)? Please specify:

There are no exceptions.

124) If there is a probation period for public prosecutors, how long is this period? If the situation is not applicable in your country, please indicate NAP.

	Duration of the probation period (in years)
	2

125) If the mandate for judges is not for an undetermined period (see question 121), is it renewable? What is the length of the mandate (in years)?

NAP

126) If the mandate for public prosecutors is not for an undetermined period (see question 123), is it renewable? What is the length of the mandate (in years)?

NAP

E.1

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- 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

Question 115- According to the Constitution, the Attorney General's Office is the highest office of the Public Prosecution and is chaired by the Attorney General's Office. (article 220, n.1 and 2 of the Portuguese Constitution and article 9 of the Statute of the Public Prosecution).

The Public Prosecutors Service has its own statute and autonomy, as laid down by law. The officials of the Public Prosecutors Service are accountable and are subject to a hierarchy (article 219 Portuguese Constitution)

Article 76 of the Statute defines what the Prosecutors accountability means. Prosecutors are responsible for the performance of their duties and for the observation of directives, orders and instructions. To be subject to hierarchy means that prosecutors have to observe directives and instructions of prosecutors of higher grade. However, prosecutors directive powers are subject to the limits set by article 79 of the Statute.

The prosecution services is an independent judiciary, it does not depend of the executive and political power. Nevertheless, the Ministry of Justice has the powers referred in article 80 of the Statute, namely:

- a) Pass on specific instructions in civil actions and in proceedings regarding extra-judicial settlement of disputes in which the state has an interest;
- b) Authorize the Prosecution Services, after consultation with relevant Government department, to confess, compromise or give in in civil actions in which the State is a party;
- c) To request, through the Attorney General's Office, any magistrate or public prosecutor to elaborate reports and give service informations;
- d) Request the Prosecution Services for information and clarifications and make any communication considered appropriate;
- e) To request the Attorney General's Office for inspections, investigations and inquiries, including the criminal police.

Prosecution Services are part of the judiciary and have a role as an auxiliary organ of justice, it is autonomous in relation to other State agencies (central, regional and local).

The Prosecutions Service autonomy is characterized by the criteria of legality and objectivity and their magistrates are only subject to the orders, directives and instructions laid down in their Statute.

5. 2. Training

5. 2. 1. Training

127) Training of judges

Initial training (e.g. attend a judicial school, traineeship in the court)	Compulsory
General in-service training	Optional
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	Optional
In-service training for management functions of the court (e.g. court president)	No training offered
In-service training for the use of computer facilities in courts	Optional

128) Frequency of the in-service training of judges:

General in-service training	Annual
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	Annual
In-service training for management functions of the court (e.g. court president)	No training offered
In-service training for the use of computer facilities in courts	Occasional (e.g. at times)

129) Training of public prosecutors

Initial training	Compulsory
General in-service training	Optional
In-service training for specialised functions (e.g. public prosecutor specialised on organised crime)	Optional
In-service training for management functions of the court	Optional

(e.g. Head of prosecution office, manager)	
In-service training for the use of computer facilities in office	Optional

130) Frequency of the in-service training of public prosecutors

General in-service training	Regular (e.g. every 3 months)
In-service training for specialised functions (e.g. public prosecutor specialised on organised crime)	Regular (e.g. every 3 months)
In-service training for management functions of the court (e.g. Head of prosecution office, manager)	Occasional (e.g. at times)
In-service training for the use of computer facilities in office	Occasional (e.g. at times)

131) Do you have public training institutions for judges and / or prosecutors? If yes, please indicate in the "comment" box below the budget of such institution(s).

If your judicial training institutions do not correspond to these criteria, please specify it.

	Initial training only	Continuous training only	Initial and continuous training
One institution for judges	No	No	No
One institution for prosecutors	No	No	No
One single institution for both judges and prosecutors	No	No	Yes

Comment :

Budget of the institution: 11933953 €

E.2

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- comments regarding the attention given in 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 has been implemented over the last two years

5. 3. Practice of the profession

5. 3. 1. Practice of the profession

132) Salaries of judges and public prosecutors.

	Gross annual salary in €, on 31 December 2010	Net annual salary in €, on 31 December 2010
First instance professional judge at the beginning of his/her career	35 699	
Judge of the Supreme Court or the Highest Appellate Court (please indicate the average salary of a judge at this level, and not the salary of the Court President)	85 820	
Public prosecutor at the beginning of his/her career	35 699	
Public prosecutor of the Supreme Court or the Highest Appellate Instance (please indicate the average salary of a public prosecutor at this level, and not the	85 820	

salary of the Public prosecutor General)		
--	--	--

Comment :

Supreme Administrative Court/ Prosecution Services/Supreme Court of Justice/ General-Directorate for the Administration of Justice (Direcção-Geral de Administração da Justiça).

133) Do judges and public prosecutors have the following additional benefits?

	Judges	Public prosecutors
Reduced taxation	No	No
Special pension	No	No
Housing	Yes	Yes
Other financial benefit	Yes	Yes

134) If other financial benefit, please specify:

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

135) Can judges combine their work with any of the following other functions ?

	With remuneration	Without remuneration
Teaching	No	Yes
Research and publication	Yes	Yes
Arbitrator	No	No
Consultant	No	No
Cultural function	No	Yes
Political function	No	No
Other function	No	No

136) If rules exist in your country (e.g. authorisation needed to perform these activities), please specify. If "other function", please specify.

In principle, judges can't earn any remuneration in any other functions and need a special authorisation from the High Council of judiciary to teach (always without remuneration).

137) Can public prosecutors combine their work with any of the following other functions ?

	With remuneration	Without remuneration
Teaching	No	Yes
Research and publication	No	Yes
Arbitrator	No	No
Consultant	No	No
Cultural function	No	Yes
Political function	No	No
Other function	No	No

138) Please specify existing rules (e.g. authorisation to perform the whole or a part of these activities). If "other function", please specify:

The Public Prosecution Statute provides that their work cannot be combined with any other function (public or private), except teaching, scientific research, or managerial functions in representative organizations of the Public Prosecutor judiciary.

The exercise of teaching duties or scientific research may be allowed provided it is not remunerated and without prejudice to the service.

139) Productivity bonuses: do judges receive bonuses based on the fulfilment of quantitative objectives in relation to the delivery of judgments (e.g. number of judgments delivered over a given period of time)?

- Yes
 No

If yes, please specify the conditions and possibly the amounts:

5. 4. Disciplinary procedures

5. 4. 1. Disciplinary procedures

140) Who is authorised to initiate disciplinary proceedings against judges (multiple options possible)?

- Citizens
 Relevant Court or hierarchical superior
 High Court / Supreme Court
 High Judicial Council
 Disciplinary court or body
 Ombudsman
 Parliament
 Executive power
 Other?
 This is not possible

If "executive power" and/or "other", please specify:

141) Who has been authorised to initiate disciplinary proceedings against public prosecutors: (multiple options possible):

- Citizens
 Head of the organisational unit or hierarchical superior public prosecutor
 Prosecutor General /State public prosecutor
 Public prosecutorial Council (and Judicial Council)
 Disciplinary court or body
 Ombudsman
 Professional body
 Executive power
 Other?
 This is not possible

If "executive power" and/or "other", please specify:

142) Which authority has disciplinary power on judges? (multiple options possible):

- Court
 Higher Court / Supreme Court
 Judicial Council
 Disciplinary court or body
 Ombudsman
 Parliament

Executive power Other?

If "executive power" and/or "other", please specify:

143) Which authority has the disciplinary power on public prosecutors? (multiple options possible): Supreme Court Head of the organisational unit or hierarchical superior public prosecutor Prosecutor General /State public prosecutor Public prosecutorial Council (and Judicial Council) Disciplinary court or body Ombudsman Professional body Executive power Other?

If "executive power" and/or "other", please specify:

144) Number of disciplinary proceedings initiated against judges and public prosecutors. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. If "other", please specify it in the "comment" box below.**[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]**

	Judges	Public prosecutors
Total number (1+2+3+4)	48	29
1. Breach of professional ethics	0	26
2. Professional inadequacy	48	3
3. Criminal offence	0	NA
4. Other	0	NA

Comment :

In what concerns judges, we must explain that in the Portuguese system the professional inadequacy has always attached a breach of professional ethics. One is linked to the other and is impossible to distinguish both.

The reason for the increase of the number of disciplinary proceedings was due to an improvement of the operation of inspection services and also of the High Judicial Council itself.

145) Number of sanctions pronounced against judges and public prosecutors. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons in the "comment" box below.

	Judges	Public prosecutors
Total number (total 1 to 9)	26	26
1. Reprimand	9	3
2. Suspension	2	3
3. Removal of cases	0	NA
4. Fine	15	17
5. Temporary reduction of salary	NA	NA
6. Position downgrade	0	NA
7. Transfer to another geographical (court) location	0	NA
8. Resignation		

	0	NA
9. Other	0	3

Comment :

Civil judges: 26 of the disciplinary proceeding initiated in 2010 are still pending and 14 ended in acquittal

Public prosecutors: "other" means "compulsory retirement"

E.3

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- 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

Please indicate the sources for answering questions 144 and 145

The High Council of the Judiciary (Conselho Superior da Magistratura), the High Council of the Prosecutors (Conselho Superior do Ministério Público) and the High Council of Administrative and Fiscal Courts (Conselho Superior dos Tribunais Administrativos e Fiscais).

6. Lawyers

6. 1. Status of the profession and training

6. 1. 1. Status of the profession and training

146) Total number of lawyers practising in your country.

27 591

147) Does this figure include "legal advisors" who cannot represent their clients in court (for example, some solicitors or in-house counsellors)?

Yes

No

148) Number of legal advisors who cannot represent their clients in court:

NAP

149) Do lawyers have a monopoly on legal representation in (multiple options are possible):

- Civil cases?
- Criminal cases - Defendant?
- Criminal cases - Victim?
- Administrative cases?
- There is no monopoly

If there is no monopoly, please specify the organisations or persons that may represent a client before a court (for example a NGO, a family member, a trade union, etc) and for which types of cases:

In Portugal, lawyers are mandatory for every law case except:

- Labour cases - the employees can be represented by the Public Attorney;
- Public Law (Administrative Court Cases) - legal representation in lawsuits against the State that refers to contracts or to tort, is carried on by the Public Attorney's Office, according to Administrative Procedure Code. Article 11, n. 2 of the Administrative Procedure Code also foresees the possibility of a lawyer or even a law graduate counsel, to represent public departments or associations.

There is no monopoly when it comes to civil law cases, solicitors can also represent their clients. However, according to the Portuguese Civil Procedure Code, petitioners must be represented by a lawyer in the following cases:

- Proceedings that exceed a specific value and that admit appeal; in proceedings that always admit appeal regardless of their value; and proceedings in superior courts (article 32 of the Civil Procedure Code).
- Some credit injunctions require representation by a lawyer;
- In certain execution proceedings, depending on their value, representation by lawyer can be mandatory (article 60 of the Portuguese Civil Procedure Code).

There is a kind of court proceeding named "Peace Court" that allows petitioners to represent themselves before court, without legal representation. However there are some exceptions: if an appeal of the procedure is admissible; when the petitioner is foreign and has no understanding of Portuguese language; if the petitioner is illiterate or has some kind of disability – in this cases lawyers or solicitors are mandatory.

Mediation and Conflict Resolution Alternative issues that run in local "Peace Court" don't depend of any lawyer assistance (article 38.º of Law n.º 78/2001 of 13th of July).

150) Is the lawyer profession organised through? (multiple options possible)

- a national bar?

a regional bar?

a local bar?

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

Yes

No

If not, please indicate if there are other specific requirements as regards diplomas or university degrees :

152) Is there a mandatory general system for lawyers requiring in-service professional training?

Yes

No

153) Is the specialisation in some legal fields tied with specific training, levels of qualification, specific diploma or specific authorisations?

Yes

No

If yes, please specify:

The Portuguese Bar Association grants some titles within several areas of law, under Regulation n.º 204/ 2006 of 30th October.

F.1

Please indicate the sources for answering questions 146 and 148:

Comments for interpreting the data mentioned in this chapter:

Source for answering the questions: Portuguese Bar Association (Ordem dos Advogados)

The Portuguese Bar Association is a national Bar, ruled by a professional statute approved by Law 15/2005 of January 26th.

In Portugal, only regularly registered lawyers are allowed to carry legal practice and represent people in courts, according to Law 49/2004 of August 24th , thus the registration at the Portuguese Bar Association (OA) is mandatory – number one, article 61.º of the Statute.

6. 2. Practising the profession

6. 2. 1. Practising the profession

154) Can court users establish easily what the lawyers' fees will be (i.e. do users have easy access to prior information on the foreseeable amount of fees, is the information transparent and accountable)?

Yes

No

155) Are lawyers' fees freely negotiated?

Yes

No

156) Do laws or bar association standards provide any rules on lawyers' fees (including those freely negotiated)?

Yes laws provide rules

Yes standards of the bar association provide rules

No, neither laws nor bar association standards provide rules

F.2

Useful comments for interpreting the data mentioned in this chapter:

Lawyers fees are regulated in articles 95 indent a), 100,101 and 102, of the Portuguese Bar Association Statute – Law 15/2005, 26th January.

Fees are also addressed in the CCBE Code of Conduct for European Lawyers http://www.ccbe.org/en/documents/code_deonto.htm applicable to cross-border activities – see articles 3.3. and following.

The general rule concerning Lawyers fees is that they are freely negotiated between lawyer and client. However fees can also be established previously, in the beginning of instructions as expressly foreseen, by written agreement (article 100 number 2 of the Statute).

Lawyers should follow several criteria when presenting final note on legal fees:

Fees should be an adequate/reasonable economic compensation for the services provided considering the:

- difficulty and urgency of the matter;
- intellectual creativity of the service provided;
- time spent;
- responsibility laid on the lawyer;
- final result;
- other professional usages (for instance, having regard for the client's financial situation, the legal usage within the court district and the area of law, etc.)

In Legal Aid Support system fees are fixed within a scale of fees approved by the Government and lawyers cannot receive any other sum for that matter.

Contingency fees – quota litis - are explicitly forbidden by article 101 of the Statute. However, one can agree that the result of the matter has an impact in the final amount of fees as one between other criteria.

Courts, lawyers and clients can get a technical opinion or recommendation on fees, if any doubt occurs but even this recommendation from the Superior Council of the Bar Association, is not compulsory though usually followed by judges and lawyers.

6. 3. Quality standards and disciplinary proceedings

6. 3. 1. Quality standards and disciplinary proceedings

157) Have quality standards been determined for lawyers?

- Yes
 No

If yes, what are the quality criteria used?

Lawyers have no quality standards as such but follow professional duties (article 83, number 2 of the Statute) and a Code of Conduct, that if broken, may rise disciplinary responsibility (on account of professional misconduct) and even tort (civil professional) responsibility covered by professional insurance (article 99).

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

- the bar association?
 the Parliament?
 other?

If "other", please specify:

These duties and code of conduct laid down in the Statute are a result of self regulation powers given by law to the Bar Association.

The Statute of the Bar Association was approved by Parliament's law 15/2005 of 26th January, but self regulation and self disciplinary jurisdiction are essential attributions of the Bar Association and are guaranteed through the disciplinary bodies, the Ethics Council in each district (Lisboa, Porto, Coimbra, Faro, Évora, Madeira and Azores).

159) Is it possible to file a complaint about :

- the performance of lawyers?
 the amount of fees?

Please specify:

Yes, it is possible to complain on fees, as already explained in comments to 156, within the Superior Councils' jurisdiction.

When it comes to the lawyers conduct itself, the Bar has exclusive jurisdiction upon them, there are 7 Ethics Councils (Deontology Councils) which, according to each lawyer professional domicile, analyse and apply disciplinary measures (article 109 and forth).

160) Which authority is responsible for disciplinary procedures?

- the judge
 the Ministry of justice
 a professional authority
 other

If other, please specify:

161) Disciplinary proceedings initiated against lawyers. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP. If "other", please specify it in the "comment" box below.

[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]

	Total number of disciplinary proceedings initiated (1 + 2 + 3 + 4)	1. Breach of professional ethics	2. Professional inadequacy	3. Criminal offence	4. Other
Number	2 025	2 025	NA	NA	NA

Comment :

162) Sanctions pronounced against lawyers. If data is not available, please indicate NA. If the situation is not applicable in your country, please indicate NAP.

If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons in the "comment" box below.

	Total number of sanctions (1 + 2 + 3 + 4 + 5)	1.Reprimand	2. Suspension	3. Removal	4. Fine	5. Other (e.g. disbarment)
Number	301	123	39	5	134	NA

Comment :

Before "reprimands" we have the "warning" (total of 183) which is the lightest sanction applied, according to article 125.º of the statute of the Bar Association.

F.3**You can indicate below any useful comments for interpreting the data mentioned in this chapter**

Question 161 - In Portugal, lawyers' criminal offences are an exclusive of the Court and police investigation, however, prosecutions and condemnations are communicated to the Bar that can open misconduct or professional inadequacy procedures.

It is not possible to give the actual number for professional inadequacies – the numbers given above regard the 2010's finished cases. There are 3610 professional ethics cases still pending .

7. Alternative Dispute Resolution

7. 1. Alternative Dispute Resolution

7. 1. 1. Alternative Dispute Resolution

163) Does the legal system provide for mediation procedures? If no skip to question 168

[Judicial mediation: in this type of mediation, there is always the intervention of a judge or a public prosecutor who facilitates, advises on, decides on or/and approves the procedure. For example, in civil disputes or divorce cases, judges may refer parties to a mediator if they believe that more satisfactory results can be achieved for both parties. In criminal law cases, a public prosecutor can propose that he/she mediates a case between an offender and a victim (for example to establish a compensation agreement).]

- Yes
 No

164) Please specify, by type of cases, the organisation of judicial mediation:

	Court annexed mediation	Private mediator	Public authority (other than the court)	Judge	Public prosecutor
Civil and commercial cases	No	No	Yes	No	No
Family law cases (ex. Divorce)	No	No	Yes	No	No
Administrative cases	No	Yes	No	No	No
Employment dismissals	No	No	Yes	No	No
Criminal cases	No	No	Yes	No	No

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

- Yes
 No

If yes, please specify:

Whenever a party doesn't have sufficient financial means (Law 47/2007, 28 of August), it is possible to benefit from legal assistance by making use of legal aid.

166) Number of accredited or registered mediators who practice judicial mediation:

255

167) Number of judicial mediation procedures.

Please indicate the source in the "comment" box below:

Total number of cases (total 1+2+3+4+5)	<input checked="" type="checkbox"/> Yes	2 854
1. civil cases	<input checked="" type="checkbox"/> Yes	2 406
2. family cases	<input checked="" type="checkbox"/> Yes	83
3. administrative cases		NA
4. employment dismissals cases	<input checked="" type="checkbox"/> Yes	116
5. criminal cases	<input checked="" type="checkbox"/> Yes	249

Comment :

Office for Alternative Dispute Resolution, Ministry of Justice (Gabinete para a Resolução Alternativa de Litígios)

168) Does the legal system provide for the following ADR.

If "other", please specify it in the "comment" box below:

--	--

Mediation other than judicial mediation?	Yes
Arbitration?	Yes
Conciliation?	Yes
Other alternative dispute resolution?	No

Comment :

G.1

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

In Portugal, Peace Courts are part of our legal system, these courts are based on an extra-judicial basis (Law 78/2001, 13 July) if the parties have not reached an agreement through mediation, they can go to trial, where a decision is issued by the Peace Judge, who may also promote the parties' conciliation.

Please indicate the source for answering question 166:

Office for Alternative Dispute Resolution, Ministry of Justice (Gabinete para a Resolução Alternativa de Litígios)

8. Enforcement of court decisions

8. 1. Execution of decisions in civil matters

8. 1. 1. Functioning

169) Do you have enforcement agents in your judicial system?

- Yes
 No

170) Number of enforcement agents

706

171) Are enforcement agents (multiple options are possible):

- judges?
 bailiffs practising as private professionals under the authority (control) of public authorities?
 bailiff working in a public institution?
 other enforcement agents?

Please specify their status and powers:

Status:

In 2010 Enforcement Agents could be both:

- a) Court Officials – bailiffs working in a public institution - controlled by the Ministry of Justice through the Court Officials Council;
b) Private Enforcement Agents: other enforcement agents: Solicitors and Lawyers - controlled by the controlled by the Commission for the Efficiency of Enforcement Procedures (CPEE), a public, independent and democratic entity who began functioning on the 31st March 2009.

They are submitted to a rigorous legal system regarding the impeachments and incompatibilities with others professions, in order to assure the impartiality and ethical profile of these professionals, supervised by the Commission for the Efficiency of Enforcement Procedures.

Attributions:

The Private Enforcement Agents take control of court processes and have the powers to use of information and communication technologies (IT) concerning:

- 1 - Electronic /direct access to public database with information on the identification of the defendant/his assets;
- 2- Electronic /direct access to public register of all court processes with the identification of the defendant / the assets that were seizure;
- 3 - Online disclosure of the name of the defendants without goods – 9.000 - Public List of Enforcement Processes;
- 4 - Electronic Seizure (especially bank accounts assessments – according to the Position Paper of the UIHJ);
- 5 - Electronic notification of public creditors (tax administration and social security)
- 6 - Online Publications.

The judge only:

- Examines the enforcement title in some cases
- Decides the oppositions to the enforcement procedure or to the seizure (in 3 months)
- Decides to lodge claims and the graduation of credits
- Decides the claims regarding the acts of the Enforcement Agent (within 10 days)

172) Is there a specific initial training or examination to become an enforcement agent?

- Yes
 No

173) Is the profession of enforcement agents organised by?

- a national body?
 a regional body?

- a local body?
 NAP (the profession is not organised)

174) Are enforcement fees easily established and transparent for the court users?

- Yes
 No

175) Are enforcement fees freely negotiated?

- Yes
 No

176) Do laws provide any rules on enforcement fees (including those freely negotiated)?

- Yes
 No

Please indicate the source for answering question 170:

Question 170 – The source for answering this question is the Commission for Enforcement Procedures (Comissão para a Eficácia das Execuções).

The number indicated only refers to the number of Private Enforcement Agents (“other enforcement agents”) in December 2010.

In compliance with the decision of the Plenary meeting of the Commission for the Efficiency of Enforcement (CPEE) 19th January 2010, the CPEE is informed by the exact number of agents running on activity, on the 1st day of each month, by email. The CPEE informs that the number of Private Enforcement Agents in Portugal in 2010 was:

January - 670
 February - 671
 March - 681
 April - 682
 Mai - 684
 June -689
 July - 692
 August - 681
 September - 702
 October - 699
 November - 705
 December - 705

8. 1. 2. Efficiency of enforcement services

177) Is there a body entrusted with supervising and monitoring the enforcement agents’ activity?

- Yes
 No

178) Which authority is responsible for supervising and monitoring enforcement agents?

- a professional body?
 the judge?
 the Ministry of justice?
 the public prosecutor?
 other?

If other, please specify:

In 2010, the supervision of "bailiffs working in a public institution" remained under the control of the Ministry of Justice, but the supervision and control of the Private Enforcement Agents is a task of the Commission for the Efficiency of Enforcement Procedures (Comissão para a Eficácia das Execuções), a public independent body that started its activity on 31st March 2009 and was created:

- a) To implement the Recommendations of CEPEJ (Rec (2003)17 of the Committee of Ministers to Member States on Enforcement, especially Recommendations numbers 3, 4, 6 and 8;
- b) To implement the "Guidelines for a Better Implementation of the Existing CEPEJ Recommendations on Enforcement" - Rec (2009)11 of the Committee of Ministers to Member States on Enforcement, December 2009, namely Recommendations numbers 75 to 81);
- c) After a rigorous and in-depth analysis, made from 2005 to 2007, of all legal constraints found in enforcement procedures after the reform of 2003 entered into force, and is based on a legal resolution after a wide spread political and parliamentary consensus, thus originating Decree-Law nr. 226/2008, November 20th, approved in the use of the legal authorization granted by the Parliament, through Law nr 18/2008, of 21st of April.

The CPEE is responsible for:

- a) Issuing recommendations towards the efficiency of enforcement procedures;
- b) Issuing recommendations towards the training of Private Enforcement Agents;
- c) The increasing of the quality of the access and final evaluation demands and procedures of training period to become a Private Enforcement Agents;
- d) Analyzing the fulfilment of legal rules and upholding of the incompatibilities and impeachments of Private Enforcement Agents;
- e) The initiation of disciplinary proceedings and the application of proper penalties/sanctions to Private Enforcement Agents;
- f) Performing regular inspections to Private Enforcement Agents.

CPEE works as a Plenary which is composed by:

- a) The President of the Commission – who was elected unanimously by all members;
- b) One member appointed by the Supreme Judicial Council;
- c) One member appointed by the government member responsible for justice;
- d) One member appointed by the government member responsible for finance;
- e) One member appointed by the government member responsible for social security;
- f) One member appointed by the President of the Solicitor`s Chamber;
- g) One member appointed by the president of the Bar Association;
- h) The President of the Enforcement Agents College;
- i) One member appointed by the associations of consumers or users of justice services;
- j) Two members appointed by confederations with a seat on the Permanent Committee for Social Dialogue of the Economic and Social Council.

And also works as an Executive Board which comprises:

- a) President of the Commission for the Efficiency of Enforcement Procedures;
- b) President of the Specialty Enforcement Agents College, inherently;
- c) Three members chosen by the President and voted in favour by the Plenary.

179) Have quality standards been determined for enforcement agents?

- Yes
 No

If yes, what are the quality criteria used?

To issue the annual recommendations, the Commission for the Efficiency of Enforcement Procedures followed the criteria of the CEPEJ Recommendation number 75 (see Guidelines for a Better Implementation of the Existing CEPEJ Recommendations on Enforcement - Rec (2009)11):

- the number of pending cases,
- the number of incoming cases
- the number of executed cases
- the clearance rate,
- the time taken to complete the enforcement
- the success rates (recovery of debts, successful evictions, remittance of amounts outstanding, etc.)
- the services rendered in the course of the enforcement (attempts at enforcement, time input, decrees, etc.)
- the enforcement costs incurred and how they are covered
- the number of complaints and remedies in relation to the number of cases settled

The Commission for the Efficiency of Enforcement Procedures also added appropriate criteria concerning the specificities of the Portuguese system:

a) Handling Procedure:

- Incoming and Resolved- Clearance rate
- Geographical distribution;
- Case average time during procedures stage
- Case turnover time

b) Judicial Organization

- Geographical Distribution
- Resources by processes density

c) Enforcement Agents

- Nr. of Enforcement Agents (700 + 270 new professionals)
- Enforcement Agents geographical distribution
- Nr. of enforcement procedures per Enforcement Agent

d) Enforcement Agents stage analysis

- Nr. of Lawyers and Solicitors admitted
- Program during training (10 months)
- Middle Exam results
- Final Exam (by the external entity)

e) Enforcement Agents disciplinary behaviour analysis + supervision analysis

- Most common procedural errors / complaints
- Most common disciplinary procedures
- Management of the accounts
- Verification of the structures and the use of ICT

In July of 2010, the Commission for the Efficiency of Enforcement Procedures issued 61 Recommendations towards the efficiency of the Enforcement Procedures and 32 Recommendations towards the training of Enforcement Agents, available at http://www.cpee.pt/media/uploads/pages/RECOMENDACOES_DA_CPEE_2009-2010__.pdf

180) If yes, who is responsible for establishing these quality standards?

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

If "other", please specify:

The Commission for the Efficiency of Enforcement Procedures (Comissão para a Eficácia das Execuções).

181) Is there a specific mechanism for executing court decisions rendered against public authorities, including for supervising such execution?

- Yes
- No

if yes, please specify

The Procedural Code for 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 is applied to when some procedural rule is not specifically in the Procedural Code for Administrative Courts.

182) Is there a system for monitoring the execution?

- Yes
 No

If yes, please specify

See Question 179.

The Commission for the Efficiency of Enforcement Procedures evaluates the execution legal system entered into force since Decree-Law nr. 226/2008, November 20th (31/03/2009) to issue the annual recommendations towards the efficiency of enforcement procedures and the training of Enforcement Agents, with the cooperation of the data of all the Plenary Members of the CPEE, especially the Ministry of Justice data and analysis elaborated by the General Cabinet of Legislative Policy (from Decree-Law nr. 123/2007, April 27th), the Solicitor`s Chamber, the associations of consumers or users of justice services and the confederations with a seat on the Permanent Committee for Social Dialogue of the Economic and Social Council.

183) What are the main complaints made by 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?

If other, please specify:

Failure to return the amounts/items

184) 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:

185) Is there a system measuring the timeframes of the enforcement procedures:

- for civil cases?
 for administrative cases?

186) As regards a decision on debts collection, please estimate the average timeframe to notify the decision to the parties who live in the city where the court sits:

NA

187) Number of disciplinary proceedings initiated against enforcement agents. If other, please specify it in the "comment" box below.

[If disciplinary proceedings are undertaken because of several mistakes, please count the proceedings only once and for the main mistake.]

Total number of disciplinary proceedings (1+2+3+4)	<input type="checkbox"/> number:	53
1. for breach of professional ethics	<input type="checkbox"/> number:	13
2. for professional inadequacy		NA

3. for criminal offence number: 2
 4. Other number: 38

Comment :

"Other" includes:

Violation of the duty of diligence and zeal - 24

Failure to keep the customers accounts according to the Law - 8

Have evidence of irregularities in the handling of customer accounts - 6

188) Number of sanctions pronounced against enforcement agents.

If "other", please specify it in the "comment" box below. If a significant difference between the number of disciplinary proceedings and the number of sanctions exists, please indicate the reasons in the "comment" box below.

- Total number of sanctions (1+2+3+4+5) number: 12
 1. Reprimand number: 1
 2. Suspension number: 4
 3. Dismissal number: 1
 4. Fine number: 0
 5. Other number: 6

Comment :

"Other" includes:

Reprimand suspended in its application - 3

The Commission for the Efficiency of Enforcement Procedures dismisses an Enforcement Agent from the court process - 3

H.1

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter

- the characteristics of your enforcement system of decisions in civil matters and the main reforms that has been implemented over the last two years

Please indicate the source for answering the questions 186, 187 and 188:

Source of Questions 187 and 188 - Commission for the Efficiency of Enforcement Procedures (Comissão para a Eficácia das Execuções).

8. 2. Execution of decisions in criminal matters

8. 2. 1. Execution of decisions in criminal matters

189) Which authority is in charge of the enforcement of judgments in criminal matters? (multiple options possible)

- Judge
 Public prosecutor
 Prison and Probation Services
 Other authority

Please specify his/her functions and duties (initiative or monitoring functions). If "other authority", please specify:

The Enforcement of Sanctions Court is the entity in charge of imprisonment orders, according to article 91 of the Law on the Organization and Functioning of the Judicial Courts (Law 3/99, of the 13rd January, amended several times).

190) Are the effective recovery rates of fines decided by a criminal court evaluated by studies?

- Yes
 No

191) If yes, what is the recovery rate?

- 80-100%
- 50-79%
- less than 50%
- it cannot be estimated

Please indicate the source for answering this question:

H.2

You can indicate below:

- **any useful comments for interpreting the data mentioned in this chapter**
- **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. Notaries

9. 1. 1. Notaries

192) Do you have notaries in your country? If no go to question 197

- Yes
 No

193) Are notaries:

If other, please specify it in the "comment" box below.

private professionals (without control from public authorities)?		NAP
private professionals under the authority (control) of public authorities?	<input checked="" type="checkbox"/> number	381
public agents?	<input checked="" type="checkbox"/> number	65
other?		NAP

Comment :

194) Do notaries have duties (multiple options possible):

- within the framework of civil procedure?
 in the field of legal advice?
 to certify the authenticity of legal deeds and certificates?
 other?

If "other", please specify:

Notaries are one of the entities in Portugal that can legalize contracts and documents in general and authenticate signatures, either because the law requires it or at the parties' request. However, in most cases, even when the law requires a certain level of authenticity in the documents, it is possible for other legal professionals to do it, such as registers, lawyers or solicitors.

195) Is there an authority entrusted with supervising and monitoring the the notaries' activity?

- Yes
 No

196) Which authority is responsible for supervising and monitoring notaries:

- a professional body?
 the judge?
 the Ministry of justice?
 the public prosecutor?
 other?

If other, please specify:

Due to the special nature of the notary activity, there is a double supervision and control by the Notaries Order, the professional body of notaries in Portugal, and by the Ministry of Justice, through the Institute of Registries and Notary. Both entities have disciplinary jurisdiction and regulation power over the notaries.

I.1

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system of notaries and the main reforms that have been implemented over the

last two years

10. Court interpreters

10. 1. Court interpreters

10. 1. 1. Court interpreters

197) Is the title of court interpreters protected?

Yes

No

198) Is the function of court interpreters regulated by legal norms?

Yes

No

199) Number of accredited or registered court interpreters:

NA

200) Are there binding provisions regarding the quality of court interpretation within judicial proceedings?

Yes

No

If yes, please specify (e.g. having passed a specific exam):

201) Are the courts responsible for selecting court interpreters? If no, please indicate in the "comment" box below which authority selects court interpreters.

Yes for recruitment and/or appointment for a specific term of office

Yes for recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings

- No

Comment :

J.1

You can indicate below any useful comments for interpreting the data mentioned in this chapter:

Question 198 - There are no specific rules for court interpreters. However, the rules applicable to experts are "mutantibus mutatis", also valid for interpreters.

The function of court interpreters is regulated, namely, by articles 139,141 and 568 and following of the Civil Procedure Code, and by "inter alia", articles 47, 91, 92, 153 and 162 of the Penal Procedure Code, as well as by article 17 of table IV of the Regulation of Judicial Fees.

Please indicate the sources for answering question 199:

Directorate-General for the Administration of Justice (Direcção-Geral da Administração da Justiça)

11. Judicial experts

11. 1. Judicial experts

11. 1. 1. Judicial experts

202) In your system, what type of experts can be requested to participate in judicial procedures (multiple choice possible):

- "expert witnesses", who are requested by the parties to bring their expertise to support their argumentation
- "technical experts" who put their scientific and technical knowledge on issues of fact at the court's disposal
- "law experts" who might be consulted by the judge on specific legal issues or requested to support the judge in preparing the judicial work (but do not take part in the decision)

203) Is the title of judicial experts protected?

- Yes
- No

204) Is the function of judicial experts regulated by legal norms?

- Yes
- No

205) Number of accredited or registered judicial experts (technical experts)

NA

206) Are there binding provisions regarding the exercise of the function of judicial expert within judicial proceedings?

- Yes
- No

If yes, please specify, in particular the given time to provide a technical report to the judge:

When the investigations doesn't end with the immediate presentation of the technical report, the judge will establish the timeframe for the conclusion of the report, this period may not exceed 30 days (article 585 of the Civil Procedure Code)

207) Are the courts responsible for selecting judicial experts?

If no, please indicate in the "comment" box below which authority selects judicial experts?

- Yes for recruitment and/or appointment for a specific term of office
- Yes for recruitment and/or appointment on an ad hoc basis, according to the specific needs of given proceedings
- No .

Comment :

The function of judicial expert is regulated by articles 568 and following of the Portuguese Civil Procedure Code. Judicial experts are designated by the judge among persons of recognized competence in the matter in questions.

However, parties are consulted and can suggest an expert to perform these duties. If the parties agree on the choice of the expert, the judge shall designate the expert chosen, unless there are doubts about his capacity and competence.

K.1

You can indicate below any useful comments for interpreting the data mentioned in this chapter:

Please indicate the sources for answering question 205:

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

12. Foreseen reforms

12. 1. Foreseen reforms

12. 1. 1. Reforms

208) Can you provide information on the current debate in your country regarding the functioning of justice? Are there foreseen reforms? Please inform whether these reforms are under preparation or have only been envisaged. If possible, please observe the following categories:

1. (Comprehensive) reform plans

2. Budget

3. Courts and public prosecution services (e.g. powers and organisation, structural changes - e.g. reduction of the number of courts -, management and working methods, information technologies, backlogs and efficiency, court fees, renovations and construction of new buildings)

4. High Judicial Council

5. Legal professionals (judges, public prosecutors, lawyers, notaries, enforcement agents, etc.): organisation, education, etc.

6. Reforms regarding civil, criminal and administrative laws, international conventions and cooperation activities

7. Enforcement of court decisions

8. Mediation and other ADR

9. Fight against crime and prison system

10. Other

1. (Comprehensive) reform plans:

- Reform of the judicial system, including the court organization;
- Reforms regarding the acceleration of judicial proceedings;
- Measures aimed to increase efficiency, reduce costs, avoid waste and centralize the management of facilities and equipment.

3. Courts and public prosecution services

- The organic legislation applicable to the courts and the procedural legislation must be congruent in providing a clear definition of the role of the Supreme Court of Justice and the Supreme Administrative Court as courts that standardise and harmonise jurisprudence and not, as a rule, as courts of instance;
- Manage the judicial system in accordance with objectives that are preferably quantified, This is a change that is absolutely essential in order to combat judicial slowness;
- Provide the courts with a professional management and the necessary technical support;
- Evaluate the changes that have been made to the judicial costs regime in the last few years and standardise it;
- Use the latest technologies to pursue a principle of unification;
- The creation of a pool of judges in order to quickly respond to chronic delays;
- The creation of support offices for each Court or group of Courts, so that judges can dedicate themselves almost solely to their essential task.

5. Legal professions:

- Improve the system for recruiting and training judges and prosecutors;
- Ensure the specialisation of judicial operators;
- Introduce a definition of the number of cases a judge or prosecutor can handle at one time;
- The inclusion in the law of norms designed to substantially limit the participation of judges and prosecutors in service commissions outside the judiciary;
- Establish a real performance evaluation for judges and prosecutors, to be conducted by the Supreme Councils;
- The Government must reconsider the regulations governing registry and notarial fees and their status.

6. Legislative reforms:

- Make it a priority to create institutional and procedural mechanisms for protecting personality rights in urgent cases;
- Adoption of a Statute of the Child;
- The revision of the Civil Code regime governing disqualifications (suspension of civil rights, incapacitation), especially with regard to the elderly;
- Amendment of the Law governing Protective and Educational Measures regarding Juvenile Crime;
- Procedural simplification, particularly with simplified sentences;
- A reduction in the forms of procedure, simplifying the regime and ensuring efficacy and speed, while simultaneously investing in the deformalisation of procedures, oral procedures and the limitation of relevant procedural questions, making the process more effective and more understandable to the parties;
- It is crucial that there is a change in the paradigm for the decision-making process employed by judges, who are presently required to preside over every procedural act, to issue every judicial order, even if it is merely administrative, and to preside over every hearing, all of which in reality constitutes an administrative bottleneck that is blocking the judicial system;
- Create a new paradigm for the declaratory action and for the executory action in order to reduce the number of pending civil suits;
- Enact new rules for procedural management and procedural details;
- Make it obligatory to hold a preliminary hearing;
- Give courts of second instance more efficacy in the examination of matters of fact.

7. Enforcement of court decisions:

- Reform the executory action, in such a way as to do away with it whenever the executory title is a sentence; judicial decisions must either be executed on the basis of a concrete order contained in the sentence, or be handled under an additional incidental procedure;
- In cases in which there is an executive title other than a judicial sentence, it is foreseen to create an abbreviated procedure that makes it possible to resolve cases quickly;
- The Government will determinedly work towards the creation of institutional solutions that make it easier for companies to receive the amounts due to them, which are indispensable to their survival;
- Make the execution of sentences in administrative and fiscal proceedings more agile, allowing execution to be made at the address listed in the tax authorities' database;
- Make the current law governing insolvency proceedings more agile.

8. Mediations and other ADR:

- Ensure a proximity justice and the de-judicialisation of conflicts;
- The magistrates' courts (Julgados de Paz), which were created in 2001, are courts that possess their own operational and organisational characteristics and are a good example of what a proximity justice can be. In any case, nearly a decade after they were created, it seems appropriate to undertake a detailed evaluation of their practical efficacy and to make the adjustments that prove necessary to the rapid resolution of small conflicts.

9. Fight against crime and prison system:

- Improve the image of criminal justice and guarantee citizens' rights;
- A revision of the Penal Code (CP) and the Code of Criminal Procedure (CPP) in such a way as to broaden the application of, and effectively implement, the summary procedure in the case of persons who are detained in flagrante delicto, and broaden the imposition of remand in custody for crimes that are punishable by prison terms of more than three years;
- Strengthen the Public Prosecutors' Office's autonomy and accountability in the exercise of its penal action;
- Strengthen the penal status of victims;
- Strengthen the supervision of the so-called short-term releases and make the regime governing the grant of parole more rigorous;
- Strengthen the fight against corruption;
- Improve the regime governing urbanistic crime.

10. Other:

- The improvement of the management control and information systems is a fundamental element in increasing efficiency, reducing costs and avoiding waste;
- Develop arbitration-based justice;
- The judicial map must also be rethought from the point of view of the Justice system's users;
- The government will also take account of international good practices and recommendations, evolving towards the proposals set out in the Report of the European Commission for the Efficiency of Justice (CEPEJ), which includes the obligation to tell the parties at the beginning of proceedings and following a procedural management assessment, how long the specific case in question is likely to last.