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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul

Addendum

Mission to Portugal* **

Summary

The Special Rapporteur on the independence of judges and lawyers conducted an official visit to Portugal from 27 January to 3 February 2015. The purpose of the visit was to examine the achievements and challenges regarding the independence and impartiality of the judiciary and the administration of justice in the country. In this report, the Special Rapporteur provides an overview of the legal and institutional framework and describes the main challenges faced by the justice system.

While noting that Portugal relies on a solid legal framework and recognizing the positive perception of independence, the Special Rapporteur paid attention to various concerns reported to her during the visit, which followed the implementation of a major reform of the justice system put in place in 2014. The visit also took place in the context of a serious economic crisis. While recognizing it was impossible to assess the full impact of the various changes, the Special Rapporteur took note of areas where improvements can be made.

Concerns were brought to the attention of the Special Rapporteur on the pace of implementation of the recent reforms, the security of the electronic system, the legal instability generated by various changes and the protection of defendants' guarantees. The Special Rapporteur further notes that the reforms should be taken as an opportunity to

* The summary of the present report is being issued in all official languages. The report itself, contained in the annex to the summary, is being issued in the language of submission only.

** Late submission.

promote greater financial and administrative autonomy of courts and prosecution offices and to revisit education and training initiatives for judges, prosecutors and lawyers.

The Special Rapporteur also notes concerns about the effectiveness of the existing channels for accessing justice. Despite important investments in legal aid, various complaints were received on the delays in obtaining legal aid and the quality of the support received. Concerns also exist regarding the attention given to victims of violence by the justice system, in particular, persons in detention and victims of domestic violence.

Taking into consideration these observations, the Special Rapporteurs concludes her report calling on Portugal to: i) promoting the greater managerial administrative autonomy of justice institutions; ii) ensuring adequate capacity of the Superior Council of the Magistracy and the Public Prosecution; iii) increasing investment in the promotion of access to justice; iv) ensuring dedicated attention to victims of violence; and v) investing in the training of judges, prosecutors and lawyers.

Annex

[English only]

Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Portugal

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1 – 4	4
II. Legal and institutional framework	5 – 23	4
A. International obligations	5 – 7	4
B. Constitutional provisions	8 – 10	5
C. Court structure	11 – 23	5
III. Challenges to the independence and impartiality of the judiciary and the proper administration of justice	24 – 76	8
A. Ongoing reforms to the justice system.....	29 – 43	9
B. The financial administration of justice	44 – 47	12
C. The role of the Superior Council of the Magistracy and the Superior Council of the Public Prosecution.....	48 – 54	13
D. Lawyers.....	55	14
E. Access to justice	56 – 64	15
F. Victims of violence.....	65 – 72	16
G. Education, training and capacity-building	73 – 76	18
IV. Conclusions	77 – 81	19
V. Recommendations	82 – 88	20

I. Introduction

1. The Special Rapporteur on the independence of judges and lawyers conducted an official visit to Portugal from 27 January to 03 February 2015. The purpose of the visit was to examine, in a spirit of co-operation and dialogue, the achievements and challenges regarding the independence and impartiality of the judiciary and the administration of justice in Portugal.

2. During her stay, the Special Rapporteur visited the cities of Lisbon, Porto and Coimbra. Meetings were held with the main authorities in the area of justice, including the Minister of Justice and the Minister of Internal Administration, the Presidents of the Constitutional Court, the Supreme Court of Justice (also President of the Superior Council for the Magistracy) and the Supreme Administrative Court (also President of the Superior Council for the Administrative Magistracy), the Attorney General (also President of the Superior Council for the Prosecution Office) and the Commission of Constitutional Affairs, Rights, Freedoms and Guarantees of the Portuguese National Parliament. She further met magistrates and public prosecutors working in courts of appeal and first instance courts, the Ombudsman (“Provedor de Justiça”) and the Director of the Centre of Judicial Studies.

3. The Special Rapporteur also met numerous representatives of civil society, including non-governmental organizations, the Portuguese Bar Association, the unions representing magistrates and prosecutors, independent lawyers and academics researching the functioning of the justice system in Portugal.

4. The Special Rapporteur expresses her gratitude to the Government of Portugal and, in particular, officials at the Ministry of Foreign Affairs, for preparing an extensive programme of meetings and visits with full respect for the independence of her mandate. She also thanks all those who met her, sharing their experiences, informed opinions and concerns.

II. Legal and institutional framework

A. International obligations

5. The independence of judges and lawyers is one of the bedrocks of the rule of law and democratic rule. Portugal expresses its commitment to guarantee this independence through its national legislation, including the Constitution of the Republic, and through the ratification of the main international and regional human rights treaties.

6. Portugal is party to most international and European human rights treaties¹, including the International Covenant on Civil and Political Rights and the European

¹ Portugal is party to the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or punishment and its Optional Protocol, the International Covenant on Civil and Political Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty, the Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights and its Optional Protocol, the Convention on the Rights of the Child and its Optional Protocols on the involvement of children in armed conflict, on the sale of children child prostitution and child pornography and on individual complaints and the Convention on the Rights of Persons with Disabilities. Portugal has not ratified the

Convention on Human Rights. The country's adherence to these treaties implies, *inter alia*, the recognition of the obligations to ensure rights related to the proper administration of justice, including the principles of equality before the law, the right to an effective remedy, the right to liberty and security of the person, the presumption of innocence, the right to a fair and public hearing without undue delay by a competent, independent and impartial tribunal established by law, the fundamental procedural guarantees of persons charged with a criminal offence, and the principle of legality.

7. The Portuguese Constitution stipulates that the rules and principles of international law shall form an integral part of Portuguese law, and that provisions set out in ratified international agreements shall come into force in Portuguese domestic law (article 8), and that the provisions of the Constitution and of laws concerning fundamental rights shall be interpreted and construed in accordance with the Universal Declaration of Human Rights (article 16).

B. Constitutional provisions

8. The Constitution of the Portuguese Republic adopted in 1976 following the return to democratic rule, expressly recognises the principle of separation of powers in its article 2. In addition, the Constitution guarantees in its Part I a list of fundamental rights and freedoms in line with the relevant standards in this regard. These include guarantees of access to the law and the courts, the right to legal counsel and to be accompanied by a lawyer before any authority (article 20), the right to life (article 24), the right to personal integrity (article 25) and the right to freedom and security except as a consequence of a judicial sentence (article 27).

9. The judicial authority is regulated mainly by Part III, titles V and VI of the Constitution. Part III, title V, chapter I outlines general principles regarding the courts, which include provisions for the independence of the courts (article 203), supremacy of the Constitution (article 204), public court hearings (article 206), and necessary immunities for lawyers (article 208).

10. Part III, title V, chapter III concerns the status of judges. It contains guarantees for judges, including security of tenure and that judges will not be held personally liable for their rulings (article 216), provides for the appointment, assignment, transfer and promotion of judges (Article 217), and enshrines the Supreme Judicial Council (article 218).

C. Court structure

11. As indicated, the Constitution recognizes the courts as supreme authoritative bodies that administer justice in the name of the people (article 202), as independent and subject only to the law (article 203) and establishes their rulings as binding on all persons and bodies, public and private, prevailing over the decisions of all other authorities (article 205). All court rulings that are not merely administrative in nature must be duly motivated (article 205). Court hearings are public, subject to certain exceptions including public interest (article 206). The Portuguese judicial system has the following categories of courts

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. At the European level, the country is party to the European Convention on Human Rights and the Revised European Social Charter. Portugal also accepted the jurisdiction of the European Court of Human Rights and the competence of the European Committees on Social Rights and for the Prevention of Torture.

(Article 209): the Constitutional Court; judicial courts; the administrative and tax courts; the Court of Auditors; maritime courts; arbitral courts; and justices of the peace (“Julgados de Paz”).

12. Over the last three years, Portugal has been implementing a major reform to its judicial system structure (see details in the section below). Since September 2014, Decree-Law 49/2014 lays down the regulations for the Law of Organisation of the Judicial System (Law 62/2013 of 26 August 2013) establishing the rules on the organisation and functioning of the judicial courts.

1. Courts of first instance

13. Portugal is divided into 23 county courts or judicial circuits, each with a main judicial court based in the capitals of the existing administrative districts – with the exception of Lisbon and Oporto that are divided into three and two court districts respectively – and each split into central and local court departments. Central court departments have jurisdiction over the geographic area corresponding to the court district and are divided into (i) civil sections, (ii) criminal sections, and (iii) sections with specialised jurisdiction, including commercial, enforcement, family and minors, criminal and labour sections. Cases not allocated to central court departments are processed by local court departments which have general jurisdiction sections divided into civil, criminal, petty crime and proximity sections. The local court departments also include courts with specialised and broadened territorial jurisdiction – these include the Sentence Enforcement Courts, the Maritime Court, the Intellectual Property Court, the Competition, Regulation and Supervision Court, and the Central Criminal Inquiry Court.

2. Appeal courts

14. Second instance courts (“Tribunais da Relação”) function mainly as appeal courts.² There are five such courts throughout the country in Lisbon, Oporto, Coimbra, Évora and Guimarães. Second instance courts may include civil, criminal and labour sections and, depending on the volume of cases, family and minors, commerce, intellectual property and competition sections. According to their respective competence, sections examine appeals, as well as proceedings initiated against first instance judges and prosecutors, hear cases concerning international judicial cooperation on criminal matters, and review and confirm foreign judgements.

3. Supreme Court of Justice

15. The Supreme Court of Justice is the highest body in the hierarchy of courts of law, but in principle it only examines matters of law, rather than concrete facts. It comprises five judges and hears cases appealed from the Court of Appeal. The court is divided into civil, criminal, labour and dispute claims chambers; the latter tries appeals filed against the decisions issued by the Higher Judicial Council. The staff of the Supreme Court of Justice’s judges is currently composed of 65 judges.

4. Administrative and tax courts

16. The Portuguese Constitution also establishes an administrative and tax jurisdiction, which is governed by the Supreme Administrative Court. The role of the administrative and tax courts is to settle disputes arising from administrative and tax relations. They include the central administrative courts, the circuit administrative courts and the tax courts.

² Article 32 and Chapter IV of Law 62/2013

5. Constitutional Court

17. The Constitutional Court is also established in the Constitution and is specifically responsible for administering justice in matters of a legal and constitutional nature (article 221). It is composed of 13 judges, 10 of whom are elected by Parliament and three co-opted by those elected. They enjoy the same safeguards as all judges, including independence, immovability, impartiality and immunity.

18. Besides ruling on conformity with the Constitution and the law, the Constitutional Court has competence in electoral matters and passes judgement in last instance on the regularity and validity of acts of the electoral procedure. It further verifies the legality of the establishment of political parties and coalitions and verifies in advance the constitutionality and legality of national, regional and local referenda. At the request of parliamentarians and as laid down in law, it also rules on appeals concerning losses of seats and elections held by Parliament and the Regional Legislative Assemblies (article 223 of the Constitution).

6. The Superior Council of the Magistracy

19. The Constitution attributes to the Superior Council of the Magistracy (article 218) the competences of appointing, assigning, transferring and promoting judges as well as acting as the disciplinary body for the judiciary. The Council is composed of seven members appointed by the Parliament, seven magistrates elected by their peers, and two members appointed by the President of the Republic. Members of the Superior Council have the same guarantees enjoyed by all judges. The President of the Supreme Court of Justice is also the president of the Superior Council of the Magistracy.

20. The Statute of Judicial Magistracy (Law 21/85 of 30 July 1985, currently under revision) is the most important norm regulating the exercise of judicial powers established in the Constitution. The Statute also provides guarantees of independence, protection against personal liability and security of tenure for judges (articles 4 to 6, respectively).

7. Public Prosecution Office

21. Part III, title V, chapter IV of the Constitution defines the general role of the Public Prosecutor as that of representing the State, participating in the implementation of the criminal policy, conducting penal action in accordance with the principle of legality, and defending the democratic rule of law (article 219). Public prosecutors also enjoy guarantees of independence. The Attorney General's Office is presided over by the Attorney General who has a term of office of six years.

22. The Statute of the Public Prosecution (Law 47/86 of 15 October 1986, currently under revision) regulates the work of prosecutors, reflecting the assurances of their independence and autonomy preconized by the Constitution. The appointment, transfer and promotion of prosecutors as well as the application of disciplinary measures is under the responsibility of the Superior Council of the Public Ministry. The Council is chaired by the Attorney General, counts with all district level Prosecutors, seven prosecutors elected by their peers, five members appointed by the Parliament and two by the Ministry of Justice.

8. Lawyer's Statute

23. The rights at duties of lawyers are defined in the Law 15/2005 of 26 January 2005 (also under review during the time of the visit (see further comments below). The code of ethics of lawyers is part of the Portuguese bar Association's Statute. The Bar Association has also adopted the Code of Conduct for European Lawyers, which is binding on Portuguese Lawyers in cross-border activities.

III. Challenges to the independence and impartiality of the judiciary and the proper administration of justice

24. The overall perception of independence of the judiciary is possibly one of the most important achievements of the transition to democratic rule in Portugal. Throughout the visit, multiple interlocutors not only acknowledged the overall adequacy of the legal framework protecting the independence of judges, prosecutors and lawyers, but also underlined their shared perception on the independence of the various actors in the justice system. Indeed, recent studies, such as the 2015 EU Justice Scoreboard, indicated that the perception of independence slightly increased over the last four years and placed Portugal close to the average within the European Union in this regard.³

25. Despite this positive situation, it is important to highlight that the independence of the judiciary is not a static achievement secured by the adoption of adequate norms and practices. Ensuring the independence of the judiciary requires permanent monitoring and the identification and tackling of the multiple problems faced daily by judges, prosecutors and lawyers as well as those who come into contact with the justice system.

26. Over the last decades, studies on the Portuguese justice system have highlighted challenges with regard to issues such as the length of proceedings and difficulties in the access to courts.⁴ Attention was called, for example, to the time needed to resolve litigious cases before first instance civil courts – the Portuguese average was of over one year according to 2012 data.⁵ Statistics compiled by the European Court of Human Rights also show that violations related to the length of civil, criminal, administrative and enforcement proceedings (article 6) corresponded to over half of all violations identified in cases brought against the country in the European Court between 1959 and 2014.⁶ The problem clearly mostly affects first instance level courts, and at the appeal and superior levels the length of proceedings is considered to be adequate. These challenges have triggered a number of reforms and initiatives, some of them described below.

27. During the visit, two recent situations were recalled by various authorities and civil society representatives in relation to the most important challenges currently faced by the Portuguese justice system. First, Portugal had to confront a major economic depression. In May 2011, Portugal agreed to a three-year economic adjustment programme with its creditors. The country exited this programme in June 2014 and is now under post-programme surveillance. The direct impact of the crisis can be seen in the clear increase of poverty levels, and it is noteworthy that recent data indicated that in 2013, 19.3% of the population was at risk of poverty,⁷ the highest level in ten years. These economic developments have obviously also directly affected public spending in all ministries and public services, and in particular justice system actors as, for example, the salaries of judges and prosecutors decreased between 2008 and 2012⁸ and the overall budgets allocated to

³ http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2015_en.pdf

⁴ See, for example, Gomer, Conceicao, *Os Atrasos da Justiça*, 2011; and Garoupa Nuno, *O Governo da Justiça*, 2011.

⁵ CEPEJ, Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice", 2014

⁶ http://www.echr.coe.int/Documents/Stats_violation_1959_2014_ENG.pdf

⁷ See Instituto Nacional de Estatística, *The risk of poverty kept increasing 2013, 2015*
http://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=223346392&DESTAQUESmodo=2

⁸ CEPEJ, Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice", 2014, page 306

courts decreased by 14.3% between 2010 and 2012.⁹ In this critical context, tensions also reached courtrooms: the Constitutional Court, in particular, faced strong pressure from society as it considered the constitutionality of some controversial cost-reducing measures proposed by the Government. The fact that it declared the unconstitutionality of some measures was presented by many interlocutors as an important indicator of the independence of the Portuguese judiciary.

28. Second, in the context of the crisis and allegedly as part of the structural reforms agreed as part of the economic adjustment programme, the Government is implementing a major reform of the Portuguese justice system and at the time of the visit various important measures had either been in place only for a few months or were not yet fully concluded. The reported aim of these reforms included expediting court processes, improving efficiency and accountability and speeding up debt enforcement cases.

A. Ongoing reforms to the justice system

29. Over the last years, Portugal took several initiatives to simplify and streamline the functioning of its justice system and optimize the use of financial and human resources. These include investments in alternative dispute resolution, the complete computerization of the management and administration of the civil courts and successive legal reforms. Among the most recent legal measures are amendments to the Penal Code, the adoption of the Judicial Administrator Statute and a new Civil Procedure Code, and the adoption of a law establishing the complete reorganization of the judicial system.

1. The reform to the ‘Judicial Map’

30. As of September 2014, the geographical organization of the judicial system was entirely reformed based on the law 62/2013 of 26 August 2013. The so called new “Judicial Map” is part of an extensive reform aimed at achieving three main objectives: (i) broadening the territorial base of the judicial districts, which as a rule should coincide with Portugal’s main towns and cities; (ii) setting up specialised courts at the national level; and (iii) implementing a new management model for the court districts.

31. The previous distribution of courts into 233 counties was based on a model recognized as outdated and impractical as it dated back to the 19th century and neglected significant political, social and economic transformations that had occurred since. The new Judicial Map consolidated the courts into 23 new county courts, each with a main judicial court based in the respective capitals of the existing administrative districts. Lisbon and Porto are the exceptions in that they are divided into three and two county courts respectively.

32. In the new structure, central court departments are divided into (i) civil sections (as a rule, processing and judging cases with a value exceeding €50’000), (ii) criminal sections (to prepare and judge criminal cases to be heard by a collegiate court or before a jury) and (iii) sections with specialised jurisdiction including commercial, enforcement, family and minors, criminal and employment sections. The local court departments process and adjudicate cases not allocated to the central court departments and have general jurisdiction sections that can be divided into civil, criminal, petty crime and proximity sections.

33. The Government informed the Special Rapporteur that the reform of the judicial map had been developed through an extensive consultative process involving all actors of

⁹ CEPEJ, Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice", 2014, page 33

the justice system and that it took into account a pilot experience implemented in 2008 in three counties. It also underlined the goal of changing the management model of the courts promoting greater autonomy and establishing specific goals and objective criteria of efficiency in the administration of justice at various levels. According to the law, courts are managed by a management board (*Conselho de Gestão*) headed by judges who administer the court jointly with a representative of the Public Prosecutor's office and a judicial administrator. The Government further stressed the central relevance of the specialization process and the expansion of the territorial reach of specialized courts which increased from 22% to 88% of the entire territory.

34. It is clearly too early to assess the impact of the reform after only six months of implementation of the most important measures. Nevertheless, during the visit the Special Rapporteur, concerns were expressed on the pace of implementation of the new judicial map and on the capacity of the new system to properly respond to the newly established goals. It was reported that some courts were installed in temporary and precarious structures, although the Government informed the Special Rapporteur that out of the three courts based in temporary modules, one has already been transferred to a new facility. Concerns were also raised with regard to the process of specialization and the pace of establishment of the various specialized courts, as some specialized magistrates allegedly did not have the necessary experience on the domains they would cover. Similarly, it was indicated that despite the specialization of courts in the first instance, the specialization could not be fully implemented at the higher levels. The Special Rapporteur welcomes information received according to which the Centre for Judicial Studies has reinforced specialized trainings for judges and magistrates.

35. Despite a reported 2-year long consultation process leading to the formulation and adoption of the new judicial map, civil society groups and experts have questioned the openness of the dialogue. Some expressed concern about the increased physical distance that the consolidation of courts in administrative capitals would imply for the population living in remote areas and the lack of consideration given to alternatives to facilitate access through, for example, models of "mobile" courts, punctually convening in remote areas.

36. The most evident problem faced in the transition to the new judicial map was the collapse of the electronic system CITIUS. Although Portugal is one of only 12 countries within the Council of Europe having achieved complete computerization of civil justice courts,¹⁰ a progress which was certainly important in promoting greater accessibility and possibly reducing delays, the redistribution of processes in the transition to the new judicial map was not adequately supported by the existing electronic platform. This resulted in the paralysis of the courts for up to one month and a half when the judicial year started on 1 September 2014.

37. The Government clarified that the problems related to the electronic system had been solved and that the system was fully in place again by 30 December 2014. It also noted that it had launched a disciplinary procedure to identify responsibilities and adopted a specific law¹¹ to allow for the extension of deadlines of ongoing proceedings affected by the breakdown. Nevertheless, it is evident that the system's collapse generated widespread doubts regarding the preparatory process leading to the reforms and about the overall sustainability of this vital electronic system, which, despite having been praised as an important achievement in the recent past, still requires systematic investment and adaptation.

¹⁰ CEPEJ, Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice", 2014, page 126

¹¹ Decree-Law 150/2014 of 13 October 2014

38. Additional concerns were raised with regard to the adequate protection of the mass of electronic data, in particular given its confidential nature. The Ministry of Justice, through the Management and Financial Institute of Justice (*Instituto de Gestão Financeira e Equipamentos da Justiça*), is currently responsible for the management and maintenance of the electronic system. Following the crisis, some judges and legal experts publicly voiced their concern about the fact that an institution within the Executive branch continues to administer the entire electronic database of the courts, creating avenues for inadequate and improper interferences. Indeed, even if the Ministry of Justice assures the public it does not have direct access to the data, it was directly involved in the recovery and reestablishment of the data system.¹²

39. The Special Rapporteur believes that the management and maintenance of the electronic system of the database of the courts should be under the entire responsibility of the judicial bodies. This independence from the executive will enhance the independence of the entire judicial system and its accountability, in particular regarding the management of confidential information.

2. Other important legal reforms

40. Besides promoting the entire reorganization of the justice system, the Government also recently implemented various additional legal reforms. These reforms include the adoption of a new Civil Procedure Code (Law 41/2013 of 26 June 2013) and changes in norms for insolvency, both aiming at promoting greater efficiency in the justice system. For instance, the new Civil Procedures Code establishes that a court hearing cannot be postponed and that any delay must be justified. It also simplifies the procedures for the enforcement of judicial orders and establishes important punitive measures against unjustified acts that purport to slow down proceedings.

41. Another measure taken to speed up proceedings was the adoption of a pre-enforcement extrajudicial proceeding through the Law 32/2014 of 30 May 2014. The pre-enforcement extrajudicial proceeding enables a creditor, holding an enforcement title to such effect, to consult, through the enforcement agent, the various databases on the same terms as those applied to the enforcement action, so as to verify whether a debtor has assets that may be attached before lodging the correspondent enforcement action. While recognizing the contribution of this measure to alleviating the pressure against courts, some lawyers indicated their concern on the facilitated access to multiple databases of enforcement agents and the possible economic exploitation of these mechanisms.

42. Various amendments were adopted to reform both the Penal Code and the Penal Procedure Code.¹³ Some of these also aimed at simplifying and expediting procedures; in particular laws 19/2013, 20/2013 and 21/2013 expand the possibilities of summary enforcement of measures to specific cases. Among the changes introduced there is the possibility of using testimonies collected in preliminary stages at the trial stage and the elimination of the possibility of appealing against prison sentences of less than five years issued by appeal courts. Some legal experts expressed concern with regard to both measures and their possible impact in weakening due process guarantees of defendants. For example, it was noted that prison sentence of less than five years from an appeal court,

¹² <http://www.publico.pt/sociedade/noticia/juizes-acusam-governo-de-gerir-o-citius-contra-lei-que-atribui-esse-poder-a-magistratura-1673293>

¹³ These include Law 56/2011 of 15 November 2011, Laws 19/2013, 20/2013 and 21/2013 of 21 February 2013, Law 60/2013 of 23 August 2013, Law 2/2014, Law 59/2014 of 26 August 2014, and Law 69/2014 of 29 de August 2014.

which followed an acquittal from a first instance court, is not open to appeal anymore, which in practice may violate the right to a review by a higher tribunal.

43. The Special Rapporteur welcomes the efforts of the Government to speed up and simplify proceedings given the notorious issues in the past regarding delays in the justice system. Nevertheless, she takes notes of the concerns brought to her attention by lawyers and judges in relation to the risks of weakening defendants' due process rights and guarantees. Moreover, she also takes note of the concerns raised with regard to the instability generated by the high frequency of changes of some laws, such as the Penal Code, which was subjected to 35 changes since 1982, and the Penal Procedure Code, which was amended 26 times since 1987. A 2011 study already noted that the excessive number of legal reforms and the lack of the necessary attention to the quality of new norms and their potential impact constituted a serious problem in the country.¹⁴ Even if some legal changes are punctual and aim at aligning norms with international and regional agreements, continued changes can be very problematic not only because they can complicate the work of judges, prosecutors and lawyers but also because they obviously make the understanding of the norms and proceedings by the society in general more difficult.

B. The financial administration of justice

44. The recent reform of the judicial map includes among its main goals the promotion of a new management model for the court districts. This model implies greater involvement of the "management boards" in the administration of the courts. Judges and prosecutors are tasked not only with the management of resources attributed to their areas of work, but are encouraged to establish targets and can request and propose changes. The recent reform also creates consultative councils with representatives not only from the local justice community, but also local authorities and civil society. The Special Rapporteur would like to highlight that it will be crucial for the success of the judicial reform to financially empower the courts and the prosecution services. The lack of an effective mechanism to promote accountability for the efficient administration of justice institutions is also an important concern to be addressed to promote of a more efficient and accessible justice system.

45. While welcoming the steps taken to increase the involvement of the courts and prosecution services in the management of their daily activities, the Special Rapporteur notes that the overall administration of budgets for the justice system continues to rely mostly on entities within the Ministry of Justice. This Ministry is ultimately responsible for the preparation of overall budgets for all justice institutions, the allocation of resources to specific courts and the overall evaluation on the management of resources. Such a model is not an exception in Europe.¹⁵ Nevertheless, during her visit, concerns were expressed to the Special Rapporteur regarding the negative impact of the lack of proper facilities and material conditions of work on the activities of courts allegedly resulting from the lack of financial independence. The Special Rapporteur was also told that the productivity of judges, especially in first instance courts, was affected when they lost their assistants or when the latter were transferred or reallocated by the Ministry of Justice without prior consultation. The Special Rapporteur also wishes to underline that the major complaints expressed were linked to the functioning of the first instance courts, which are administered by the Ministry of Justice.

¹⁴ Garoupa, Nuno, *O Governo da Justiça*, p.76, 2011

¹⁵ CEPEJ, Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice", 2014, page 39.

46. Recognizing that the Portuguese legislation establishes clear guarantees for judicial independence and acknowledging the Government's expressed intentions of promoting greater autonomy in the management of courts, the Special Rapporteur wishes to encourage the implementation of concrete measures to promote the overall budgetary, financial and administrative autonomy and independence of the courts and Public Prosecution, in line with the aims of the judicial reform. The excessive centralization of the judiciary's financial and administrative functions within the Ministry of Justice seems to undermine their independence and limit the possibilities of holding judges and prosecutors accountable for the efficient exercise of their functions.

47. According to some judges and prosecutors, the scarcity of financial and material resources resulting from the economic crisis affecting the country has had an impact in the management of their daily activities. For instance, various prosecutors and judges noted with concern the increasing difficulties in receiving the necessary technical and human resources to support them in the performance of their work. The Ministry of Justice recently announced the hiring of 600 additional support staff in response to these concerns. The lack of expert technical assistance also very often creates difficulties for prosecutors who frequently need to request support from public officials working in other State institutions, thereby leading to undue delays in the exercise of prosecutors' functions. Some public prosecutors further reported facing difficulties in planning and executing their work as sometimes annual budgets could not fully cover the expenditure of the entire year, obliging them to negotiate additional allocations during the course of investigations. Additionally, difficulties in long term planning can particularly impair the implementation of more complex initiatives, such as the ones pertaining to collective rights. The specific interest of the Government in initiatives which could generate resources, such as the creation of a specific task force to expedite the processing of potentially most valuable fiscal processes within the Fiscal and Administrative justice system, can also generate distortions.

C. The role of the Superior Council of the Magistracy and the Superior Council of the Public Prosecution

48. During the period of the visit, as a consequence of the reorganization of the justice system, reforms to the Statute of the Judicial Magistracy and the Statute of the Public Prosecution were under discussion. These reforms offer an important opportunity to strengthen the roles of the Superior Council of the Magistracy and the Superior Council of the Public Prosecution, for example, by establishing greater involvement of these two entities in the formulation and management of the overall budgets of courts and prosecution offices. Unfortunately, the draft proposals for the new Statutes were not publicly available at the time of writing this report.

49. Both the Superior Councils of the Magistracy and of the Public Prosecution are mandated to *inter alia* conduct routine evaluations, implement disciplinary procedures and manage career promotions of magistrates. Regardless of the results of the reform and the possible involvement of these entities in the financial administration of the justice system, ensuring adequate human and technical capacity to both Councils is crucial for the promotion of efficiency and accountability within justice institutions. In this regard, the Special Rapporteur noted with concern that some routine evaluations of judges were reportedly implemented with important delays due to the limited capacity of the existing evaluation mechanisms.

50. Some judges further reported to the Special Rapporteur their concern in relation to the potentially negative impact of some inspection methods which appeared to overemphasize specific quantitative indicators on aspects such as the precise fulfilment of procedures deadlines, while overlooking information on success in the conclusion of cases,

as well as ignoring some differences in the personal situation of judges (including health-related situations or pregnancy). While she recognizes the need to prevent judicial delays, the Special Rapporteur understands that an overemphasis on time targets could, in some situations, affect the delivery of justice as judges could be compelled to ensure the cases under their control meet the time-frames established at the expense of other essential guarantees.

51. The Association of Judges also expressed concern with regard to the current composition of the Superior Council of the Magistracy, which currently includes a majority of appointees who are not selected by their peers. The Special Rapporteur endorses this concern and calls for the adjustment of this model, taking into account, for instance, the 2010 recommendation on judges of the Committee of Ministers of the Council of Europe,¹⁶ which suggested that at least half the members of the Council be judges elected by their peers.

52. A recent situation of conflict between the Executive Branch and the Superior Council of Prosecutors regarding the appointment process of the Portuguese prosecutor working in EUROJUST (the entity created to support and strengthen coordination and cooperation between national investigating and prosecuting authorities within the European Union) was also brought to the attention of the Special Rapporteur.

53. The appointment process of the prosecutor designated to integrate this entity was until 2014 regulated by Law 36/2003 of 22 August 2013. The law established (article 3) that the Ministry of Justice and the Ministry of Foreign Affairs nominated the prosecutor, following the proposal by the Attorney General in consultation with the Superior Council of Prosecutors. In 2013, this process reportedly faced a stalemate as the Minister of Justice questioned the re-appointment of the prosecutor posted in Brussels, requiring the consideration of alternative candidates and suggested two additional names to the Superior Council. The Council refused to accept the suggestion of the Minister and maintained its decision to renew the term of the incumbent representative. During about nine months the tension persisted and ultimately led to the departure of the incumbent prosecutor and the appointment of one of the candidates originally suggested by the Ministry of Justice. In 2014, the Minister of Justice amended the article regulating the appointment process through Law 20/2014, eliminating the involvement of the Superior Council of Prosecutors in the proposition of the candidates to integrate EUROJUST, attributing the nomination of three candidates to the Attorney General.

54. Some prosecutors shared with the Special Rapporteur their deep frustration with the exclusion of the Superior Council of Prosecutors in the nomination process, particularly considering the overall tensions between the Council and the Ministry of Justice in 2013. They underscored the risks of attributing to the Executive Branch the ultimate role in deciding on the appointment of an official whose tasks very frequently may involve investigating crimes of corruption which can involve national authorities.

D. Lawyers

55. During her visit, the Special Rapporteur looked into the proposition of reforming the statute of the bar. She noted that the presentation in early 2015 of a proposal for a new statute for the bar gave rise to the tensions between the Ministry of Justice and the bar association, which she views as a matter of concern. While unable to examine the content

¹⁶ Council of Europe, Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judge: independence, efficiency and responsibilities

of the bill that was still under discussion during the visit, the Special Rapporteur underlines that it is essential that the design and adoption of a new statute for lawyers be done with the meaningful participation of the legal profession. Regardless of the nature of the revisions, it is fundamental that the absolute independence of the bar be guaranteed. As stated by the United Nations Basic Principles on the Role of Lawyers, the State must abstain from any interference in the establishment and functioning of professional associations of lawyers.

E. Access to justice

56. Legal aid is both a right in itself and an essential condition for the exercise and enjoyment of a number of fundamental rights, including the right to a fair trial and the right to an effective remedy. The European Convention on Human Rights, the regional jurisprudence and the resolutions adopted in the European context¹⁷ clearly encourage member States to develop legal aid systems. Since Portugal has been facing a clear increase in poverty levels over the last four years, the impact of the costs related to the access to the justice system must receive dedicated attention to prevent such expenses from becoming an obstacle to access justice affecting precisely the sectors of the population which may need it the most. The Special Rapporteur welcomes the Government's new initiative to assess the legal aid system's gaps and tackle the difficulties identified in order to improve its efficiency and equity.

57. The Constitution expressly enshrines access to law and justice (article 20), which is regulated by Law 34/2004 of 29 July 2004, amended by Law 47/2007 of 28 August 2007. The legal framework establishes that no one should be prevented from exercising or defending their rights because of their social or cultural status, or lack of financial means; it also provides legal protection in the procedures for legal advice (prior to formal court proceedings) and legal aid (including in contexts of alternative dispute resolutions). The legal protection may be granted to Portuguese and European Union citizens as well as foreigners, including without valid residential permit, when their respective countries provide similar protections to foreigners.

58. In 2012, the Government reported spending an average of 5.26€ per inhabitant in its legal aid system which is similar to some other countries in the region (despite a great variation of expenditure levels between States which makes this data not easily comparable).¹⁸ Eligibility to legal aid is determined by the National Institute for Social Security. Once a request is accepted, the aid is provided by a lawyer affiliated to the Bar Association or a justice official listed on a voluntary basis in a special registrar. For those obtaining aid, costs of proceedings are exempted or reduced, depending on the economic situation of the beneficiary.

59. The Special Rapporteur is concerned about reports from civil society representatives and lawyers indicating that costs for legal proceedings increased in the last years and that the eligibility criteria for obtaining legal aid are too narrow. For example, persons living with very limited economic resources would be excluded from eligibility after the inclusion of the value of their household in the assessment of their economic condition. Complaints on the excessive delays in the designation of a lawyer and on the quality of the assistance provided were also reported.

¹⁷ For example, see the Council of Europe Resolutions: (76) 6 on legal aid in civil, commercial and administrative matters; Resolution (78)8 on legal aid and advice; Recommendation No. R (93) 1 on effective access to the law and justice for the poor

¹⁸ CEPEJ, Report on "European judicial systems – Edition 2014 (2012 data): efficiency and quality of justice", 2014, p.76

60. Complaints also referred to the fact that the fragmentation of responsibilities between the justice system, the Institute of Social Security, the Bar Association and the Public Prosecution in the provision of legal aid seems to contribute to the inefficiency of the system, and unacceptable delays in the effective designation of a lawyer. Moreover, according to some lawyers and civil society representatives, the comparatively low remuneration paid by the legal aid system only attract lawyers with less experience and qualification.

61. The Government informed the Special Rapporteur that the system of legal aid has received satisfactory evaluations and that in 2013 the Social Security Institute calculated that 72,2% of the legal aid requests received were accepted. It also reported that the eligibility criteria in place had been revised in order to expand eligibility, clarifying that it factors the combination between the household income, accumulated capital and permanent expenditures, while noting that the possession of a household had only a limited impact in this calculation. Further, it noted that to facilitate understanding, a mechanism for simulating the eligibility for legal aid was electronically accessible.

62. With regard to complaints on the delays in obtaining legal aid, the Government reported that in most cases these delays resulted from the failure to provide the required documentation for requesting legal aid. It also noted that the involvement of the Social Security Institute in the designation of eligibility was introduced in 2000 (before the system was managed entirely by the courts), precisely in order to speed and facilitate access to legal aid services as the Social Security Institute has the necessary expertise and knowledge. The Government further reported that the Bar Association, as an independent entity, was responsible for ensuring and monitoring the quality of the legal support provided. Furthermore, a mechanism for evaluating the overall functioning of the legal aid system with representatives from the Bar Association, Social Security Institute and Ministry of Justice was established in 2008 and a first evaluation report was presented in 2009.

63. While she recognises the importance of the various efforts taken to expand access and ensure the quality of the legal aid system, the Special Rapporteur notes that further and more systematic evaluation on its enhancement is important. For example, she observes that even if delays may be related to problems in providing adequate documentation, it is still necessary to identify how to simplify this process. To address problems relating to the fragmentation of responsibilities and the variation in the quality of legal aid, she also suggests evaluating alternatives such as the establishment of institutional bodies for the public defence. The Special Rapporteur was informed that this alternative is under evaluation in the legal aid system assessment currently underway.

64. Finally, the Special Rapporteur also received complaints concerning the difficulties of understanding judicial decisions and procedures. Legal experts and civil society representatives noted that sometimes, the use of excessively complex language might, for instance, make judicial measures unintelligible to victims. In this regard, she was also informed on efforts to promote shorter and more objective decisions within the justice system. On another level, judges and prosecutors also noted their need to receive further support in their communication with the media. Most judicial institutions do not count with any professional support for media interaction, which means that members of the judiciary themselves sometimes struggle to transmit information on their work and to cope with media demands.

F. Victims of violence

65. Obstacles in accessing justice can have a particularly harmful impact for sectors of the population particularly vulnerable to violence, such as persons in detention, women,

children and elderly people. While describing challenges to accessing lawyers and legal aid, civil society representatives and legal experts expressed their concern on the situation of persons in detention. According to them, the guarantees of access to a lawyer during the time of detention and throughout sentence executions are not adequately ensured, often exposing detained persons in detention to deteriorated conditions and sometimes even to abuse.

66. Concerns regarding the situation of Portuguese prisons have already been addressed by international and European human rights protection mechanisms. In 2012 and 2013 respectively, the Human Rights Committee and the Committee against Torture expressed concern about, *inter alia*, the excessive length of pre-trial detention and its recurrent use, physical ill-treatment and other forms of abuse at the hands of prison guards, as well as the bad detention conditions in certain prisons.¹⁹ The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited the country in 2012 and expressed similar concern regarding increasing overcrowding in prisons and the lack of effective access to legal assistance for persons detained by law enforcement officials.²⁰ Recommendations from these various bodies include a call for ensuring access to a lawyer from the moment police custody starts. In order to tackle the problem of pre-trial detention, the Human Rights Committee also recommended reducing the length of investigations and legal procedures, improving judicial efficiency and addressing staff shortages.²¹

67. The Special Rapporteur shares the concerns previously expressed by other human rights mechanisms regarding the situation of prisons. To address situations relating to the conditions of detention and the ill-treatment of persons deprived of their liberty it is essential that access to their lawyers be ensured and that prosecutors pay specific and systematic attention to the situation of such persons and the conditions in detention facilities. While noting the recent efforts of the Government to expedite legal proceedings, the Special Rapporteur notes that more attention should be paid to cases where the use of pretrial detention could be excessive.

68. Domestic violence was acknowledged by authorities and civil society as a great concern in Portugal. Concerns were expressed about the responses of the justice system to violent incidents affecting children, women and the elderly. Recommendations on the need to invest in the effective investigation and prosecution of cases of domestic violence were expressed in recent reports of the Committee on the Rights of the Child, the Committee against Torture and the Human Rights Committee.²²

69. The Government reported to the Special Rapporteur that in 2007 article 152 of the Penal Code was amended, and that measures to protect victims of domestic violence were thus specified in the Code. Efforts to prevent and respond to domestic violence are also detailed in the National Plan against domestic and gender-based violence, which includes measures of prevention, awareness-raising and education, as well as protection for victims and promotion of their social integration. The fifth version of the plan (2014-2017)²³ is currently being implemented, and given its multi-disciplinary nature, the implementation is

¹⁹ CPR/C/PRT/CO/4 and CAT/C/PRT/CO/5-6

²⁰ Council of Europe, Report to the Portuguese Government on the visit to Portugal carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 2012, p.16

²¹ CPR/C/PRT/CO/4, Rec. 9, p. 3

²² CRC/C/PRT/CO/3-4, CAT/C/PRT/CO/5-6 and CPR/C/PRT/CO/4

²³ Resolution of the Council of Ministers no. 103/2013, V National Plan for Gender Equality, Citizenship and Non-discrimination 2014-2017 (V PNI)

supported by a working group composed of representatives from various Government entities, including representatives from the Attorney General's office and the Superior Council of Magistracy, as well as civil society organizations.

70. Despite these relevant initiatives, various concerns on the impact of violence and the alleged lack of adequate responses to victims in some cases were also reported to the Special Rapporteur. In 2013, 40 women were reportedly killed by their partners, ex-partners and close family members, and 46 attempted murders against women were recorded by civil society in Portugal.²⁴ The Portuguese Association for the Protection of Victims (APAV), which directly cooperates with the Government in the promotion of victims' assistance, reported a significant increase in the number of cases of violence against the elderly, pointing to the lack of capacity of professionals who should promptly intervene in these situations.²⁵ The same association also noted that responses to violence against children are also frequently inadequate. Accordingly, children's involvement in judicial proceeding is often a source of secondary victimization mostly due to repeated questioning. It further noted the limited use of protection orders and foster-care alternatives. Finally, it indicated that entities specialized in child welfare (*Comissões de Protecção de Crianças e Jovens*) are overloaded as various institutions tend to systematically refer their cases to them.

71. A recent and detailed study²⁶ on judicial decisions regarding domestic violence underscored, *inter alia*, the limited capacity of prosecutors and judges in processing and sharing data on situations of domestic violence, the particular invisibility of violence against the elderly, children or persons with disabilities, the lack of attention on the victims' needs and the excessive focus on their testimony in the processing of cases, which could lead to their frustration and re-victimization. The same report emphasizes the urgency of investing in the capacity of judges and prosecutors in order to ensure not only a good understanding on the national and international norms but also the social problems surrounding their implementation.

72. The Special Rapporteur notes that the proper education and awareness-raising of judges and prosecutors are paramount for a better performance of judicial actors in the treatment of all victims of crimes. This is especially true as a means to avoid the reproduction of prejudices in judicial decisions or the adoption of contradictory measures, for instance in relation to custody, which could facilitate the access of known aggressors to their victims. The Special Rapporteur appreciates the efforts made by the Centre for Judicial Studies in providing trainings which pay particular attention to human rights and vulnerable groups.

G. Education, training and capacity-building

73. Beyond the promotion of law and policy reforms, the education, training and capacity building of judges, prosecutors and lawyers is essential for fully transforming the practices of the judiciary. As noted above, some concerns exist with regard to the preparation of judges and prosecutors assigned to specialized courts and on the capacity of judicial actors to communicate and properly respond to the needs of victims of violence.

²⁴ Amnesty International, Report 2014/15 - The state of the world's human rights, p.299

²⁵ Submission of the APAV (Associação Portuguesa de Apoio à Vítima) - Universal Periodic Review Second Cycle - Portugal

²⁶ Centro de Estudos Sociais da Universidade de Coimbra, Estudo Avaliativo das Decisões Judiciais em Matéria de Violência Doméstica, 2014

Addressing these challenges requires continued investment in capacity building both for those already active in the justice system and for those who are being recruited.

74. In Portugal the Centre for Judiciary Studies is the main institution responsible for initial and on-going training of judges and public prosecutors. Created in 1979, the Centre is under the responsibility of the Ministry of Justice, but has administrative autonomy. The Centre plans its activities in consultation with the Superior Councils of the Magistracy, the Administrative Tribunals and the Public Prosecution, providing specialized training initiatives whenever requested by these various entities. Public prosecutors and judges undertake their initial year of training together and are then separated in different groups according to their preferences or grading. Every year, the Centre also provides many courses of specialization, seminars and one day courses both *in situ* and through video conference.

75. While recognizing the importance and extent of the training activities offered by the Centre for Judiciary Studies and its significant contribution since the transition to democracy, legal experts and civil society representatives indicated their concern about the reported legal formalism privileged in the training activities offered by the Centre, and the lack of attention given to ongoing social challenges and to disciplines that are not exclusively legal.²⁷ Concerns were also voiced about the reported limited attention given to human rights law not only in the Centre but also in some Portuguese law schools.

76. In a previous annual report²⁸, the Special Rapporteur noted that judges, prosecutors, public defenders and lawyers must be adequately educated and informed on a regular and continuing basis of new developments in international human rights law, principles, standards and case law. In this regard, she wishes to recall the importance of periodically revising existing training instruments and university courses and curricula in order to better respond to social challenges and better integrate multiple sources of knowledge into the education and training of judges and prosecutors.

IV. Conclusions

77. **Portugal has repeatedly expressed its commitment to guarantee the full independence of the judiciary through its national legislation and the ratification of the main international and regional human rights treaties. The overall positive perception of independence of the judiciary indicates that these commitments are mostly reflected in practice. Despite this favourable context, the promotion of the independence of judges, prosecutors and lawyers and of the proper administration of justice requires constant attention and further investments so that judicial actors and institutions can better responds to emerging and remaining challenges.**

78. **The visit of the Special Rapporteur took place at a moment of intense debate on the functioning of the Portuguese justice system as the Government was implementing major reforms in the administration and distribution of courts. At the same time, over the past four years, the entire country has been confronted with a major economic crisis that also has affected justice actors and institutions as public resources became scarce. The Special Rapporteur wishes to highlight the importance of the role played by the Constitutional Court in preserving the integrity of the rights established in the Constitution, in particular during the economic crisis.**

²⁷ See, for example, Sousa Santos Boaventura, *Para uma Revolução Democrática da Justiça*. 2014, p.117

²⁸ A/HRC/14/26

79. It is too early to fully assess the impact of the various recent reforms. However, concerns were expressed regarding the pace of implementation of these reforms, access to justice, the security of the electronic system, the legal instability generated by the many and frequent amendments to legislation, and the possible weakening of defendants' guarantees.

80. The reform process also opens important opportunities for re-discussing the roles of judges and prosecutors in the administration of their own offices. Reinforcing the autonomy and capacity of the Councils of the Magistracy and Prosecutors is vital for promoting greater efficiency and accountability. Reforms also represent an opportunity to revisit education and training initiatives for judges, prosecutors and lawyers in order to update them and ensure human rights content is adequately presented.

81. With the increase in poverty levels, it is essential that Portugal continue to pay the utmost attention to the effectiveness of the existing channels for accessing justice, in particular concerning vulnerable groups. Despite investments in legal aid, concerns were expressed with regard to delays in obtaining legal aid and the quality of the support received. In this regard, victims of violence deserve specific attention in all efforts aiming at improving access to justice, as the lack of particular attention can lead victims of domestic violence to be re-victimized by legal proceedings, and the lack of systematic support of lawyers can render persons in detention more vulnerable to abuse. The Special Rapporteur is encouraged to hear the legal aid system is being assessed with the view to improve its efficiency.

V. Recommendations

82. In this context, the special rapporteur presents the following recommendations to the Portugal:

A. Enhancing the managerial administrative independence of justice institutions

83. The opportunity of ongoing reforms should be seized to evaluate ways in which the overall budgetary, financial and administrative autonomy of the courts and public prosecution can be enhanced. Beyond promoting the operational autonomy within courts, empowering actors within the justice system with the management of the resources required in their daily activities is important to promote efficiency and accountability. The Superior Council of the Magistracy, of the Administrative and Fiscal Magistracy and of the Public Prosecution could play a greater role in the preparation of overall budgets for the justice system, the allocation of resources to specific courts and the overall evaluation of the management of resources.

B. Ensuring the adequate capacity of the oversight bodies within the judiciary

84. The effective functioning of justice requires to permanently ensuring the human and technical capacity of the Superior Council of the Magistracy, the Administrative and Fiscal Magistracy and the Public Prosecution. The reform of the Statute of these entities must be thoroughly debated given their central role in the promotion of the independence, efficiency and accountability of the justice system.

Attention must be paid to eliminating delays and ensuring full transparency and fairness in the implementation of all disciplinary and evaluative procedures.

C. Increasing investment in the promotion of access to justice

85. Further investments are required to ensure that mechanisms providing access to justice effectively reach those who need it the most. Eligibility criteria and, in particular, documentation requirements for the provision of legal aid must be revised to avoid that these become obstacles for obtaining legal aid. Systematic evaluations on the quality and effectiveness of the legal aid system must be carried out and their results thoroughly discussed. In this context, consideration should be given to the possible establishment of an office for public defense in the country.

D. Ensuring dedicated attention to victims of violence

86. Particular attention must be paid to all obstacles impeding victims of violence from accessing justice. Access to a lawyer from the moment police custody starts, as well as during the execution of sentences, must be systematically guaranteed in practice. Attention should continue to be paid, and efforts made, to limit the use of pre-trial detention and to improving conditions of detention, as recommended by other human rights protection mechanisms.

87. Judges, prosecutors and lawyers must continue to receive adequate training in order to better respond to domestic violence cases. Judicial proceedings must be carefully revised in order to prevent the re-victimization of victims. Investments can also be made in raising awareness on the existing mechanisms to report domestic violence, the impact of all forms of violence on society, including gender-based violence, on society, and violence against children, persons with disabilities and the elderly.

E. Investing in the training of judges, prosecutors and lawyers

88. Investments must be made to review and update the education, training and capacity-building curricula, programmes and courses for lawyers, judges and prosecutors. This not only includes continued attention needed to review the work of the Centre for Judicial Studies, but also the courses offered by Portuguese law schools, in order to keep up-to-date with the latest case-law and standard development. Attention must be paid to a multi-disciplinary approach that is not confined to formal legal content and enables a good understanding of the social, economic and cultural dimension of problems brought before the courts. Attention must also be paid to enhancing the understanding of international human rights law, principles, standards and case law.