

Strasbourg, 10 September 2006

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Version finale

**Answer to the  
REVISED SCHEME  
FOR  
EVALUATING JUDICIAL SYSTEMS  
2004 Data**

**Réponse à la  
GRILLE REVISEE  
POUR  
L'ÉVALUATION DES SYSTÈMES JUDICIAIRES  
Données 2004**

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**PORTUGAL**



COUNCIL OF EUROPE    CONSEIL DE L'EUROPE

**Final version**

Strasbourg, 30 June 2006

**CEPEJ (2005) 2 REV 2**

**EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE  
(CEPEJ)**

**REVISED SCHEME FOR EVALUATING JUDICIAL SYSTEMS**

**adopted by the CEPEJ at its 5<sup>th</sup> Plenary Meeting (Strasbourg, 15 – 17 June 2005) and  
approved by the Committee of Ministers on 7 September 2005  
(936<sup>th</sup> meeting of the Ministers' Deputies)**

## Contents

<b>I. Demographic and economic data</b> .....	<b>p. 3</b>
I. A. General information.....	p. 3
I. B. Budgetary data concerning judicial system.....	p. 3
<b>II. Access to Justice and to all courts</b> .....	<b>p. 5</b>
II. A. Legal aid.....	p. 5
II.B. Users of the courts and victims .....	p. 6
II.B.1. Rights of the users and victims .....	p. 6
II.B.2. Confidence of citizens in their justice system.....	p. 8
<b>III. Organisation of the court system</b> .....	<b>p. 9</b>
III.A. Functioning.....	p. 9
III.B. Monitoring and evaluation .....	p. 13
<b>IV. Fair trial</b> .....	<b>p. 15</b>
IV.A. Fundamental principles.....	p. 15
IV.B. Timeframes of proceedings .....	p. 16
IV.B.1. General .....	p. 16
IV.B.2. Civil and administrative cases.....	p. 17
IV.B.3. Criminal cases.....	p. 18
<b>V. Career of judges and prosecutors</b> .....	<b>p. 20</b>
V.A. Appointment and training.....	p. 20
V.B. Practice of the profession .....	p. 22
V.C. Disciplinary procedures .....	p. 23
<b>VI. Lawyers</b> .....	<b>p. 24</b>
<b>VII. Alternative Dispute Resolution</b> .....	<b>p. 27</b>
<b>VIII. Enforcement of court decisions</b> .....	<b>p. 29</b>
VIII.A. Execution of decisions in civil matters .....	p. 29
VIII.B. Enforcement of decisions in criminal matters .....	p. 31
<b>IX. Notaries</b> .....	<b>p. 32</b>

## REVISED SCHEME FOR EVALUATING JUDICIAL SYSTEMS

COUNTRY:

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### I. Demographic and economic data

#### I. A. General information

1. **Number of inhabitants** 10 529 255  
*Source Instituto Nacional de Estatística  
(National Statistics Office)*
2. **Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level**  

State level	64 175 000 000 € (preliminary data)
Regional / entity level	€

  
*Source Instituto Nacional de Estatística  
(National Statistics Office)*
3. **Per capita GDP** 13 550 € (preliminary data)  
*Source Instituto Nacional de Estatística  
(National Statistics Office)*
4. **Average gross annual salary** 13 492 €  
*Source Ministério do Trabalho e da Solidariedade Social  
(Labour Ministry and Social Welfare)*

This figure corresponds to the average gross annual salary within the whole of the economic activity (Public Administration included) and does not comprise the effective or fictitious employers' social contributions towards the Social Security Services and other related regimes. This result has been calculated upon the national accounts provisional values provided by the National Statistics Office and in a likely progressive evaluation view for 2004.

An error occurred in the data given for the 2002 pilot scheme.

I. B. Budgetary data concerning judicial system

5. **Total annual budget allocated to all courts** 552 462 601€ (as at 31/Dec/2004)

Source *Direcção Geral da Administração da Justiça, Instituto de Gestão Financeira e Patrimonial da Justiça e Tribunais Superiores*  
(Justice Administration Directorate General, Financial and Patrimonial Management Institute and the High Courts)

**Please specify:**

It refers to amounts spent in expenses related to the functioning of the courts, including court personnel salaries.

6. **Within this budget, can you isolate the following budgets and specify, if appropriate, their amount:**

	Yes	Amount
▪ Salaries?	Y	325 846 953€
▪ IT?	Y	984 782€
▪ Justice expenses borne by the State?	NA	€

Source *Direcção Geral da Administração da Justiça*  
(Justice Administration Directorate General)

7. **Annual public budget spent on legal aid** 27 632 424€

Source *Instituto de Gestão Financeira e Patrimonial da Justiça*  
(Financial and Patrimonial Management Institute)

It must be noted that some of this capital refers to amounts that should be paid in the previous years but were only paid in 2004.

8. **If possible, please specify:**

▪ the annual public budget spent on legal aid in criminal cases	NA	€
▪ the annual public budget spent on legal aid in other court cases	NA	€

Source *Instituto de Gestão Financeira e Patrimonial da Justiça*  
(Financial and Patrimonial Management Institute)

9. **Annual public budget spent on prosecution system** €

Source

Part of the budget spent on prosecution system is mixed with the expenditure of the Courts and it is not possible to separate from it.

10. **Bodies formally responsible for budgets allocated to the courts:**

	Preparation of the budget (Yes/No)	Adoption of the budget (Yes/No)	Management and allocation of the budget among courts (Yes/No)	Evaluation of the use of the budget (Yes/No)
Ministry of Justice	Y		Y	Y
Other ministry. Please specify	Y (Ministry of Finances)			
Parliament		Y		

Supreme Court				
Judicial Council				
Courts				
Inspection body. Please specify.				
Other. Please specify				

\*\*\*

**You can indicate below:**

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your budgetary system**

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

## II. Access to Justice and to all courts

### II. A. Legal aid

#### 11. Does legal aid concern:

	Criminal cases	Other than criminal cases
Representation in court (Yes/No)	Y	Y
Legal advice (Yes/No)	Y	Y
Other (Yes/No). Please specify	Y (total or partial exemption from court fees and other expenses related to the case; payment by instalments of the court fees and of other expenses related to the case, payment by instalments of the assigned counsel's salary; payment of the salary of the lawyer appointed by the court).	Y (total or partial exemption from court fees and other expenses related to the case; payment of the appointed execution solicitor's salary; payment by instalments of the court fees and of other expenses related to the case, of the assigned counsel's and of the appointed execution solicitor's salary).

#### 12. Number of legal aid cases:

- total 130 095
- criminal cases NA
- other than criminal cases NA

It is not possible to give more detailed data.

Source *Ministério do Trabalho e da Solidariedade Social*  
(Labour Ministry and Social Welfare)

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

Yes  No

14. Does your country have an income and asset test for granting legal aid:

- |                                  | No                       | Yes/Amount                          |
|----------------------------------|--------------------------|-------------------------------------|
| ▪ for criminal cases?            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| ▪ for other than criminal cases? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Source *Gabinete de Política Legislativa e Planeamento*  
(Legal Policy and Planning Office)

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

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

Yes  No

16. If yes, is the decision taken by:

- |  | Yes                                 |
|--|-------------------------------------|
| ▪ the court?   | <input type="checkbox"/>            |
| ▪ a body external to the court?                      | <input checked="" type="checkbox"/> |
| ▪ a mixed decision-making body (court and external)? | <input type="checkbox"/>            |

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

- |                                  | Yes                                 | No                       |
|----------------------------------|-------------------------------------|--------------------------|
| ▪ for criminal cases?            | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ for other than criminal cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

If yes, are there exceptions? Please specify:

*Subjective exemptions:*

The Public Prosecutor, in the actions, proceedings and appeals, when he acts on his own behalf, in the defence of the rights and interests that the law confers to him;

Legal persons with public administrative purposes;

Voluntary organisations;

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

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

*Objective exemptions:*

In the adoption procedures;

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

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

institutions and to syndicate bodies;  
 In the deposits and withdrawals that have to be made by the parts and which are considered normal specific procedural steps, as well as the release of securities, in inventories and in the civil enforcement actions;  
 In cases of value inspection for counting effects in what concerns the justice tax.

18. **Is there a private system of legal expense insurance for individuals in order to finance legal proceedings to court?**

No   
 Yes  **Please specify:**

Legal expenses insurance is a private insurance branch which is carried out according to EU Non Life Insurance framework Directives and Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions. However, its relevance is largely marginal (only 0,1% of total insurance premiums of Portuguese insurance market in 2003 and in 2004), situation which today still remains unchangeable.

19. **Do judicial decisions have an impact on who bears the legal costs which are paid by the parties during the procedure in:**

	Yes	No
▪ <b>criminal cases?</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
▪ <b>other than criminal cases?</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

\*\*\*

**You can indicate below:**

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your legal aid system**

II. B. Users of the courts and victims

II. B. 1. Rights of the users and victims

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

	Yes	No
▪ <b>legal texts (e.g. codes, laws, regulations, etc.)?</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Internet address(es): <a href="http://www.mj.gov.pt">www.mj.gov.pt</a> ; <a href="http://www.dre.pt">www.dre.pt</a> ; <a href="http://www.digesto.gov.pt">www.digesto.gov.pt</a>		
▪ <b>case-law of the higher court/s?</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Internet address(es): <a href="http://www.dgsi.pt">www.dgsi.pt</a> ;		
▪ <b>other documents (for examples legal forms)?</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Internet address(es): <a href="http://www.tribunaisnet.mj.pt">www.tribunaisnet.mj.pt</a>		

21. **Is there an obligation to provide information to the parties concerning the foreseeable**



timeframe of the proceeding?

Yes  No

If yes, please specify:

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

Yes  No

23. Are there special arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:

	Information mechanism (Yes/No)	Hearing modalities (Yes/No)	Procedural rights (Yes/No)	Other (Yes/No). Please specify
Victims of rape	N	Y	Y	Y
Victims of terrorism	N	Y	Y	Y
Child/Witness/Victim	N	Y	Y	Y
Victims of domestic violence	N	Y	Y	Y
Ethnic minorities	N	N	N	N
Disabled persons	N	Y	Y	Y
Juvenile offenders	N	Y	Y	Y
Other	N	Y	Y	Y

24. Does your country have compensation procedure for victims of crimes?

Yes  No

25. If yes, does this compensation procedure consist in:
- |                  |                          |
|------------------|--------------------------|
|                  | Yes                      |
| ▪ a public fund? | Y                        |
| ▪ a court order? | <input type="checkbox"/> |
| ▪ private fund?  | <input type="checkbox"/> |

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

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

27. For victims, are there studies to evaluate the recovery rate of the compensation awarded by courts?

No	N	
Yes	<input type="checkbox"/>	<b>Please specify:</b>

**II. B.2. Confidence of citizens in their justice system**

28. Is there a system for compensating users in the following circumstances:
- |                                    |     |                          |
|------------------------------------|-----|--------------------------|
|                                    | Yes | No                       |
| ▪ excessive length of proceedings? | Y   |                          |
| ▪ wrongful arrest?                 | Y   | <input type="checkbox"/> |
| ▪ wrongful condemnation?           | Y   | <input type="checkbox"/> |

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

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

The Portuguese Constitution foresees, in article 20, nr. 4 that «everyone shall possess the right to secure a ruling in any suit to which he is a party, within a reasonable period of time and by means of fair process».

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

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

of liberty.

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

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

29. **Does your country have surveys on users or legal professionals (judges, lawyers, officials, etc.) to measure public trust and satisfaction with the services delivered by the judiciary system?**

Yes  No

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

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

30. **If yes, please specify:**

	<b>Trough systematic surveys (Yes/No)</b>	<b>Through ad hoc surveys (Yes/No)</b>
Surveys at national level	N	Y
Surveys at court level	N	N

31. **Is there a national or local procedure for making complaints about the performance of the judicial system?**

Yes  No

32. **If yes, please specify:**

	<b>Time limit to respond (Yes/No)</b>	<b>Time limit for dealing with the complaint (Yes/No)</b>
Court concerned	NA	NA
Higher court	NA	NA

Ministry of Justice	NA	NA
High Council of Justice	N	N
Other external organisations (e.g. Ombudsman)	N	N

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

Although a request or complaint can be filled before the court concerned or, on appeal, before a higher court, it is possible to present those complaints, if linked to disciplinary or administrative matters, to the pertinent High Council (to the High Council for the Administrative and Tax Courts, to the High Council of the Judiciary, to other courts and to the General Prosecutor Office if the complaint is addressed against an action or omission of a public prosecutor).

The 2004 report of the High Council of the Judiciary is available on <http://www.conselhosuperiordamagistratura.pt/m1/1128090735relatorioanualdocsmano2004.htm>

In 2004, following a citizen's complaint, 838 files were opened. Under the Portuguese Penal Procedure Code, it is possible for the High Council of the Judiciary to take measures to accelerate a given penal procedure. In 2004, 46 such requests were appreciated (a 142% increase over the 2003 figure, where in 19 instances, 35 requests were sustained, 6 overruled and 5 were related to situations in the meantime solved.

It is possible to address the Ombudsman but only on the same grounds as the High Council is able to intervene (art. 22, n. 2, Law 9/91, of April 9<sup>th</sup>). The Ombudsman's action should be made through the pertinent High Council (art. 22, n. 3, Law 9/91).

In 2004 (report available on <http://www.provedor-jus.pt/publicacoes/2004/index.html>) 516 complaints were presented against a court or a public prosecutor. Of these, 205 invoked an unlawful delay and 191 were presented on substantive grounds, thereby inhibiting the Ombudsman of taking any further action.

Albeit specific data are unavailable concerning these complaints, the general data for the total of complaints received by the Ombudsman in 2004 shows that 35% lasted less than 30 days, 55% less than 90 days and 65% less than 6 months.

## III. Organisation of the court system

### III. A. Functioning

#### 33. Total number of courts (administrative structure):

- **first instance courts of general jurisdiction** 229

Source *Gabinete de Política Legislativa e Planeamento (Legal Policy and Planning Office)*

- **specialised first instance courts** 116

Source *Gabinete de Política Legislativa e Planeamento (Legal Policy and Planning Office)*

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

Family and Juvenile courts – 18; Labour courts – 47; Enforcement of sanctions courts – 4; Maritime court – 1; Administrative and Tax courts – 16; Commerce courts – 2; Civil enforcement courts – 2; Criminal instruction courts – 5; Civil and/or Criminal courts – 21.

34. Total number of courts (geographic locations) 333

Source *Direcção Geral da Administração da Justiça*  
(Justice Administration Directorate General)

35. Number of first instance courts competent for a case concerning:

The criteria used in answering question 35 correspond to the criteria used in question 33 and not in question 34.

▪ a debt collection for small claims 233

Please specify what is meant by small claims in your country:

In 2004, a small claim was a claim under 3 740,98 €

▪ a dismissal 59  
▪ a robbery 233

In this question it was used the same criterion applied in question 33 (administrative structure). In the number of courts competent for robbery cases it was not considered 5 criminal instruction courts but only the courts competent to judge those cases at trial stage.

36. Number of professional judges sitting in courts 1 754 (provisional data)  
(present the information in full time equivalent and for permanent posts)

From this total, 1 346 are in the first instance courts and 408 in the high courts.

Source *Gabinete de Política Legislativa e Planeamento*  
(Legal Policy and Planning Office)

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

▪ gross figure NA  
▪ if possible, in full time equivalent

Source *Conselho Superior da Magistratura*  
(High Council of Judiciary)

Please specify:

Judges do not sit in courts on an occasional basis. They work in full time. However, they may, sometimes, be in service commission or in any other situation previously authorised.

38. Number of non-professional judges (including lay judges) who are not remunerated but who can possibly receive a simple defrayal of costs 676 social judges

Source *Ministério da Justiça*  
(Ministry of Justice)

**Please specify:**

For this question it was considered the figure of the social judge in actual service. This number refers to the people designated as social judges, as published in the Official Journal. Being on those lists does not mean actually participating on the judicial decision making but only on the possibility of being called to participate in very specific proceedings, namely towards those cases foreseen both in the Law n. 166/99 of 14th September (article 30, n. 2 - Tutorial Educational Law) and in the Law n. 147/99 of 1st September (article 115- Protection of Minors and Juvenile in Danger Law) and they decide together with a presiding professional judge. It is impossible to determine the quantity of non-professional judges who have actually participated in judgments in 2004. The number given corresponds to the persons designated as social judges, which does not mean that they have really acted as non-professional judges.

**39. Does your judicial system include trial by jury with the participation of citizens?**

No

Yes **Y** **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.

**If possible, number of citizens who were involved in such juries for the year 2004?**

**NA**

**40. Number of non-judge staff who are working in courts** **7 506 (provisional data)**  
(present the information in full time equivalent and for permanent posts)

7 492 administrative staff (provisional data)  
14 assessors (provisional data)

From this total, 7 249 administrative staff and 3 assessors are in the first instance courts and 243 administrative staff and 11 assessors are at the high courts.

Source *Gabinete de Política Legislativa e Planeamento*  
(Legal Policy and Planning Office)

**41. If possible, could you distribute this staff according to the 3 following categories:**

- **non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars:** **6 670 (provisional data)**
- **staff in charge of different administrative tasks as well as of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management):** **425 (provisional data)**

- **technical staff:** 343 (provisional data)

**40) and 41)** The criteria used this year differs from the one followed in the last exercise because this year we have only counted those professionals in full time service at the judicial offices excluding those working in the public prosecutor offices and those professional working both for judges and the Public Prosecutor.

**41)** Given the categories provided, please note that we have included in the first category all different types of court clerks and not only assessors. The court clerks don't provide legal assistance to the judges but they provide assistance to the entire procedure in administrative tasks, such as case file preparation, assistance during the hearing, etc... In the second category we have only included the court secretary, since their tasks include, *inter alia*, the running of the office, the drafting and management of the office budget as well as the counting of the judicial procedures.

- 42. In courts, do you have non-judge staff entrusted with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal (such as German and Austrian Rechtspfleger):**

No  N  
 Yes  Number of staff

- 43. Number of public prosecutors** 1 217 (provisional data)  
 (present the information in full time equivalent and for permanent posts)

Source Gabinete de Política Legislativa e Planeamento  
 (Legal Policy and Planning Office)

- 44. Do you have persons who have similar duties as public prosecutors?**

No  N  
 Yes  Please specify:

- 45. Is the status of prosecutors:**

- independent within the judiciary?  Yes
- independent from the judiciary ?  NA
- under the authority of the Ministry of Justice?  NA

Please, do see the comments below.

- 46. Number of staff (non prosecutors) attached to the public prosecution service** 1 696 (provisional data)  
 (present the information in full time equivalent and for permanent posts)

Source Gabinete de Política Legislativa e Planeamento  
 (Legal Policy and Planning Office)

- 47. Who is entrusted with the individual court budget?**

	Preparation of the budget (Yes/No)	Arbitration and allocation (Yes/No)	Day to day management of the budget (Yes/No)	Evaluation and control of the use of the budget (Yes/No)
Management Board				
Court President				
Court administrative director				
Head of the court clerk office	Y He is responsible for the budget referring to goods and services		Y He is responsible for the budget referring to goods and services	Y He is responsible for the budget referring to goods and services
Other. Please specify	Y It is up to the Justice Administration Directorate General the payment of court personnel and magistrates' salaries at the 1 <sup>st</sup> instance courts.	Y It is up to the Justice Administration Directorate General the payment of court personnel and magistrates' salaries at the 1 <sup>st</sup> instance courts		Y It is up to the Justice Administration Directorate General the payment of court personnel and magistrates' salaries at the 1 <sup>st</sup> instance courts

48. In general, do the courts in your country have computer facilities?

Yes

No

49. What are the computer facilities used within the courts?

Functions	Facilities	100% of courts	+50% of courts	-50% of courts	- 10 % of courts
Direct assistance to the judge/court clerk	Word processing	Y			
	Electronic data base of jurisprudence	Y			
	Electronic files				Y
	E-mail	Y			
	Internet connection	Y			
Administration and management	Case registration system	Y			
	Court management information system		Y		



	Financial information system	Y			
Communication between the court and the parties	Electronic forms			Y	
	Special Website	Y			
	Other electronic communication facilities		Y		

Source Direcção Geral da Administração da Justiça  
(Justice Administration Directorate General)

50. Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the courts and judiciary?

No

Yes  Please specify the name and the address of this institution:

Gabinete de Política Legislativa e Planeamento, do Ministério da Justiça  
Legal Policy and Planning Office, Ministry of Justice  
Av. Óscar Monteiro Torres, 39  
1000-216 LISBOA

\*\*\*

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your judicial system

**Question 45)** None of the choices given applies.

The autonomous statute of the Public Prosecutor is foreseen in the Constitution of the Portuguese Republic (art. 219, n.1 and 2) and in the Public Prosecutor Statute (art. 2) where it is referred its autonomy towards other central, regional or local bodies. It has an exclusive liaison to legal, objective *criteria* and is subjected to the directives, orders and hierarchical instructions.

Thus, in accordance with the Public Prosecutor Statute (art. 80) the Minister of Justice is competent to:

- a) Convey, through the Public Prosecutor General, specific instructions regarding civil actions and other proceedings towards the composition of alternative dispute resolutions in which the State takes part;
- b) Authorize the Public Prosecutor, once the competent governmental department is heard, to admit, to temporize or to recede from the civil actions in which the State takes part;
- c) Require inspections, inquiries and inquests towards the criminal investigation police.

### III. B. Monitoring and evaluation

51. Are the courts required to prepare an annual activity report?

Yes  No

52. Do you have a regular monitoring system of court activities concerning the:

- |                              | Yes                                 | No                       |
|------------------------------|-------------------------------------|--------------------------|
| ▪ number of incoming cases?  | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ number of decisions?       | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ number of postponed cases? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ length of proceedings?     | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| ▪ other?                     | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Please specify:

53. Do you have a regular evaluation system of the performance of the court?

No

Yes

Y

Please specify:

54. Concerning court activities, have you defined:

▪ performance indicators?

Yes

No

N

**Please specify the 4 main indicators for a proper functioning of justice:**

There are ordinary or extraordinary inspections concerning not only the judges' activity but court inspections as well. An annual summary inspection has to be conducted in each court by the Inspection Services of the High Council of Judiciary.

▪ targets?

Yes

No

N

**Please specify who is responsible for setting the targets:**

- executive power?
- legislative power?
- judicial power?
- other?

Yes

Please specify:

**Please specify the main objectives applied:**

Source Conselho Superior da Magistratura  
(High Council of Judiciary)

55. Which authority is responsible for the evaluation of the performances of the courts:

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

Yes

Y

Please specify:

56. Does the evaluation system include quality standards concerning judicial decisions?

No

Yes

Y

Please specify:

Being the High Council of Judiciary the entity responsible for the evaluation of the judges' work, there are, necessarily, for the judicial inspectors, quality standards they must observe within the adjective law, namely those referring to the legal formalities that a judgement must adopt and the time limits for indictment in criminal or juvenile matters.

Source Conselho Superior da Magistratura  
(High Council of Judiciary)

57. Is there a system enabling to measure the backlogs and to detect the cases which are not processed within an acceptable timeframe for:

	Yes	No
▪ civil cases?	Y	
▪ criminal cases?	Y	
▪ administrative cases?	Y	

58. Do you have a way of analysing queuing time during court procedures?

No N  
Yes Please specify:

59. Do you monitor and evaluate the performance of the prosecution services?

No N  
Yes Please specify:

\*\*\*

**You can indicate below:**

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

**Question 57)** Regarding question 57 it must be said that the High Council of Judiciary is aware of these backlogs through the inspections made to the judges and to the courts, as well as through the complaints made by the users of the courts.

#### IV. Fair trial

##### IV. A. Fundamental principles

60. Is there in your judicial system:

- a right for an interpreter for all those within your jurisdiction who cannot understand or speak the language used in court?  
Yes Y No
- the right to have reasons given for all prisons sentences?

- Yes  No
- **for all cases, an effective remedy to a superior jurisdiction?**  
Yes  No

There is an effective remedy to a superior jurisdiction in all-criminal cases; however in non-criminal cases it depends on the value of the case and on the issue concerned.

61. Which is the percentage of judgements in first instance criminal cases in which the suspect is not actually present or represented?  NA

Source Gabinete de Política Legislativa e Planeamento  
(Legal Policy and Planning Office)

62. Is there a procedure to effectively challenge a judge if a party consider he/she is not impartial?

No   
Yes  If possible, number of successful challenges (in a year):  NA

63. Please give the following data 2003 and 2004 concerning the number of cases regarding the violation of Article 6 of the European Convention of Human Rights:

		Cases communicated by the Court		Cases declared inadmissible by the Court		Friendly settlements		Judgements establishing a violation		Judgements establishing a non violation	
		2003	2004	2003	2004	2003	2004	2003	2004	2003	2004
Criminal proceedings	Article 6§1 (equity)										
	Article 6§1 (duration)	2	1		3 (a)	1	2	1			
	Article 6§2										
	Article 6§3a										
	Article 6§3b										
	Article 6§3c										
	Article 6§3d										
Civil proceedings	Article 6§1 (equity)										
	Article 6§1 (duration)	1		42(a)	1 (a)	1	1	13	4	1	
	Article 6§1 (non execution only)										

- (a) Subsequent decisions deriving from the case law, in the complaint n° 65305/01 – Silva Torrado v/s Portugal, 22/05/2003.

Source Gabinete para as Relações Internacionais Europeias e de Cooperação  
(International European Relations and Cooperation Office)

<b>IV.B. Timeframes of proceedings</b>
<b>IV. B. 1. General</b>

64. Are there specific procedures for urgent matters in:

- |                         |     |                          |
|-------------------------|-----|--------------------------|
|                         | Yes | No                       |
| ▪ civil cases?          | Y   | <input type="checkbox"/> |
| ▪ criminal cases?       | Y   | <input type="checkbox"/> |
| ▪ administrative cases? | Y   | <input type="checkbox"/> |

65. Are there simplified procedures for:

- |                                    |     |                          |
|------------------------------------|-----|--------------------------|
|                                    | Yes | No                       |
| ▪ civil cases (small claims)?      | Y   | <input type="checkbox"/> |
| ▪ criminal cases (petty offences)? | Y   | <input type="checkbox"/> |
| ▪ administrative cases?            | Y   | <input type="checkbox"/> |

66. Is it possible for a second instance court to send back a case to a first instance court for a new examination?

Yes  No

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

No  Yes  Please specify:

All the parties involved and the judges must, however, establish, by mutual agreement, a date for the hearing.

**IV. B. 2. Civil and administrative cases**

68. Total number of civil cases in courts (litigious and not litigious): 628 170 (provisional data)

**Please specify the main types of cases:**

Labour cases – 75 306; Juvenile cases – 36 684; Other civil cases – 515 904 and maritime cases – 276.

Source Gabinete de Política Legislativa e Planeamento  
(Legal Policy and Planning Office)

69. Litigious administrative and civil cases in courts – please complete this table concerning the number of cases/length of proceedings/pending cases and specify definitions of incoming cases, starting and ending point of length and pending cases:

	Civil cases	Administrative cases	Divorce	Employment dismissal
Incoming cases	628 170	NA	10 119	NA
Decisions on the merits	524 684	NA	10 011	3 346

Total number (1st instance)	Percentage of decisions subject to appeal in a higher court	NA	NA	NA	NA
	Pending cases by 1 January 2005	1 325662	NA	12 570	NA
	Percentage of pending cases of more than 3 years	NA	NA	NA	NA
Average length (from date of lodging of court proceedings*)	1st instance decisions	696 days 23months	NA	308 days 10 months	244 days 8 months
	2nd instance decisions	127 days 4 months	NA	106 days 4 months	167 days 6 months
	Total procedure	NA	NA	NA	NA

\* If you cannot calculate the average length from the date of lodging of court proceedings, how do you calculate length of proceedings?

- All data given have a provisional nature.

For definitions please refer to the box at the end of this chapter.

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

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

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

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

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

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

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

considered.

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

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

Source Gabinete de Política Legislativa e Planeamento  
(Legal Policy and Planning Office)

#### IV. B. 3. Criminal cases

##### 70. Please describe the role and powers of the prosecutor in the criminal procedure:

	Yes	No
▪ to conduct or supervise police investigation?	Y	
▪ to conduct investigation?	Y	
▪ when necessary, to demand investigation measures from the judge?	Y	
▪ to charge?	Y	
▪ to present the case in the court?	Y	
▪ to propose a sentence to the judge?	Y	
▪ to appeal?	Y	
▪ to supervise enforcement procedure?	Y	
▪ to end the case by dropping it without the need for a judicial decision?	Y	
▪ to end the case by imposing or negotiating a penalty without a judicial decision?		N
▪ other significant powers? Please specify:		

##### 71. Does the prosecutor also have a role in civil and/or administrative cases?

No

Yes  Please specify:

Within the civil area:

The Public Prosecutor, in accordance with its statute (law n. 60/98, of 27<sup>th</sup> August, arts. 3 and 5) and the civil law, can represent, in court, the State, the autonomous regions, the municipal authorities, the incapacitated and the disabled (minors and non-imputable persons) who are in an uncertain or unknown location and the workers. It intervenes in juvenile inquest cases, in civil juvenile cases (such as filiation, parental authority, tutorship and adoption, legal trust and judicial handing over of minors) as well as maternity and paternity investigations. Throughout 2004, the Public Prosecutor has intended 3 939 legal civil actions, 30% of which followed the judicial course. Within the civil juvenile jurisdiction it handled 52 888 cases. In the labour area, its intervention extends namely to individual working contracts, to labour accidents and professional illness

concerning labour enforcement cases and appeals misdemeanours proceedings.  
Within the administrative area:

The Public Prosecutor, in accordance with its statute (art. 1 and 3 of the law n. 60/98) and the Administrative Procedure Code (arts. 9, n. 2, 11, n. 2 and 85) can represent the State, intending and contesting actions and intervenes in public actions (in the defence of public interest) and makes proposals towards actions where the public health, the environment and land management, quality of life, cultural patrimony and other State, autonomous regions and municipal authorities' property are concerned.

**72. Functions of the public prosecutor in relation to criminal cases– please complete this table:**

		Total number of 1st instance criminal cases
Received by the public prosecutor		498 935
Discontinued by the public prosecutor	In general	406 151
	Because the offender could not be identified	NA
	Due to the lack of an established offence or a specific legal situation	NA
Concluded by a penalty, imposed or negotiated by the public prosecutor		2 116
Charged by the public prosecutor before the courts		85 563

- All data given have a provisional nature.

Source Gabinete de Política Legislativa e Planeamento  
(Legal Policy and Planning Office)

**73. Criminal cases in courts – please complete this table concerning the number of cases/length of proceedings/pending cases and specify definitions of incoming cases, starting and ending point of length and pending cases:**

		Criminal cases	Robbery cases	Intentional homicides
Total number (1st instance)	Incoming cases	116 344	NA	NA
	Judicial decisions	99 747	1 884	192
	Convicted persons	69 798	1 749	157
	Acquitted persons	35 105	584	33
	Percentage of decisions subject to appeal in a higher court	NA	NA	NA
	Pending cases by 1 January 2005	170 008	NA	NA
	Percentage of pending cases of more than 3 years	NA	NA	NA



Average length*(from the date of official charging)	1st instance decision	336 days 11 months	346 days 12 months	292 days 10 months
	2nd instance decision	146 days 5 months	102 days 3 months	115 days 4 months
	Total procedure	NA	NA	NA

\* If you cannot calculate the average length from the date of official charging, how do you calculate length of proceedings?

- All data given have a provisional nature.

For definitions please refer to the box at the end of this chapter.

Source Gabinete de Política Legislativa e Planeamento  
(Legal Policy and Planning Office)

\*\*\*

**You can indicate below:**

- any useful comments for interpreting the data mentioned above
- the characteristics of your system concerning timeframes of proceedings

**Question 69)** “Incoming employment dismissal cases” – We cannot detach data concerning just individual working contracts dismissals from all the other contained in the same item. For that matter, only those figures regarding collective dismissal cases can be given: 60.

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

“Decisions on the merits – We are unable to detach data concerning just decisions on the merit from all the other contained in the same item.

- employment dismissal cases” – This total does not consider collective dismissal cases.

“Average length” – employment dismissal cases – The data given do not include collective dismissal cases.

“Average length” - Data related to 2<sup>nd</sup> instance decisions refer not only to the appeal courts but to the Supreme High Court as well. We cannot detach these data separately. Distinction cannot be made between those appeals submitted before one of the high instance courts and those appeals that go from a 2<sup>nd</sup> to a 3<sup>rd</sup> instance high court.

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

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

**Question 72)** The public prosecutor has no power to impose direct sanctions; nonetheless it can always, with the approval of the judge and of the defendant himself, apply certain injunctions and behaviour rules whenever the crime for which the defendant is prosecuted is punishable with less than 5 years of imprisonment or other than a prison sentence. If the defendant obeys all the injunctions and behaviour rules the case is filed.

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

As to the given figures: from this total, 1 833 cases are from the former type; the other 283 are from the latter.

**Question 73)** – “Average length” - Data related to 2<sup>nd</sup> instance decisions refer not only to the appeal courts but to the Supreme High Court as well. We cannot detach these data separately. Distinction cannot be made between those appeals submitted before one of the high instance courts and those appeals that go from a 2<sup>nd</sup> to a 3<sup>rd</sup> instance high court.

We have no way of knowing the percentage of decisions subject to appeal in a higher court. We cannot follow up the information at this stage.  
The same applies to the percentage of pending cases of more than 3 years. This kind of data is only collected in completed cases.

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

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

**Length of time:** it starts to be measured from the day the case enters a court until it reaches a final decision in that instance, even if later there may occur an appeal on the decision before a higher court.

## V. Career of judges and prosecutors

### V. A. Appointment and training

74. **Are judges initially/at the beginning of their carrier recruited and nominated by:**

- a body composed of members of the judiciary?
- a body composed of members external to the judiciary?
- a body composed of members of the judiciary and external to the judiciary?

Yes

Y

75. **Are prosecutors initially/at the beginning of their carrier recruited and nominated by:**

- a body composed of members of the prosecution system?
- a body composed of members external to the prosecution system?
- a body composed of members of the prosecution system and external to the prosecution system?

Yes

Y

76. **Is the mandate given for an undetermined period for:**

- |                | Yes | No                       |
|----------------|-----|--------------------------|
| ▪ judges?      | Y   | <input type="checkbox"/> |
| ▪ prosecutors? | Y   | <input type="checkbox"/> |

**Are there exceptions ? Please specify:**

No, there are no exceptions.

If no, what is the length of the mandate:

Is it renewable?

- of judges?
- of prosecutors?

Yes No

 

\*\*\*

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of the selection and nomination procedure of judges and prosecutors

**77. Nature of the training of judges:**

	Compulsion (Yes/No)		Frequency (Yes/No)	
Initial training	Compulsory	Y		
	Highly recommended			
	Optional			
General in-service training	Compulsory		Annual	
	Highly recommended		Regular	Y
	Optional	Y	Occasional	
In-service training for specialised functions (e.g. judge for economic or administrative issues)	Compulsory		Annual	
	Highly recommended		Regular	Y
	Optional	Y	Occasional	
In-service training for specific functions (e.g. head of court)	Compulsory	N	Annual	N
	Highly recommended	N	Regular	N
	Optional	N	Occasional	N

**78. Nature of the training of prosecutors:**

	Compulsion (Yes/No)		Frequency (Yes/No)	
Initial training	Compulsory	Y		
	Highly recommended			
	Optional			

General in-service training	Compulsory		Annual	
	Highly recommended		Regular	Y
	Optional	Y	Occasional	
Specialised in-service training	Compulsory		Annual	
	Highly recommended		Regular	Y
	Optional	Y	Occasional	

\*\*\*

**You can indicate below:**

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of of your training system for judges and prosecutors**

In Portugal, the initial training of judges and public prosecutors is a joint venture. In-service training is also, usually, done together.

#### **V. B. Practice of the profession**

**79. Gross annual salary of a first instance professional judge at the beginning of his/her career**  
32 272,24€

Source *Conselho Superior da Magistratura/ Conselho Superior dos Trib. Administrativos e Fiscais (High Council of Judiciary and Administrative and Tax High Council)*

**80. Gross annual salary of a judge of the Supreme Court or of the highest appellate court**  
77 582,54€

Source *Conselho Superior da Magistratura/ Conselho Superior dos Trib. Administrativos e Fiscais (High Council of Judiciary and Administrative and Tax High Council)*

**81. Gross annual salary of a public prosecutor at the beginning of his/her career**  
32 272.24€

Source *Procuradoria Geral da República (General Prosecutor Office)*

**82. Gross annual salary of a public prosecutor of the Supreme Court or of the highest appellate court**  
75 328.80€

Source *Procuradoria Geral da República (General Prosecutor Office)*

**83. Do judges and public prosecutors have additional benefits?**

	Judges (Yes/No)	Public prosecutors (Yes/No)
Reduced taxation	N	N
Special pension	N	N
Housing	Y	Y
Other financial benefit (If yes, please specify)	Y (A settlement subsidy and an allowance whenever the judge	Y (A settlement subsidy for those prosecutors working at the

	has to go abroad or anywhere within the national territory).	autonomous regions (art. 97 of the Public Prosecutor Statute) as well as an allowance whenever the prosecutor has to work outside the court jurisdiction (art. 100, <i>ibidem</i> ).
--	--	--

**84. Can judges or prosecutors combine their work with any of the following other professions?**

	Judges			Prosecutors		
	Yes with remuneration	Yes without remuneration	No	Yes with remuneration	Yes without remuneration	No
Teaching		Y			Y	
Research and publication		Y			Y	
Arbitrator			N			N
Consultant			N			N
Cultural function		(*)	(*)		Y	
Other function to specify	Publish books and receive the respective copyrights			Publish books and receive the respective copyrights		

(\*) In accordance with the High Council of Judiciary, each and every situation must be analysed separately, in order to avoid any incongruity with the judges' own work.

**85. Do judges receive bonus based on the fulfilment of quantitative objectives relating to the delivering of judgments?**

No  N

Yes  **Please specify:**

**V. C. Disciplinary procedures**

**86. Types of disciplinary proceedings and sanctions against judges and prosecutors:**

		Judges	Prosecutors
		Total number	18
Reasons for disciplinary procedures	Breach of professional ethics (Yes/No) If yes, please specify the number	13	
	Professional inadequacy (Yes/No) If yes, please specify the number	1	12

	Criminal offence (Yes/No) If yes, please specify the number		
	Other (Yes/No) If yes, please specify	3 - for violation of the right of discretion; 1 - for violation of the duty of incompatibility	35
Types of sanctions	Total number	15	13
	Reprimand (Yes/No) If yes, please specify the number	2	6
	Suspension (Yes/No) If yes, please specify the number	7	2
	Dismissal (Yes/No) If yes, please specify the number		1
	Fine (Yes/No) If yes, please specify the number	5	4
	Other (Yes/No) If yes, please specify	1 - compulsive retirement	

\*\*\*

**You can indicate below:**

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your system concerning disciplinary procedures for judges and prosecutors**

## VI. Lawyers

**87. Number of lawyers practising in your country** 22 418

This figure neither includes lawyers suspended from practise (at their own request or for any other reasons) nor trainee lawyers nor solicitors nor trainee solicitors.

Source *Gabinete de Política Legislativa e Planeamento*  
(Legal Policy and Planning Office)

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

Yes

No

**89. Do lawyers have a monopoly of representation:**

	Monopoly (Yes/No)		If no, possible representation by (Yes/No)	
Civil cases*	N		Member of family	
			Trade Union	
			NGO	
			Other	Solicitors (1)
Criminal cases*	Defendant	Y	Member of family	
			Trade Union	
	Victim	Y	Member of family	
			Trade Union	
Administrative cases*	N		Member of family	
			Trade Union	
			NGO	
			Other	Law graduates may represent public bodies and government departments

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

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

\* If appropriate, please specify if it concerns first instance and appeal.

**90. Is the lawyer profession organised through?**

- a national bar?
- a regional bar?
- a local bar?

Yes

**Please specify:**

The Bar Association is the public association (nationwide) representing law graduates who practise law as a profession – Lawyers. <http://www.oa.pt/>. The Bar Association comprises seven District Councils and seven Deontology Councils (with the same territorial limits of the District Councils).

You will find further details on question 100.

91. Is there a specific initial training or examination to enter the profession of lawyer?

Yes  No

92. Is there a mandatory general system for lawyers requiring continuing professional development?

Yes  No  (\*)

(\*) Under the Bar Association Statute, lawyers are obliged to pursue their professional development, as laid down by regulations, which shall be passed by the General Council of the Bar Association.

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

No   
Yes  Please specify:

A lawyer may attain recognition as a specialist lawyer in a certain area of law through a procedure managed by the Bar Association. This procedure aims to assess if the candidate has the appropriate professional and academic qualifications and may include a public exam.

94. Can users establish easily what the lawyers' fees will be?

Yes  No

95. Are lawyers fees:

- |                                 |   |
|---------------------------------|---|
| ▪ regulated by law?             | Yes <input type="checkbox"/>            |
| ▪ regulated by Bar association? | <input type="checkbox"/>                |
| ▪ freely negotiated?            | <input checked="" type="checkbox"/> (*) |

(\*) There are, however, some criteria which must be observed when presenting fees: time spent, difficulty of the matter, final result, possessions of the client, etc/Fees may be agreed in advance/ Legal aid fees are specified in a scale of fees approved by the Government.

96. Have quality standards been formulated for lawyers?

Yes  No

This answer differs from the one given in the 2002 pilot scheme, because another interpretation of the expression "quality standards" has been made. We understand it now, not as deontological norms, but as a benchmarking vision that comprises the description of practical tasks (and of the quality standards inherent to them), which lawyers must consider in the course of their work.

97. If yes, who is responsible for formulating these quality standards:

- |                        |                              |
|------------------------|------------------------------|
| ▪ the bar association? | Yes <input type="checkbox"/> |
| ▪ the legislature?     | <input type="checkbox"/>     |



- **other?**  **Please specify:**

**98. Is it possible to complain about :**

- **the performance of lawyers?** No  Yes  **Please specify:**

Lawyers and trainee lawyers are under the disciplinary jurisdiction of the Bar Association.

- **the amount of fees?** Yes  No

**99. Disciplinary proceedings and sanctions against lawyers:**

It is not possible to give statistical data regarding this year (2004). However, new software is being implemented which will enable us to provide this kind of information.

	Yes /No (If yes, please specify the annual number)	
Reasons for disciplinary proceedings	Breach of professional ethics	Y
	Professional inadequacy	Y
	Criminal offence	Y
	Other	Y
Type of sanctions	Reprimand	Y
	Suspension	Y
	Removal	Y
	Fine	Y
	Other	Restitution of fees

**100. Who is the authority responsible for the disciplinary procedures:**

- **a professional body?** Yes  **Please specify:**

The Deontology Councils (first instance) and the Superior Council (usually the instance of appeal) of the Bar Association.

- **the judge?**
- **the Ministry of justice?**
- **other?**  **Please specify:**

\*\*\*

**You can indicate below:**

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your system concerning the organisation of the Bar**

The Bar Association's departments/bodies (non-exhaustive) may be described as follows:

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

**The General Council** - The management and regulatory body nationwide.

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

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

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

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

For further details please see the Bar Association Statute (bylaw) approved by Law no. 15/2005, of 26<sup>th</sup> January. <http://www.oa.pt/genericos/detalheArtigo.asp?idc=5&scid=128&ida=24345>

**VII. Alternative Dispute Resolution**

**101. If appropriate, please specify, by type of cases, the organisation of the judicial mediation:**

	Compulsion (Yes/No)		Body providing mediation (Yes/No)	
Civil cases	Compulsory stage prior to court proceedings	N	Private mediator	N
			Public or authorised by court body	N
			Court (Peace judges)	Y
	Compulsory stage in court proceedings	N	Judge	N
	Ordered by judge in certain cases	N	Prosecutor	N
Family cases	Compulsory stage prior to court proceedings	N	Private mediator	N
			Public or authorised by court body	Y
			Court	N
	Compulsory stage in court proceedings	N	Judge	N
	Ordered by judge in certain cases	Y	Prosecutor	N
Administrative cases	Compulsory stage prior to court proceedings	N	Private mediator	N
			Public or authorised by court body	N

			Court	N
	Compulsory stage in court proceedings	N	Judge	N
	Ordered by judge in certain cases	N	Prosecutor	N
Employment dismissals	Compulsory stage prior to court proceedings	N	Private mediator	N
			Public or authorised by court body	N
			Court	N
	Compulsory stage in court proceedings	N	Judge	N
	Ordered by judge in certain cases	N	Prosecutor	N
Criminal cases	Compulsory stage prior to court proceedings	N	Private mediator	N
			Public or authorised by court body	N
			Court	N
	Compulsory stage in court proceedings	N	Judge	N
	Ordered by judge in certain cases	N	Prosecutor	N

**102. Can you provide information about accredited mediators?**

There are 82 accredited mediators at the Peace Courts and 81 family accredited mediators, 10 of which at the Family Mediation Office. Besides the 82 above-mentioned mediators, there is still available information on 104 mediators, qualified to work at the Peace Courts.

The candidates that wish to become mediators at the Peace Courts are subjected to a curriculum evaluation and should have certain legal requirements, such as: having a mediators' course previously recognised by the Ministry of Justice, being 25 or more years old and hold an university degree.

**103. Can you provide information about the total number of mediation procedure concerning:**

- **civil cases?** 694
- **family cases?** 249
- **administrative cases?** NA
- **employment dismissals?** NA
- **criminal cases?** NA

*Source* Direcção Geral da Administração Extrajudicial  
(Extra Judicial Administration Directorate General)

**104. Can you give information concerning other alternative dispute resolution (e.g. Arbitration)? Please specify:**

There are 33 arbitration centres, 8 of which are financed by the Ministry of Justice. These 8 centres (of consumer conflicts and of the motor vehicle sector) have handled, in the year 2004, a total of 3 651 cases, 2 160 of which through mediation, 244 through conciliation and 1 247 through arbitration.

\*\*\*

**You can indicate below:**

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your system concerning ADR**

As the alternative dispute resolutions, in our judicial system, have a voluntary nature, it is necessary the compliance of all the parties involved. However, it should be referred that, within the areas of competence of the Peace Courts, the reached agreement has the same value as a court's decision.

## VIII. Enforcement of court decisions

### VIII. A. Execution of decisions in civil matters

#### 105. Are enforcement agents:

- **judges?** Yes
  - **bailiff practising as private profession ruled by public authorities?**
  - **bailiff working in a public institution?** Y
  - **other enforcement agents?** Y
- Please specify their status:**

It is a mixed body that comprises both court officials and execution solicitors. Even though entrusted with public duties, the execution solicitors work as private professionals.

#### 106. Number of enforcement agents 486

Source **Câmara dos Solicitadores**  
**(Solicitors' Chamber)**

#### 107. Is there a specific initial training or examination to enter the profession of enforcement agent?

Yes Y  No

#### 108. Is the profession of enforcement agent organised by?

- **a national body?** Yes Y
- **a regional body?**
- **a local body?**

#### 109. Can users establish easily what the fees of the enforcement agents will be?

Yes Y  No

#### 110. Are enforcement fees:

- **regulated by law?** Yes Y
- **freely negotiated?**

111. Is there a body entrusted with the supervision and the control of the enforcement agents?

No

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

- a professional body?
  - the judge?
  - the Ministry of justice?
  - the prosecutor?
  - other?
- Please specify:

Yes

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

112. Have quality standards been formulated for enforcement agents?

No

Yes  Who is responsible for formulating these quality standards?

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

Source Câmara dos Solicitadores  
(Solicitors' Chamber)

113. What are the main complaints of users concerning the enforcement procedure:

- no execution at all?
- lack of information?
- excessive length?
- unlawful practices?
- insufficient supervision?
- excessive cost?
- other?

Yes No

N

N

N

Source Câmara dos Solicitadores  
(Solicitors' Chamber)

114. Does your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions?

No

Yes  Please specify:

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

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

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

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

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

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

**115. Is there a system measuring the timeframes of the enforcement of decisions :**

	Yes	No
▪ for civil cases?	Y	
▪ for administrative cases?	Y	

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

	Yes
▪ between 1 and 5 days	
▪ between 6 and 10 days	
▪ between 11 and 30 days	
▪ more: please specify	

Source

**117. Disciplinary proceedings and sanctions against enforcement agents:**

	Yes /No (If yes, please specify the total number)	
Disciplinary proceedings	Breach of professional ethics	No
	Professional inadequacy	No
	Criminal offence	No
	Other	Yes – 655*
Sanctions	Reprimand	Yes – 9
	Suspension	Yes – 1**
	Dismissal	

Fine	Yes - 3
Other	

\*\*\*

**You can indicate below:**

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your enforcement system of decisions in civil matters**

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

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

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

\* Cases initiated in 2004

\*\* Suspended from the list for 3 months.

#### **VIII. B. Enforcement of decisions in criminal matters**

##### **118. Is there a judge who has in charge the enforcement of judgments?**

Yes  **Please specify his/her functions and activities (e.g. Initiative or control functions):**

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

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

acts foreseen in and conferred to him by law.

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

No  Please specify which authority is entrusted with the enforcement of judgements (e.g prosecutor):

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

No  N  
Yes  Please specify:

\*\*\*

You can indicate below:

- any useful comments for interpreting the data mentioned above
- the characteristics of your enforcement system of decisions in criminal matters

## IX. Notaries

120. Is the status of notaries:

	Yes	Number
▪ a private one?	<input type="checkbox"/>	<input type="checkbox"/>
▪ a status of private worker ruled by the public authorities?	y <input type="checkbox"/>	227
▪ a public one?	Y <input type="checkbox"/>	176
<input type="checkbox"/> other?	<input type="checkbox"/>	<input type="checkbox"/>

Please specify:

The number given concerns the number of notary's licences, conceded up to date, as a private activity ruled by the public authorities (do see the comments at the end of this chapter). The law foresees that the total number of licences may reach 543. Besides the notaries who already have their licence as a private activity duly regulated, there are still functioning (during a temporary period, that should end in February 2006)



176 public notaries.

Source *Direcção Geral dos Registos e do Notariado*  
(Registry and Notary Directorate General)

121. Do notaries have duties:

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

	Yes	No
within the framework of civil procedure?		N
in the field of legal advice?	Y	
to authenticate legal deeds?	Y	
other?		

If yes, please specify:

122. Is there a body entrusted with the supervision and the control of the notaries?

No  
Yes

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

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

	Yes
a professional body?	Y
the judge?	
the Ministry of justice?	Y
the prosecutor?	
other?	

Please specify:

Please do see the comments below.

\*\*\*

**You can indicate below:**

- **any useful comments for interpreting the data mentioned above**
- **the characteristics of your system of notaries**

The notary's activity liberalisation derives from a recent reform, foreseen in the decree-law n<sup>o</sup> 26/2004, of 4<sup>th</sup> February and in other complementary legislation. The regime applied to the notaries, while civil servants, still remains for a temporary period of 2 years (it will end in Feb/2006), during which time the transition will be made towards the new notary's system.

With the coming into force of this reform, the notaries have now a double status: one, as a civil servant, while trustee of the public faith delegated by the State and another, as a liberal professional.

The requirements of access to the notary's activity are: a) non existence of inhibition to the performance of public duties or of interdiction to the activity of notary's functions; b) having a law degree, recognised by Portuguese law; c) frequency of a training notary's course; d) to be successful in the public competition held by the Notary Council.

The requirements or restrictions to the notary's activity are: a) the number "clausus" principle: the number of notaries and their area of location are regulated by law; b) the performance of this activity is dependent

upon a licence, after having been through a public competition, and upon the enrolment in the Notary's Council (Portuguese notaries representative institution, which is, together with the State, in charge of the supervision of the notary's activity).

The notary is competent within his own territorial jurisdiction; however, due to exceptional circumstances and by ministerial decree, he may extend his jurisdiction to others geographically closest to him.

The notary facilities can either belong to him or be rented.

The notary may hire staff to help him with his work and may authorize, under his own responsibility, the practise of certain acts or groups of acts. In the notary's absence or temporary impediments (to a maximum of 6 month, except other foreseen exceptional situations) he may be replaced by another designated by himself or by the Notary Council.

The notary's functions are performed in a regime of exclusivity, and they are not compatible with any other remunerated function, public or private, with the exception of activities in the educational field and training (with the approval of the Notary Council), conferences, colloquiums as well as those activities that concern the perception of the author's copyrights.

The notary is subjected to the supervision and disciplinary sanctions of the Minister of Justice and of the Notary Council.

The notary has as a prerogative the use of the public faith symbol (the white stamp or other digital identical sign).

In general, it is not possible to advertise the notary's activity, except when public information is concerned.

The most relevant socio-economic notarial acts have legally fixed prices (fixed values), all the others are freely charged.

\*\*\*\*\*

**123. Please indicate main orientations for reform and concrete measures which could improve the quality and the efficiency of your judicial system:**

**First line of orientation:**

To release the pressure on the courts

**Concrete measures:**

To turn all the transgressions and infractions still existing into misdemeanours;

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

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

Adoption of the debtor's jurisdiction as a relevant criterion to determine the competent court;

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

Payment of costs on the part of those who, having available the use of the injunction regime, have chosen the "regular" judicial way as well as for those who, having available alternative dispute resolution means, have used the "regular" judicial way.

**Second line of orientation:**

Dematerialization of the acts and procedures within the justice system.

**Concrete measures:**

Dematerialization of jurisdictional appeals;

Dematerialization of the injunction procedure;

Practise of judicial acts on-line;

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

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

Development and adaptation of computer software;  
In-service training to all judicial operators;  
Users' information;  
Judicial operators' incentives regarding the use of information technology.

**Third line of orientation:**

To promote alternative dispute resolutions

**Concrete measures:**

Development and reinforcement of the Peace Judges;  
Establishment of new arbitration centres.

**Fourth line of orientation:**

To proceed with the enforcement action reform

**Fifth line of orientation:**

To reform the appeal regime/to launch the reform of the jurisdictional appeals regime.

**Concrete measures:**

To simplify the procedure in the court where the appeal "ad quo";  
To simplify the procedure in the high court;  
To qualify the role of the Supreme High Court, in order to avoid its commitment towards recurring similar disputes and in order that it may perform a consistent case law;  
To adopt a system of dispute resolutions form concerning jurisdictional conflicts;  
To revise the value of the cases that is applicable within the jurisdiction of the courts.

**Sixth line of orientation:**

Legal aid

**Concrete measures:**

Implementation of legal information;  
To alter the remuneration system of the lawyers and legal aid lawyers appointed by the Bar;  
To widen the legal consultancy national jurisdiction

**Seventh line of orientation:**

Judicial costs

**Concrete measures:**

Improvement of the existing computer software;  
Legislative amendments.

**Eighth line of orientation:**

Follow up on the administrative justice reform

**Concrete measures:**

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