



European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

## Response questionnaire project group Timeliness

### Conselho Superior da Magistratura (Portugal)

#### 1. The Court System and Available Statistics

##### 1.1. The Court System

1. The Portuguese judicial system is not unitary, which consists of several classes or orders of courts, independent of each other, with its own structure and rules.

Two of these categories comprise only a Court (the *Constitutional Court* and the *Court of Auditors*) and the others cover a variety of courts, hierarchically structured, with a higher court on the top of the hierarchy:

- Supreme Court of Justice for judicial Courts
- Supreme Administrative Court for administrative and tax Courts.

There are also arbitration Courts and “Courts of Peace”.

The judicial system is organized into four judicial districts (Lisbon, Oporto, Coimbra and Évora).

2. **The Constitutional Court** is the court that has specific competence to administer justice in matters of legal and constitutional nature, and the Court to review decisions of other courts in all matters of constitutionality. As a court, the Constitutional Court shares the characteristics of all courts: it is a sovereign power, is independent and autonomous, is not dependent on or works with any other power (moderator, legislative or executive), its judges are independent and immovable; its decisions are binding on any other authority. But, unlike other courts, the Constitutional Court has its composition and competences defined directly in the Constitution, its judges are mostly elected by parliament, offers administrative and financial autonomy and its

own budget, registered separately from the "overheads State "and defines itself, the issues concerning the demarcation of jurisdiction <sup>1</sup>.

3. The **Judicial Courts** are the first category of "common Courts" (excluding the Constitutional Court) in the constitutional order and form a hierarchical structure itself. as having the highest body in the Supreme Court <sup>2</sup>. The Supreme Court is the highest level of the judicial hierarchy. The judicial courts are the *common* courts in civil and criminal jurisdiction and perform in all areas not assigned to other court orders.

<i>Instances</i>	<i>Court</i>
Cassation	Supreme Court of Justice
Appellation	Courts of Appeal ( <i>Relação</i> )
First Instance	County Courts ( <i>Comarca</i> )

3.1. The Supreme Court knows, on appeal, causes the value exceeds the jurisdiction of the courts of appeal and this causes the value exceeds the jurisdiction of the courts of first instance. Includes sections on civil, criminal and labour matters. Its headquarters are in Lisbon and has jurisdiction throughout the national territory.

3.2. The Courts of Appeal (*Relação*) are, as a rule, the courts of second instance and, if so, are called by the name of the judicial district in which they are installed. There are five courts: Lisbon, Oporto, Coimbra, Évora and Guimarães (this one belongs to the Judicial District of Oporto). Courts of Appeal include sections on civil, criminal, and social (labour) matters. It is planned, in the new judicial organization, may have also include sections in matters of family and children and on trade and intellectual property.

3.3. The Courts of First Instance are called by the name of the municipality in which they are installed. These Courts prepare and try cases related to claims falling outside the jurisdiction of other courts. Jurisdiction may general or specialized in Prosecution, Family and Children; Labour, Commerce, Intellectual Property; Maritime; Execution of sentences; Execution; Civil Instance, Criminal Instance, Civil *and* Criminal Instance.

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<sup>1</sup> The Constitutional Court, called into existence by the constitutional reform of 1982, judges whether legislative acts are legal and constitutional. Among other duties, this court also ascertains the physical ability of the president to carry out presidential functions and to examine international agreements for their constitutionality. Ten of its thirteen members are chosen by the Parliament (Republic Assembly).

<sup>2</sup> The Supreme Court of Justice is designated by the Portuguese Constitution the "*highest court of law*," but "*without prejudice to the jurisdiction of the Constitutional Court*".

4. The **Administrative and Tax Courts** have the responsibility of fiscal and administrative justice, namely the trial of actions and resources to resolve any disputes arising from administrative and fiscal relations. These courts form a hierarchical structure itself as having superior court the Supreme Administrative Court.

<i>Instances</i>	<i>Court</i>
Cassation	Administrative Supreme Court
Appellation	Central Administrative Courts (North and South)
First Instance	“Circulo” Administrative Courts, Tax Court of Lisbon

4.1. The Supreme Administrative Court have two sections — Administrative Litigation and the Tax Litigation <sup>3</sup>. Its headquarters are in Lisbon and has jurisdiction throughout the national territory.

4.2. There are two Central Administrative Courts – North (Oporto) and South (Lisbon) and have, also, the same two sections: Administrative Litigation and the Tax Litigation.

4.3. The administrative courts of First Instance may have administrative or tax competence and this one (of Lisbon) may have specialist instances.

5. **Court of Auditors**. This court has not only judicial functions (judicial review of public expenditure and public accounts of the trial) but also has functions of another nature, namely, to give an opinion on the General State Account, to empower the Parliament to enjoy it and judge it.

6. **“Courts of Peace”** and **“Arbitral Courts”**. Are intended exclusively for trial in declaratory actions, whose value does not exceed the jurisdiction of the Judicial Court of First Instance. They’re voluntary.

7. The **jury system** was reintroduced in 1976, but it is used only when requested by either the prosecutor or the defendant and only in criminal cases of high gravity (judicial courts).

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<sup>3</sup> The Administrative Supreme Court examines the fiscal and administrative conduct of public institutions. It is not concerned with the state's political decisions or legislation. One section of this court deals with administrative disputes and another section deals with tax disputes and is supported by courts of first and second instance.

## 1.2. Statistic information on Courts, judges and cases

### 1.2.1. Courts and Judges (in 2009)

CONSTITUTIONAL COURT		
<i>Instances</i>	<i>Number of courts</i>	<i>Number of Judges</i>
—	1	13

JUDICIAL COURTS		
<i>Instances</i>	<i>Number of courts</i>	<i>Number of Judges</i>
Supreme Court of Justice	1	60
Courts of Appeal (Relações)	5	432
Courts of First Instance (Countys)	271	1428
<b>Total</b>		<b>1920</b>

ADMINISTRATIVE COURTS		
<i>Instances</i>	<i>Number of courts</i>	<i>Number of Judges</i>
Administrative Supreme Court	1	36
Administrative Central Courts	2	33
Administrative Circulo Courts	17	109
<b>Total</b>		<b>178</b>

COURT OF AUDICTORS		
<i>Instances</i>	<i>Number of courts</i>	<i>Number of Judges</i>
—	1	22

*Sources:*

<http://www.tribunalconstitucional.pt/tc/juizes01.html>

<http://www.stj.pt/?idm=68>

<http://www.csm.org.pt/juizes/corpomagistrados>

[http://www.cstaf.pt/quadro\\_juizes.htm](http://www.cstaf.pt/quadro_juizes.htm)

<http://www.tcontas.pt/pt/apresenta/juizes.shtm>

### 1.2.2. Cases

<b>CONSTITUTIONAL COURT</b>			
<i>Instances</i>	<i>Entered</i>	<i>Ended</i>	<i>Pending (end year)</i>
	1.013	971	412
<b>JUDICIAL COURTS (2009)</b>			
<i>Instances</i>	<i>Entered</i>	<i>Ended</i>	<i>Pending (end year)</i>
Supreme Court of Justice	3.911	3.902	901
Courts of Appeal	33.518	32.500	10.344
Courts of First Instance	890.326	791.023	1.614.864
<b>Total</b>	<b>927.755</b>	<b>827.425</b>	<b>1.626.109</b>
<b>ADMINISTRATIVE COURTS (2009)</b>			
<i>Instances</i>	<i>Entered</i>	<i>Ended</i>	<i>Pending (end year)</i>
Administrative Supreme Court	1.202	1.228	515
Administrative Central Courts	3.455	2.699	3.733
Administrative Circulo Courts	Not available	Not available	Not available
<b>Total</b>	<b>—</b>	<b>—</b>	<b>—</b>

Source: <http://www.siej.dgppj.mj.pt>

### 1.3. Statistic information on processing time

<b>JUDICIAL COURTS (length average in months)</b>				
<i>Instances</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Supreme Court of Justice	3	3	3	3
Courts of Appeal	5	4	4	4
Courts of First Instance	25	See below	See below	See below
<b>ADMINISTRATIVE COURTS (length average in months)</b>				
<i>Instances</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Superior and Central Courts	16	13	11	9
Administrative Circulo Courts	Not available	Not available	Not available	Not available

<b>JUDICIAL COURTS – COURTS OF FIRST INSTANCE (length average in months)</b>			
<i>Different types</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Ordinary Civil	32	29	27
Criminal	11	12	10

Source: <http://www.siej.dgpj.mj.pt>

No data available for the other categories of Courts.

## **2. Statistics, Requirements and Transparency**

### ***2.1. What statistics are provided for on a regular basis ?***

The statistics provided are:

- Movement Process
  - Global data, results of court proceedings
  - Movement of cases by area of procedural motion
  - Civil Justice / Criminal Justice
  - Results of the investigation procedures for court proceedings
  - Movement of instruction, per court
- Efficiency and resolution
  - Performance Indicators
  - Average length of duration and levels of completed cases
  - Average duration of completed proceedings
  - Squadrons of duration of completed proceedings
- Characterization of cases completed
  - Divorces and legal separations
  - Inventories
  - Bankruptcy and reorganization
- Other measures
  - Number of rifts declaratory actions
  - Number of enforcement actions in courts
  - Number of criminal cases at trial stage ended
  - Labour Justice (number of processes ended)
  - Tutelary Justice (Number of civil juvenile cases ended, number of educational guardianship proceedings, number of the promotion and protection ended)

**• *At which level of information are statistics provided for?***

Statistics detailing criminal, civil and procedures types, as well as the degree of efficiency between the incoming cases, and cases pending.

***2.2. Are provided statistics published ?***

Yes.

The Higher Courts publish statistical information on their websites. The systematization of all statistics are made by a department of the Ministry of Justice and made publicly available and unrestricted access to the site <http://www.siej.dgpj.mj.pt> and also in a printed booklet.

Bench marking is encouraged and in the judicial courts is automatically done by the software of electronic processing of cases (*Citius*)

***2.3. Is processing time of individual cases transparent ?***

The only distinction is based on the restriction of criminal cases. But the statistic result is published without any distinction in the websites mentioned above. All statistical information is public.

***2.4. Are requirements for processing time stipulated ?***

Yes, by law.

***2.5. What are the consequences of exceeding required/reasonable processing time according to national rules or practice***

Exceeding required processing time is liable to disciplinary responsibility (to judges).

***2.6. Can the parties and others make a complaint about the processing time ?***

Yes. To the High Council of Judiciary (“Conselho Superior da Magistratura”)

If the subject had an inordinate delay in its resolution, the party may bring an action against the State.

***2.7. Are user surveys on processing time carried out ?***

Yes. In civil causes is automatically done by the software of electronic processing and can be accessed directly by each user. In other jurisdictions surveys on processing are recorded monthly by the staff.

### **3. Reduction of Caseload and Facilitating Court Procedures**

#### **3.1. Which means of reduction of caseload are used**

- Legal restriction of appeals (if the Court of First Instance decision is upheld by the Court of Appeal, it is not possible, as a rule, an appeal to the Supreme Court);
- Encouraging alternative dispute resolution (mediation, justice of peace);
- Transfer of jurisdiction of the courts to other organs (Register Offices and Notaries).

#### **3.2. Are any special easy procedures available ?**

Yes, v.g., *injunction* procedure (for small claims), temporary suspension of the process (for minor offenses), suspension of procedure for use of the existing mediation service in the Justice of the Peace.

#### **3.3. What simplifications of ordinary procedures are applied ?**

Fewer witnesses, allowable video conferences and oral sentences handed down.

#### **3.4. Give examples of practices used within ordinary procedures to speed up ordinary procedures.**

- "Preliminary hearing" with the decision on procedural questions and selection of facts to stand trial;
- Limitation of pleadings in cases of lesser value.

### **4. Increase of Capacity and Improvement of Processing**

#### **4.1. Do you try to limit processing time by an increase of courts or increase or reallocation of judges or cases?**

No. The increase of Courts can only be done by the Legislative.

There's no reallocation of cases or judges (compliance with the principle of *natural judge*). There were only a few cases of assistance from retired judges.

#### **4.2. Do you try to limit processing time by taking on assistance from deputy judges, trainee judges, or juridical assistants ?**

Yes, the High Council of Judiciary may affect more judges to assist courts with high pending.



**4.3. Do you try to limit processing time by facilitating processing of cases ?**

Processing is subject to strict compliance with the law.

In civil cases, judges can adapt the procedure, but that decision depends on the agreement of representatives of the parties.

Judges are subject to continuous training, with preference for specialization.

**4.4. Do you try to limit processing time by giving secretary or juridical assistance to individual judges ?**

Despite being prescribed by law, this measure was never enforced, except a few advisers in the Supreme Court.

**4.5. Do you try to improve court proceedings or increase the capacity of courts by any scientific, experimental or technical project ?**

In the Courts where is running the new judicial organization (three courts of first instance) there is a presiding judge and an administrator with powers of management, redistribution and allocation to a judge the decision in a particular category of cases.

**5. Other initiatives**

**5.1. Have other initiatives concerning timeliness been undertaken or are they contemplated ?**

Yes, through electronic processing of cases (required in civil and administrative cases and optional in other cases).