PART II

NATIONAL FRAMEWORKS AND PRACTICES OF THE ENFORCEMENT OF PRE-TRIAL DETAINEES' RIGHTS

EUROPEAN PRISON LITIGATION NETWORK
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Chapter 5

Access to Justice for Pre-Trial Detainees in PORTUGAL: Law and Practices

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TABLE OF CONTENTS

1 INTRODUCTION

ROADMAP OF NATIONAL CHAPTER

This national chapter examines the legal framework and practical realities governing the rights of pre-trial detainees in Portugal, with particular attention to their access to justice for enforcing rights and challenging detention conditions. The analysis focuses on how the law operates in practice within prisons and the extent to which procedural and institutional safeguards effectively protect the rights of remand prisoners.

The chapter draws on both desk-based and field research conducted between 2024 and 2025. After completing this research, which encompassed both desk analysis of the national legal framework and interviews with relevant stakeholders, the researchers concluded that existing legal assistance for persons deprived of liberty remains insufficient—both at the regulatory level and in practice. There is a clear absence of specialised support for prison litigation, and the limited understanding of the system among many interviewees appears itself symptomatic of its weaknesses. Any gaps that remain in this report therefore mirror the gaps within the system, as well as the lack of institutional awareness regarding the specificities and challenges of providing legal assistance in places of detention.

The analysis begins by outlining the methodology used in the research, followed by an overview of the detention regime applicable to pre-trial detainees, including the legal basis for pre-trial measures, the conditions of detention, and the main characteristics of the prison population. It then examines the complaint and remedy mechanisms available to detainees, evaluating both their procedural structure and their effectiveness in practice.

Subsequent sections assess prisoners' access to legal information, identifying key gaps in dissemination, language accessibility, and standardisation, particularly for vulnerable groups such as foreign nationals. The chapter then turns to the scope and practical implementation of legal aid in prison litigation, analysing barriers to eligibility and continuity of assistance. Then, the role of the lawyer is addressed, examining both the formal legal framework governing prisoners' right to legal assistance and the practical barriers that limit its exercise in

detention. This is followed by an examination of barriers prisoners face in acting as litigants on their own, the informal mechanisms of support among inmates, and the structural challenges that hinder access to effective remedies. The final sections address the role the Bar Association, NGOs and national monitoring bodies.

Overall, the chapter seeks to identify the systemic and practical obstacles that pre-trial detainees face in exercising their rights and to assess the degree to which existing legal and institutional frameworks provide real, rather than merely theoretical, access to justice in detention.

METHODOLOGY

The research in Portugal was carried out by Forum Penal (Diana Silva Pereira and Marta Bulhosa) and Inês Horta Pinto (University of Coimbra, Institute for Legal Research) through a combination of desk research and field research. The desk research was undertaken between November 2024 and January 2025, providing an overview of the applicable legal framework, relevant case law, and existing secondary sources on detention and access to justice. Field research was conducted in March 2025 with the aim of complementing the desk-based findings and grounding them in the practical realities of detention.

The fieldwork involved eight semi-structured interviews with key stakeholders. These included one inmate currently detained in Lisbon Central Prison; two lawyers practising in the field of criminal and penitentiary law; a representative of a non-governmental organisation providing social support to detainees and formerly incarcerated persons; two representatives of the National Preventive Mechanism; a representative from the National Bar Association; a representative of Social Security, the national authority responsible for deciding legal aid requests; and a representative from the Prison Service. The selection of participants was designed to ensure that perspectives from inside prison, from the legal profession, from civil society, and from the independent monitoring framework were all represented.

The interviews were guided by a common template covering themes such as access to legal information, the organisation and

effectiveness of legal aid, the role of NGOs, the existence of informal prisoner support networks, and the availability of remedies inside prison facilities. While the questions provided structure, the interviews also allowed space for open discussion to capture the lived experience of detainees and the insights of practitioners.

Taken together, the desk and field research provided a multi-perspective view of access to justice in Portuguese prisons. The legal framework identified through the desk review was largely validated by the fieldwork, while the interviews highlighted significant challenges in practice, including bureaucratic delays, shortcomings in dissemination of legal information, and the reliance on informal prisoner networks. The contribution of each stakeholder group was crucial in exposing the gap between formal guarantees and actual implementation.

2 OVERVIEW OF THE DETENTION REGIME FOR PRE-TRIAL DETAINEES

LEGAL FRAMEWORK SHAPING RIGHTS OF PRE-TRIAL DETAINEES

Pre-trial detention in Portugal is regulated by the Code of Criminal Procedure and is conceived as a measure of last resort. It may only be imposed where there is strong evidence of a serious offence and if the judge considers that no other coercive measure is sufficient. The law requires one of three grounds to be demonstrated: risk of escape, risk of interference with the investigation, or risk of continued criminal activity or disturbance of public order.[1] Pre-trial detention is limited to offences punishable by a maximum sentence of more than five years, or more than three years in cases of violent crime, terrorism, or organised crime. The decision to impose detention is taken by a judge, must be reasoned, and is subject to mandatory review every three months.

1 Criminal Procedure Code of Portugal, Article 204.

The implementation of pre-trial detention is governed by the Code on the Enforcement of Sentences and Measures involving Deprivation of Liberty (2009) and the General Prison Regulation (2011). The Code requires that pre-trial detainees be accommodated separately from sentenced prisoners,[2] and sets out specific guarantees reflecting the principle of the presumption of innocence.[3] Accordingly, detention may not involve restrictions beyond those strictly necessary to secure the purposes of the measure and to maintain order, security, and discipline in the establishment.

Pre-trial detainees may, if they so wish, participate in educational programmes, vocational training, work, and other prison activities. They are required to maintain their accommodation and participate in general upkeep of the prison facilities. The regime allows for frequent family contact: visits should be granted whenever possible on a daily basis, and detainees may, subject to health and security considerations, receive food from outside the prison.

Unlike sentenced prisoners, pre-trial detainees are excluded from most sentence adjustment mechanisms, such as open regime or standard prison leave. They may, however, be granted special leave on grounds of particular human significance or urgent personal need, as well as escorted exits for activities, attendance at court proceedings, or access to health care. In addition, pre-trial detainees may, in certain cases, be placed under a high-security regime.

STATISTICS

Spaces of Pre-Trial Detention

The Code governing the enforcement of sentences and measures involving deprivation of liberty (2009) stipulates that pre-trial detainees must be held in separate accommodation from convicted prisoners.[4] Portugal's penitentiary system is composed of 49 prison establishments, none of which are exclusively designated as pre-trial detention centres. Instead, pre-trial detainees are generally held in the same establishments as convicted prisoners, though

2 Ibid, Article 9 §2.

3 Ibid, Article 123.

4 Ibid, Article 9§2.

as a rule they are housed in separate wings or pavilions. Some establishments are primarily used for detainees awaiting trial or serving short sentences, while others are reserved for convicted prisoners serving longer terms. Nevertheless, the overall picture is one of mixed-use facilities rather than dedicated pre-trial institutions.

Main Social Characteristics of the Prison Population

As of 31 December 2024, Portugal's prison population stood at 12,207 persons. Of these, 9,468 (77.6%) were serving a sentence and 2,739 (22.4%) were in pre-trial detention, either awaiting trial (2,165 persons) or convicted but awaiting a decision on appeal (574 persons). The vast majority of prisoners were men (93%), with women accounting for just 7% of the population, and 17.4% were foreign nationals. No official statistics are collected on ethnic background. (20)

More detailed data from 2023 provide additional insight into the demographic profile of the pre-trial population. Of the 2,655 pre-trial detainees recorded at that time, 2,422 were men and 233 women. Portuguese nationals formed the majority, but foreign nationals were also well represented, with 720 men and 83 women. Age distribution reveals that detention particularly affects prisoners in their twenties and thirties: more than 4,700 pre-trial detainees fell between the ages of 21 and 39. A smaller number were below the age of 21, and nearly 1,000 were aged 60 or above, indicating that while prison primarily affects younger adults, older detainees remain a significant minority.

Educational levels varied considerably. While a small proportion of pre-trial detainees held a university degree (380 persons), and many had completed basic or secondary schooling, a significant number had little or no education: 362 were illiterate and a further 447 could read and write but had never received formal education. This profile highlights a prison population marked by social and educational disadvantage, with a small but notable group of highly educated prisoners.[5]

Foreign nationals remain overrepresented in pre-trial detention. On 31 December 2022, more than half of foreign women (50.7%) and over one-third of foreign men (37%) were held on a pre-trial basis,

5 Available on the website of the DGRSP (Pre-trial detainees by sex/nationality, 2023: LINK.

compared with 19.6% of Portuguese women and 16.4% of Portuguese men.[6] This disparity suggests that nationality plays a significant role in shaping detention outcomes, with foreign nationals more likely to be held in custody pending trial or appeal than Portuguese nationals.

Trends Across the Past Decade

The Portuguese prison population has generally followed a downward trend over the past decade, although fluctuations reflect changes in legal and policy frameworks. Numbers declined from 13,779 in 2016 to 12,793 in 2019, before dropping sharply to 11,412 in 2020 following the adoption of exceptional measures to prevent the spread of COVID-19 in prisons.[7] A modest increase followed in 2021 and 2022, with the population reaching 12,198, before stabilising at 12,193 in 2023. These fluctuations illustrate both the long-term trend towards a gradual reduction in the prison population and the short-term impact of legislative reforms, such as the 2017 expansion of home detention[8] and the 2020 pandemic measures.

Throughout this period, the proportion of pre-trial detainees has consistently remained below 20%, a stability largely attributed to the 2007 revision of the Code of Criminal Procedure. The most recent figures from 2024, however, show a higher percentage (22.4%), indicating a possible reversal of the trend and suggesting renewed pressure on the pre-trial detention regime.

6 Ishiy, Karla Tayumi (2023), Relatório sobre a população reclusa em Portugal de 2022, Revista Portuguesa de Ciência Criminal 33, p. 373.

7 Law No. 9/2020, of 10 April.

8 Law No. 94/2017, of 23 August.

3 BODIES COMPETENT TO RECEIVE COMPLAINTS AND EFFECTIVENESS OF REMEDIES

OVERVIEW

Internal Administrative Complaints

Both pre-trial detainees and sentenced prisoners are entitled to submit complaints, petitions, grievances, and requests concerning the execution of custodial measures in defence of their rights. These may be addressed to the prison governor, who may attempt mediation, decide on the matter within thirty days, or forward the complaint to the competent authority. Complaints may also be submitted directly to the Director-General of Prison Services (DGRSP) or the Audit and Inspection Service of the Prison Authorities (SAI), without specific formalities or deadlines.

In 2021, the Prison Service adopted Circular No. 9/2021 (Regulation on Complaints and Requests for the Prison Population), which established a more standardised procedure for handling complaints across all prison establishments.[9] The Regulation applies to all areas of prison life and requires monthly reporting to the SAI to ensure centralised oversight. The SAI is further tasked with conducting inspections to verify compliance and may issue recommendations for improvement. Importantly, the Circular does not prevent prisoners from submitting complaints directly to the Director-General, the SAI, or external authorities.

However, the text of Circular No. 9/2021 is not publicly available on the DGRSP website or through other official channels, preventing an assessment of whether it can be regarded as a sufficient remedy. Public access to all rules governing prison establishments is a prerequisite for the effective exercise of prisoners' rights, as it enables lawyers, NGOs, and relatives to understand and invoke the applicable framework. To date, there is no available evaluation of

9 Report of the NPM in respect of 2021: LINK.

the Regulation's effectiveness in preventing violations of Article 3 ECHR concerning conditions of detention.

In practice, the effectiveness of complaints to prison directors or to the Director-General of Prison Services remain largely theoretical.[10] Although inmates may formally raise grievances through these channels, this mechanism does not constitute a regular or effective means of obtaining a timely or meaningful response capable of halting ongoing violations of the prohibition of inhuman or degrading treatment.

External Administrative and Monitoring Bodies

Prisoners have the right to correspond, without restriction, with diplomatic and consular entities, the Bar Association, the Ombudsperson (who also functions as the National Preventive Mechanism under OPCAT), the Inspectorate-General of Justice Services, and other relevant bodies (Article 68 §4). They may also address petitions and complaints to external authorities, namely the Inspectorate-General of Justice Services, the Ombudsperson, the Bar Association as well as regional and international human rights bodies.

Complaints made by prisoners and addressed to the prison administration are not communicated to courts. However, where complaints reveal facts amounting to criminal offences, and certain conditions are met, the prison administration must communicate it to the public prosecution service.

Judicial Remedies

There are no judicial remedies specifically available to challenge material conditions of detention in Portugal. The courts for the execution of sentences (tribunais de execução das penas) have no explicit competence in this area and lack the power to order improvements, renovations, or other measures addressing

10 European Prison Litigation Network and Forum Penal, Communication in accordance with Rule 9.2 of the Rules of the Committee of Ministers: Case Petrescu v Portugal (No 23190/17, June 2023) (EPLN, 2023): LINK.

inadequate detention conditions. The Code contains no clear or detailed provisions granting these courts oversight over the physical state of prison facilities.

While prisoners may appeal certain administrative decisions, the right of appeal applies only to those acts expressly listed in the law and does not extend to complaints regarding conditions of detention.[11] Similarly, there is no right to appeal against a decision refusing a transfer to another cell or prison establishment. In this respect, no judicial or even theoretical remedy exists, let alone a practical and effective one.

In general, judicial supervision of sentence implementation and pre-trial detention is exercised by the courts for the execution of sentences (Article 138). Prisoners may submit requests or complaints to the court either by mail or through the prison registry office, which provides a receipt and forwards the submission to the court together with any relevant documentation.

These courts have two main areas of competence: first, they decide on matters concerning the adjustment of sentences—such as temporary leave, conditional release, or modifications to the regime of execution; and second, they provide judicial review of specific administrative decisions taken by the prison authorities. Under Article 200, prisoners may challenge (impugnar) only the two most severe disciplinary sanctions (compulsory stay in accommodation and confinement in a disciplinary cell), as well as administrative refusals of visits, restrictions on telephone communications, or denials of interviews with the media.

The procedure for such challenges, regulated by Articles 200–211 of the Code, is designed to be straightforward and accessible. Prisoners must file their challenge within eight days of notification, or within five days in the case of disciplinary sanctions. No particular formalities are required: the application must indicate the factual or legal grounds, any supporting evidence, and a concise statement of the claim. Legal representation is not mandatory unless questions of law arise.

Once the request is received, the judge has five days to reject it if it is inadmissible or manifestly unfounded, or to admit it and proceed.

11 Article 200 of Law 115/2009.

If the application is unclear or incomplete, the prisoner may be invited to amend it. When admitted, the prison administration and the Public Prosecutor's Office are notified and have five days to respond. The judge may order evidentiary measures as needed. For disciplinary matters, a decision must be delivered within five days. The court's ruling may result in the amendment or annulment of the contested administrative decision.

Compensatory Remedies

As regards compensatory remedies—namely, the common non-contractual liability lawsuit concerning State action—prisoners may bring a civil liability action before the administrative courts under the legal framework governing State liability for damages arising from the exercise of legislative, jurisdictional, and administrative functions. This framework, set out in Law No. 67/2007 of 31 December,[12] provides that compensation may be awarded where there has been an "abnormal functioning of the service".[13]

At least one ruling of the administrative courts[14] has ordered the State to pay compensation for the detention conditions endured by an applicant in Caxias Prison, finding violations of Article 3 of the European Convention on Human Rights and Articles 1 and 25 of the Portuguese Constitution, which enshrine the dignity of the human person and the prohibition of cruel, inhuman or degrading treatment. This judgment, issued by the Administrative Court of Sintra, declared the State responsible for the applicant's detention in degrading prison facilities and ordered compensation accordingly. The case is referenced in the 2021 Report of the National Preventive Mechanism,[15] although the ruling itself has not been published and therefore remains largely unknown to the public.

However, this cannot be regarded as an effective remedy. First, there is no specific legal framework governing compensation claims for prison conditions. Second, as noted earlier, widespread shortcomings

12 As amended by Law No. 31/2008 of 17 July.

13 Articles 7 §4 and 9 §2.

14 Ruling of the Tribunal Administrativo e Fiscal de Sintra, of 20 March 2021, case no. 1173/17.9BELSB.

15 available at LINK.

in prisoners' access to legal information and legal assistance mean that most inmates are unaware of the existence of such a remedy and therefore unable to exercise it effectively. Third, proceedings before the Portuguese administrative courts are notoriously lengthy, often taking several years, and in some cases more than a decade, to reach a final judgment. Finally, a single domestic judgment is insufficient to demonstrate the existence of a consistent and effective judicial practice.

COURT FEES AND COMPLAINT FILING COSTS

For prisoners, the act of filing a complaint within the prison administration does not involve any cost. These complaints remain internal unless they disclose conduct amounting to a crime, in which case the administration must forward them to the public prosecution service.

In criminal proceedings, no fee is required to initiate a case. The only exception concerns so-called "particular crimes," where prosecution depends on a private complaint. In such cases the victim must constitute themselves as an **assistente** (private prosecutor) and appoint a lawyer, which entails the payment of a fixed fee established by law. Victims may also choose to become an **assistente** in semi-public or public crimes in order to gain intervention rights, also subject to the same fixed fee, provided the request is made at least five days before trial.

There is no fee for lodging an appeal. However, at the conclusion of proceedings the losing party, whether the defendant or the **assistente**, must pay a court fee. This fee is variable within statutory limits and is determined by the judge on the basis of the case's complexity.

EFFECTIVENESS OF REMEDIES

The European Court of Human Rights has repeatedly found that the remedies available in Portugal cannot be regarded as effective for the purposes of Article 13 of the European Convention on Human Rights in cases concerning material conditions of detention. In Petrescu v. Portugal (December 2019),[16] the first in a line of rulings, the Court found a violation of Article 3 due to inhuman and degrading treatment and rejected the Government's argument that the applicant had failed to exhaust domestic remedies. The Court held that the remedies were insufficient on several grounds.

With regard to the right to petition and complain to the prison administration, the Court emphasised that the authorities in question do not have the independence required for this purpose, adding that CPT reports indicate a lack of confidence among prisoners in the internal complaints system of prisons.[17] As for complaints to the Ombudsperson, who also acts as the National Preventive Mechanism, the Court underlined that this body cannot adopt binding decisions or issue injunctions to the executive, but may only make recommendations.[18] With regard to recourse to the courts for the execution of sentences or to the administrative courts, it noted that the Portuguese Government had failed to demonstrate their effectiveness as a means of responding to poor detention conditions; furthermore, since the problem was structural, even a favourable court ruling would face significant practical obstacles in enforcement.[19] As for compensatory remedies, the Court noted the absence of examples showing that actions for State liability had provided effective redress.[20]

Petrescu v. Portugal is regarded as a quasi-pilot judgment, and its execution has since been under the supervision of the Council of Europe's Department for the Execution of Judgments. The Court reiterated its findings in Bădulescu v. Portugal[21] and in subsequent cases, consistently emphasising that Portugal lacks accessible and

16 Petrescu v. Portugal, no. 23190/17, 3 December 2019.

17 Ibid, § 81.

18 Ibid, § 83.

19 Ibid, § 82.

20 Ibid, § 86.

21 Bădulescu v. Portugal, no. 33729/18, 20 October 2020.

effective remedies, both preventive and compensatory. Between 2020 and 2024, ten further judgments concerning Portuguese prison conditions found violations of Article 3 of the Convention, with several also finding violations of Article 13 due to the absence of domestic remedies to challenge inadequate detention conditions.

In a joint Rule 9.2 submission of July 2024, Forum Penal and the European Prison Litigation Network argued that internal complaint procedures cannot be considered effective, that prisoners face major barriers in accessing legal information and legal aid, and that legal aid is excluded from key areas such as penitentiary and disciplinary law in non-judicial phases.[22] They highlighted that many prisoners, including those with low literacy, special needs, or foreign nationals, are effectively unable to exercise their rights. The Portuguese Bar Association publicly reinforced these criticisms in June 2024, stressing the absence of meaningful access to legal advice and urging the creation of a dedicated system of remote legal assistance for prisoners.

With respect to compensatory remedies, NGOs noted that civil liability actions are not effective in practice: there is no specific framework for detention conditions, prisoners often lack the knowledge or legal support to bring claims, and proceedings in the administrative courts can take many years, sometimes over a decade. They therefore called for legislative reform to establish effective compensatory remedies.

In its action plans before the Committee of Ministers, Portugal has acknowledged the deficiencies and committed to creating preventive remedies. It explained that the early dissolution of recent legislatures had delayed the legislative process, though preliminary drafting work and consultations with magistrates from execution courts had taken place.[23] On compensatory remedies, the Government pointed to new cases pending before administrative courts concerning detention conditions, healthcare, and safety, and argued that these reflected a growing judicial willingness to apply the civil liability regime to prison conditions.[24]

22 Rule 9, cited above.

23 Communication from Portugal concerning the group of cases Petrescu v. Portugal (Application No. 23190/17), 25 June 2025: LINK.

24 Communication from Portugal concerning the group of cases Petrescu v. Portugal (Application No. 23190/17), 25 June 2025: LINK.

4 ORGANISATION OF ACCESS TO JUSTICE IN PRE-TRIAL DETENTION

VULNERABILITY OF PRE-TRIAL DETAINEES AND NECESSITY OF LEGAL INFORMATION AND ADVICE

From the point of view of the access to justice and to court, the prison population accumulates social, cultural and economical disadvantages. Such disadvantages justify enhanced state efforts to ensure the provision of legal information and legal advice.

Nevertheless the research shows that access to relevant and comprehensible legal information as well as to legal advice from legal professionals remains uneven, inadequate, and particularly deficient for vulnerable groups such as foreign nationals, those with low literacy skills, and prisoners without private legal assistance.

As stressed by interviewees from NGO and the National Preventive Mechanism, many prisoners rely primarily on informal information being passed on by more experienced or literate inmates to others. In the absence of reliable systems of legal information and legal advise, this is a crucial source of legal information for prisoners, particularly those who do not speak Portuguese.

ACCESS TO LEGAL INFORMATION

Overall, while the Portuguese legal framework formally guarantees prisoners' access to legal information, field research shows that implementation remains inconsistent and fragmented. The information available within prisons is often confined to practical aspects of daily life rather than legal rights or remedies. Dissemination is irregular and predominantly in Portuguese, creating substantial barriers for foreign nationals and prisoners with low literacy. Social workers and in-house legal practitioners play a role in conveying rights-related information, yet there is no standardised

approach, and access largely depends on the initiative and capacity of individual staff members. As a result, many prisoners rely on more experienced or literate fellow inmates for translation, assistance with administrative forms, and basic legal understanding.

In practice, this means that persons deprived of their liberty in Portugal are often not fully aware of their rights and face considerable obstacles in exercising them. The absence of consistent, accessible information contributes to a sense of helplessness and frustration among prisoners and may, in concrete terms, impair their ability to make effective use of legal rights guaranteed by law.

A broader structural issue also affects access to legal information in Portugal. With reference to the publication of court decisions, since judgments of the first instance courts are not published, and not all judgments of the higher courts are published and there are no clear criteria for the selection of those that are indeed published.[25] This lack of systematic publication limits public and professional access to legal reasoning and jurisprudence, thereby constraining the right to judicial review and, more broadly, the right to an effective remedy.

Obligation to Inform Detainees of Their Rights

The obligation to inform detainees of their rights is rooted in the Portuguese constitutional framework. Since the adoption of the 1976 Constitution, Article 20 has stipulated that everyone has access to the courts to defend their rights, with the express safeguard that justice cannot be denied on account of insufficient financial means. Following the 1982 constitutional amendment, this provision was broadened to include the right to legal information, establishing that "everyone has the right to information and legal protection, as laid down by the law."

In the specific context of deprivation of liberty, the Constitution further provides that "every person deprived of liberty shall be informed promptly and in an understandable manner of the reasons for their arrest or detention and of their rights" (Article 27 §4). This imposes a direct duty on the authorities to ensure that detained persons are

25 See www.dgsi.pt and more recently on https://jurisprudencia.csm.org.pt.

immediately made aware, in clear terms, of both the grounds for their detention and the rights available to them. The 'Law on Access to Law' concretises these constitutional safeguards, and regulates regulates access to legal information, legal representation, and the courts.

Prior to the democratic transition of 1974 and the 1976 Constitution, legislation had recognised the need for legal aid for those without sufficient means, as reflected in Law No. 7/70 of 9 June 1970. After the adoption of the Constitution, Decree-Law No. 387-B/87 of 29 December 1987 was enacted to implement the constitutional mandate. This law was designed to cover the full spectrum of access to justice: legal information, legal advice, and legal aid, extending beyond criminal matters to all legal issues.

Decree-Law No. 387-B/87 affirmed key principles: that the system of access to law and the courts must ensure that no one is prevented, by reason of social or cultural status or insufficient means, from knowing, exercising, or defending their rights;[26] that access to justice is a shared responsibility of the State and the legal professions, to be realised through cooperation mechanisms;[27] and that the State must guarantee appropriate remuneration for legal professionals working within the system.[28] With respect to legal information, the law established a proactive responsibility on the Government to carry out permanent and structured initiatives aimed at raising legal awareness, including through publications and other forms of communication, with the aim of progressively establishing reception services in courts and judicial services.[29] The law also provided that individuals unable to pay legal fees or bear litigation costs were entitled to legal protection, which took two forms: legal advice and legal aid. Legal aid included total or partial exemption from court costs, as well as the payment of lawyer or solicitor services.[30]

The current legislative framework is set out in Law No. 34/2004 of 29 July 2004, last amended in 2023. This law continues to regulate access to legal information and legal protection.

26 Article 1.

27 Article 2.

28 Article 3.

29 Articles 4 and 5.

30 Article 7.

In addition to the general framework on access to law, the right of persons deprived of liberty to be informed of their rights is specifically safeguarded in legislation governing detention and the enforcement of prison sentences. This dual recognition, in both general law and prison-specific law, underscores the centrality of the obligation to inform detainees of their rights within the Portuguese legal system.

The implementation of pre-trial detention and prison sentences is governed by the Code on the Enforcement of Sentences and Measures Involving Deprivation of Liberty (2009) and the General Regulation of Prisons (2011). The Code expressly guarantees the right "to information, consultation and legal advice from a lawyer",[31] together with other rights closely linked to access to legal information, petition, complaint, and judicial review. These include the right to be informed upon entry into prison, and whenever necessary thereafter, of one's rights, duties, and applicable rules; the right to access the individual file and be kept informed about the procedural situation and the progress of the sentence or measure; and the right to be heard, to submit requests and complaints, and to challenge prison service decisions before the courts for the execution of sentences.[32] Prisoners also have the right to be assisted by a lawyer in disciplinary proceedings.[33]

Prisoners must be informed of their rights and duties in a manner they can understand, with translation provided where necessary.[34] Each prisoner must receive a leaflet containing information on their rights, duties, and rules in force, as well as practical details about services, activities, and access to relevant legislation. These leaflets should be available in Portuguese and in the most common foreign languages spoken by the prison population. Prisons are also required to provide access to written legal information, including penal and penitentiary legislation, the General Regulation of Prisons, and relevant international conventions, while prison libraries must contain copies of the Code and the applicable regulations and orders.

31 Article 7(n).

32 Articles 7(j), (l), and (m).

33 Article 110(2).

34 Article 117 of the Code, together with Articles 9 and 94 of the General Regulation of Prisons.

Actors Providing Legal Information

The obligation to inform prisoners of their rights and duties is not formally assigned to any specific authority; in practice, it is carried out by the prison governor and prison staff, such as reintegration officers or prison guards, and through the provision of leaflets and legislation.

Before the courts for the execution of sentences, when lawyers are appointed to cases, they play a central role in informing prisoners of their rights and ensuring compliance with deadlines.

Communication and Information Tools

The legal framework establishes a duty on prison facilities to provide inmates with access to legal information through specific tools. Article 117 of the Code and Articles 9 and 94 of the General Regulation of Prisons require that each prisoner be supplied with a leaflet, printed in Portuguese and in the foreign languages most commonly spoken by the foreign prison population. This leaflet must set out prisoners' rights and duties, the rules applicable to the execution of the sentence or measure, and practical information necessary for integration into prison life, including the services and activities available, their opening hours, and the locations where relevant legislation and regulations may be consulted.

In addition, the Code and the Regulation provide that relevant legislation and prison rules must be available in all prison libraries. This includes the Code, the General Regulation of Prisons, and a compilation of the regulations and orders issued by the Director-General of Prison Services and by the prison governor.

More recently, steps have been taken to introduce digital means of access. In March 2024 the Prison Service launched a new digital platform for inmates, piloted at Tires Female Prison and now being extended to other establishments. The platform provides secure access to a restricted range of authorised websites, including online newspapers, government services, official journals, the Ombudsperson, the Bar Association, the Prison Service and NGOs. It also enables prisoners to consult their individual files, access information and news about the prison system, and submit requests or complaints

electronically, which are then directed to the competent department without the intermediation of prison guards.

According to the published tender specifications, the list of authorised websites is approved by the Director-General and covers the official journals of the Republic and the Autonomous Regions, as well as the websites of key public institutions such as Parliament, the Ministry of Justice and the Public Prosecution Service. To facilitate use, computers connected to the portal are installed in common areas of prisons, including libraries and other suitable rooms.

Field research suggests, however, that the introduction of digital legal tools remains at an early stage. Lawyers interviewed indicated that no specific digital tools currently exist for prisoners or for defence counsel in the field of prison litigation. The National Preventive Mechanism confirmed awareness of the pilot platform but could not provide further details on its scope or implementation.

With regard to communication in judicial proceedings, one lawyer explained that digital communication generally takes place via Webex, which is used both for video calls between prisoners and their lawyers (subject to authorisation) and for hearings where prisoners or witnesses participate remotely. Although confidentiality cannot be fully guaranteed, prisoners are formally assured of privacy during these communications. In practice, to expedite hearings, some judges have authorised the temporary introduction of smartphones into prisons to allow video calls through applications such as WhatsApp.

Significant limitations remain. According to the NPM, lawyers seeking to access inmates' personal files or disciplinary records must still travel to the relevant prison and consult the documentation in physical form. Digital tools are primarily used for remote communication, both with legal representatives and family members, rather than for broader legal research or case management.

Provision of Legal Information to Foreign Prisoners

Article 4 of the Code establishes a set of "special guiding principles" for the execution of custodial sentences and measures imposed on foreign prisoners and on those belonging to ethnic or linguistic minorities. These provisions emphasise the need to respect cultural values, address difficulties in social integration, and overcome language barriers. In practice, this includes facilitating contact with consular or diplomatic authorities and non-governmental organisations supporting migrants, providing access to Portuguese language courses, ensuring the translation of documents, and enabling the intervention of interpreters when required.

The Code further stipulates that foreign prisoners must receive information, in a language they understand, regarding the possibility of serving their Portuguese criminal sentence abroad, the transfer of the sentence to another jurisdiction, and the execution of any ancillary expulsion order.[35] Complementing this, the General Regulation of Prisons requires that the leaflet on prisoners' rights and duties, prison rules, and integration-related information be made available not only in Portuguese but also in the foreign languages most commonly spoken by the prison population.[36]

In addition, foreign prisoners are entitled to receive visits from foreign lawyers, provided that these lawyers comply with the requirements of the Bar Association Statute for practising law in Portugal.[37]

Reported Shortcomings in the Quality, Accessibility, and Dissemination of Legal Information

Field research revealed significant shortcomings in the quality, accessibility, and dissemination of legal information available to prisoners in Portugal. While some information is provided within prison establishments, it is limited in scope, primarily available only in Portuguese, and focused more on practical day-to-day

35 Article 117.

36 Article 9.

37 Articles 104 and 233 of the General Regulation.

matters than on legal rights and remedies. As such, access to relevant and comprehensible legal information remains uneven, inadequate, and particularly deficient for vulnerable groups such as foreign nationals, those with low literacy skills, and prisoners without private legal assistance.

Quality and Relevance of Information

According to inmates, the information available in prisons is typically posted on large wall placards, but it does not cover substantive legal rights. Instead, it concerns routine matters such as visiting schedules, daily timetables, or the quantity of food and clothing that may be provided by relatives. The National Preventive Mechanism (NPM) confirmed that legal rights and procedures are not systematically or uniformly communicated. They reported that information is often passed on inconsistently and almost exclusively in Portuguese, creating barriers for foreign inmates. Although the Agency for Integration, Migration and Asylum provides a phone line that can assist with translation, this service is rarely known or used in practice. The NPM has therefore recommended the creation of a single, standardised leaflet to be distributed across all prisons upon intake, in order to ensure that rights and relevant procedures are conveyed in a consistent and accessible manner.

Sources of Information

In practice, inmates reported that no staff member proactively explains the available information. Social workers were identified by both NGOs and the NPM as the primary staff resource for conveying rights-related information. The NPM also highlighted the importance of in-house legal practitioners, particularly in the context of disciplinary proceedings where defence rights are at stake. Nevertheless, the delivery of information remains ad hoc and heavily dependent on the availability and initiative of individual staff.

Information During Intake

The provision of legal information at the point of intake is highly inconsistent. While information may be visible on placards, inmates reported that it is not formally explained or systematically introduced during onboarding. The NPM confirmed that whether information is provided depends on variable factors such as the staff

member conducting the intake, staff availability at the time, and the language spoken by the inmate. Crucially, there is no standardised intake procedure across prison establishments to ensure uniform delivery of essential legal information.

Role of External Actors

The NPM underlined the essential role of lawyers in informing prisoners of their rights and obligations and in detecting and acting upon violations. To address the current gaps, they advocated for the introduction of State-appointed duty lawyers, ideally available in all prisons on a rota basis, or at least in the largest establishments. Currently, external organisations such as NGOs or human rights groups play a limited role in the systematic circulation of legal information, though their involvement could provide an important supplement to state provision.

Language and Literacy Barriers

Language barriers pose a major obstacle. Information is predominantly available only in Portuguese, leaving non-Portuguese speakers dependent on informal translations by fellow prisoners, often in English. While the Agency for Integration, Migration and Asylum phone line exists for translation support, it remains little known and seldom used. In addition, all legal aid request forms and forms for access to a lawyer during disciplinary proceedings are written solely in Portuguese. This severely disadvantages foreign prisoners and those with limited literacy, raising concerns about both accessibility and fairness.

Access to Forms and Written Materials

Although prisoners can theoretically access printed forms to file motions or requests, in practice these are controlled by the Wing Chief ("Chefe de Ala"), who maintains pre-prepared templates divided by topic (e.g. requests to see a doctor, applications for prison leave, or complaints). Completed forms must then be deposited in the designated boxes. While a complaint box is available for confidential grievances, inmates expressed reluctance to use it. Since the process requires requesting a form from the Wing Chief and visibly depositing it in the box, prisoners fear that staff will identify the complainant and reprisals may follow. The NPM confirmed that while a dedicated complaints box exists for confidential use, trust in the confidentiality of the mechanism is weak.

PROVISION OF LEGAL ADVICE

Advice Deserts of Prisons: A Structural Gap Acknowledged by the Portuguese Government

Prisoners are entitled to legal assistance in a range of proceedings, although the requirement for representation varies. In disciplinary proceedings within prison, the law expressly provides for the right to be assisted by a lawyer.[38] Legal representation is also permitted in hearings concerning early release and prison leave, however, the presence of a lawyer in these hearings is not mandatory by law.

Under Article 147 of the Code, representation by a lawyer is always permitted in proceedings before the courts for the execution of prison sentences, though it becomes mandatory only in certain circumstances. Specifically, legal assistance is required when questions of law arise, such as in judicial review of decisions taken by the prison administration. Legal representation is also compulsory in cases involving prisoners declared criminally irresponsible on grounds of mental illness and placed under internment measures in forensic units.

While prisoners may privately instruct a lawyer, those unable to do so may receive legal aid counsel appointed **ex officio** by the Bar Association from a list of volunteers registered for specific areas of law. In criminal proceedings, once a person is granted legal aid, the lawyer remains appointed until the judgment becomes final. After this point, assistance automatically ends, and prisoners who wish to have legal representation during the execution of their sentence must reapply for legal aid. This requires completing a Social Security application form again, a process that many prisoners are either unaware of or lack the knowledge to navigate effectively, creating a significant barrier to accessing legal assistance during the enforcement phase of their sentence.

At present, however, access to legal advice for those unable to afford private representation, particularly after final conviction, is

38 Article 110(2).

neither practically nor effectively guaranteed. Inmates in Portugal face considerable limitations in obtaining legal advice. Some of these constraints stem directly from the inherent restrictions of imprisonment itself, such as limited freedom of movement and communication. Others are linked to the structural vulnerabilities of the prison population, which includes a high proportion of individuals experiencing economic hardship, low literacy, addiction, undocumented status, or displacement from their home regions. These factors combine to make the practical exercise of the right to legal assistance significantly constrained in practice, despite its formal recognition in law.

As the Bar Association has acknowledged, the lack of accessible legal advice in prisons remains a major structural gap. In a public statement issued on 22 June 2024, the Portuguese Bar Association declared that "one of the most obvious gaps in the Portuguese prison system is the lack of legal advice. Many inmates in Portugal do not have access to legal advice worthy of that name, and therefore do not make use of the legal mechanisms that are at their disposal during the execution of their sentences, which clearly conflicts with the defence of their rights, freedoms and guarantees." The Bar further reiterated its longstanding call for the creation of a specific system to provide remote legal advice to prisoners, integrated into the national system of access to law and the courts. Such a mechanism, it argued, should not require prior validation by Social Security and should be capable of ensuring rapid and effective access to legal assistance for inmates, given their particularly vulnerable situation.

From here, it is clear that to make the rights of persons deprived of liberty truly effective, access to lawyers within prison establishments must be facilitated through the establishment of a dedicated legal information and orientation scheme. Such a scheme could be provided by lawyers registered with the Portuguese Bar Association, who would attend prisons regularly to offer in-person legal guidance. This would allow detainees to understand their rights, make informed complaints, and exercise their legal entitlements effectively.

Between 27 September and 7 October 2016, the European Committee for the Prevention of Torture (CPT) carried out a visit to Portugal. Its report, adopted on 13 November 2020, and the subsequent

response by the Portuguese Government on 27 February 2018, provide important insight into this issue.[39] In its reply, the Ministry of Justice stated:

> "It has already been agreed between the Directorate-General for Reintegration and Prison Services and the Bar Association to set up legal counselling offices in prisons where lawyers may provide free information and legal advice to inmates on various issues concerning their lives—particularly how to make a complaint about less appropriate treatment, as well as to challenge decisions that are not favourable to them. Talks are currently taking place to solve logistical problems, and we believe that such offices will become a reality in the very near future."

This statement is significant for several reasons. First, the Portuguese Government formally recognised that providing legal advice to inmates through Bar-registered lawyers constitutes an essential safeguard against ill-treatment in prisons. Alongside other preventive measures outlined in its response, free access to legal assistance was framed as a key instrument for humanising prison conditions and empowering prisoners both personally and socially. Second, the Government explicitly committed to establishing legal counselling offices within prisons, in cooperation with the Bar Association, to offer legal support in matters such as filing complaints and challenging unfavourable administrative decisions related to sentence execution.

The agreement between the Directorate-General for Reintegration and Prison Services (DGRSP) and the Bar Association, referred to as the "Protocol", was negotiated between 2017 and 2019. Forum Penal actively participated in this process, drawing on comparative experiences, particularly from Spain's long-standing Servicio de Orientación y Asistencia Jurídica Penitenciaria (SJOAP), which provides regular legal orientation and assistance within prisons.

The draft Protocol envisioned the regular presence of lawyers in prison establishments to assist inmates. Their support would include: Referrals to the System of Access to Law and Courts (legal

39 Document CPT/Inf (2018) 7.

aid), including information about procedures and assistance in completing and submitting applications; Provision of legal information and advice on matters not requiring representation before a court, such as complaints to prison governors or the DGRSP, parole and transfer requests, disciplinary procedures and appeals, and issues relating to civil, family, labour, or administrative rights; Assistance with drafting letters and requests for the renewal of personal documents, as well as information on social and administrative matters relevant to reintegration.

However, the Protocol was never finalised or signed. Consequently, as of today, the proposed "legal counselling offices in Portuguese prisons where lawyers may provide free information and legal advice to inmates" do not exist.

General Profile of Lawyers Active in Prison Litigation

The research suggests that there is no clearly defined profile of lawyers working in prison litigation in Portugal, and that this field remains marginal and fragmented. According to one lawyer, any lawyer, without restriction, may report violations to the Bar Association, in particular through the Human Rights Commission. Nevertheless, the Bar itself reported having no record of complaints, reports or requests relating to difficulties faced by lawyers in supporting beneficiaries in prison, including problems of access or representation within the legal aid system. While the Bar receives a large volume of requests and communications from lawyers generally, it does not segregate penitentiary law from criminal law, and therefore has no data on which professionals work in this field. Information concerning the education and average age of lawyers registered for criminal legal aid does exist but has not been processed, and could not be made available to researchers during the study.

As regards the professional background of lawyers involved in prison litigation, field research indicates that they are very few in number and usually practise independently or within small firms. The National Preventive Mechanism noted that a significant number of applications currently pending before the European Court of Human Rights concerning prison conditions have been submitted by a single lawyer, himself a former inmate, who is widely

recommended within the prison population. One of the lawyers interviewed reported that around 90% of their professional time is spent on litigation, although not exclusively on prison-related matters.

Links between lawyers active in prison litigation and NGOs, human rights organisations, or universities could not be identified through the interviews conducted. The Bar Association stated that some lawyers registered within the legal aid system also hold positions within Bar structures, but provided no information about potential connections to NGOs or other organisations. The lack of NGOs dedicated specifically to prisoners' rights, combined with the large number of lawyers enrolled under the broad category of criminal law in the legal aid system, suggests that there are no strong institutional or activist networks linking lawyers involved in prison litigation. Furthermore, university legal clinics are not permitted to practise law in Portugal, limiting the role of academic institutions in this field.

Legal Access in a Controlled Environment: Practical Modalities and Limitations

The practical arrangements for providing legal information and assistance in custody are primarily regulated by Article 61 of the Code and Articles 102–106 of the General Regulation of Prisons. Prisoners have the right to communicate with a lawyer personally and in private, in premises that ensure confidentiality and allow only visual surveillance. Such communication does not require prior authorisation.

Premises and Confidentiality

All prisons must provide spaces for lawyer–prisoner consultations that guarantee privacy. In newer establishments, these are purpose-built rooms with separate entrances for lawyers and prisoners, lockable doors, and soundproofing. In older facilities, meetings often take place in small rooms, sometimes converted cells, which may be located within a wing or ward. These rooms are not always fully closed, but lawyers generally report that confidentiality is not undermined in practice, as guards do not usually remain directly outside. Regardless of the physical set-up, the law requires that exchanges of documentation necessary for legal representation take place freely, without monitoring, and that

phone calls with lawyers are also confidential. Lawyers may not, however, access accommodation wings or other internal parts of the prison beyond designated meeting rooms.

Regularity and Scheduling

Consultations with lawyers usually occur on working days and during regular office hours, with schedules defined in coordination with the Bar Association. However, Article 103 of the General Regulation and Article 61 of the Code provide that meetings may also take place outside these hours, including on non-working days, if the lawyer briefly justifies the urgency and the prejudice that postponement would cause. In such cases, the prison director may only refuse access on grounds of security or service needs, and must provide written justification and an alternative time as soon as possible. The frequency of visits is not regulated, leaving it to each lawyer's professional judgment and the needs of the case.

Access to Files

Lawyers are also entitled to consult their client's penitentiary file on prison premises, excluding classified documents or third-party nominative information. Such consultation must occur in the registry office and under the supervision of a clerk.

Reported Barriers

Field research shows that lawyers' access to prisoners in Portugal is shaped by a combination of deontological restrictions, practical limitations, and uneven institutional practices across prisons. The reliance on personal networks and discretionary practices leads to unequal access to legal assistance, with privately retained counsel enjoying more consistent contact and influence than legal aid lawyers.

While the legal framework guarantees unrestricted visits and confidentiality, practical constraints affect implementation. The reimbursement system for travel costs under Ordinance 10/2008 limits compensation to a small number of prison visits, meaning legal aid lawyers may not recover the expenses of frequent travel. In practice, this discourages some appointed lawyers from visiting regularly, and many inmates report that they receive few or no visits from their legal aid representatives during detention.

With respect to initial contact, lawyers cannot advertise their services and therefore access to potential clients depends largely on family or friends on the outside or on word of mouth within prisons. The National Preventive Mechanism (NPM) highlighted the example of a former inmate, now a lawyer, who is widely recommended among prisoners and has submitted the majority of applications to the European Court of Human Rights concerning prison conditions.

Lawyers' attendance at detention facilities is not organised through a central system. Visits are in principle permitted during public opening hours without prior notice. However, practices differ from prison to prison. For example, Coimbra prison has introduced a requirement for prior booking of lawyer visits in order to monitor access and prevent clientele acquisition. Videoconferencing facilities are available for lawyer–client meetings, but the NPM noted that smaller prisons are generally more capable of making these accessible than larger ones. The Bar Association confirmed that lawyers' access is uneven, describing it as dependent on the particular prison, its organisation, and external factors.

Material obstacles also affect access. Legal aid only covers three prison visits, with travel costs reimbursed only at the end of proceedings, which often last for years. As a result, prisoners relying on appointed legal aid lawyers are likely to receive fewer visits than those who can privately retain counsel.

Administrative challenges further limit access. Many prisoners are unaware that they can instruct a lawyer to accompany them throughout the execution of their sentence. For those without outside support, the involvement of social workers or in-prison legal practitioners is often decisive in determining whether they receive this information. The NPM reported that in-prison legal practitioners play a key role, for example by suspending deadlines in disciplinary proceedings where prisoners choose to be represented by a lawyer, but this practice is not standardised across prisons. The NPM and NGO representatives also noted that restrictions are sometimes justified by concerns that lawyers have previously breached rules or brought prohibited items into prisons.

As regards in-prison conditions, researchers did not identify systemic barriers to access, with the exception of one prison where a prolonged

strike by prison guards severely limited lawyer visits. Confidential spaces for meetings are generally available, although contacts with medical staff and social workers can be difficult to obtain and vary widely across prisons. Prisoners escorted outside to attend court hearings are particularly likely to face restrictions on private communication with their lawyers.

Problems were also reported in relation to access to prisoners' files. The NPM cited several cases in which lawyers were denied access to documentation concerning disciplinary proceedings. At the same time, one of the researchers, a practising lawyer, recounted personal experience of successfully obtaining such files and CCTV footage, while stressing that the speed and reliability of disclosure differs greatly between prisons.

The initiation of cases follows multiple channels. Inmates can submit confidential complaints through a designated "box," which also accepts everyday requests. However, staff do not systematically inform prisoners about its use, and many prisoners distrust its confidentiality, fearing guards will know who submitted a complaint. Staff are also required to register and forward each complaint to the General Directorate of Prisons, a burdensome obligation that may discourage dissemination of the tool. As a result, the mechanism appears underused and lacks clear procedures for follow-up. By contrast, complaints submitted through lawyers are perceived as more effective, as they are typically fast-tracked and receive greater attention.

Legal Assistance for Third-Country Nationals

Article 4 of the Code establishes a set of special guiding principles aimed at protecting the rights of foreign prisoners and those belonging to ethnic or linguistic minorities. These principles require that the execution of custodial sentences and measures should, as far as possible, enable such prisoners to express their cultural values, overcome integration challenges, and address language barriers. To this end, prisoners must have access to consular or diplomatic bodies, non-governmental organisations providing support to migrants, Portuguese language courses, translated documents, and interpreter assistance.

Under Article 117 of the Code, foreign prisoners must also receive information, in a language they understand, about the options available for serving their sentence abroad, transferring it to another jurisdiction, and the conditions for the execution of expulsion orders.

In addition, Article 9 of the General Regulation stipulates that the leaflet informing prisoners of their rights and duties, the applicable prison rules, and the essential information for integration into the prison environment must be provided not only in Portuguese but also in the foreign languages most commonly spoken within the prison population.

Finally, foreign prisoners retain the right to be visited by a lawyer from abroad, provided that the requirements set out in the Portuguese Bar Association Statute for the practice of law are fulfilled.[40]

Prisoner-Led Legal Assistance in the Absence of Formal Structures

Research found no evidence of detainee committees within Portuguese prisons. According to an inmate interviewed, such bodies do not exist, and neither the National Preventive Mechanism nor the NGO consulted were aware of them. The National Preventive Mechanism did, however, mention that petitions are occasionally circulated among prisoners, though these are ad hoc initiatives rather than formalised structures.

By contrast, the presence of "jail-house lawyers" – prisoners who assist others with legal or administrative matters – was consistently highlighted. According to an inmate, certain prisoners, particularly those who speak English, often help foreign inmates to understand their rights or complete paperwork. Both the NGO and the National Preventive Mechanism confirmed that it is common to see more experienced or literate prisoners providing support to others. This informal assistance is especially important for inmates who do not speak Portuguese, given that written information about rights and procedures posted inside prisons is only available in Portuguese. In such cases, "jail-house lawyers" may draft complaints, complete forms and convey basic legal information on behalf of others.

40 Articles 104 and 233 of the General Regulation.

While this peer-to-peer support provides essential access to practical information for many prisoners, it is not without drawbacks. The reliance on fellow inmates means that legal information is often transmitted informally and without oversight, and in some cases inaccurate advice is given. As noted in interviews, this can misdirect prisoners who cannot afford legal representation, leaving them vulnerable to mistakes in pursuing remedies or defending their rights.

5 LEGAL AID SCHEME

Overall, the Portuguese legal aid system is marked by a series of structural and practical shortcomings which significantly constrain prisoners' access to effective legal protection. At a structural level, the scope of legal aid is narrow: it does not cover internal complaints or administrative proceedings within prisons and is formally limited to court litigation. While the Code governing sentence execution provides that prisoners may be assisted by a lawyer in disciplinary proceedings, the law on legal aid restricts coverage to court-based litigation, creating an ambiguity that results in inconsistent interpretations by the Social Security services. Beyond disciplinary hearings and proceedings where questions of law are raised, there is no right to continuous representation during the execution of the sentence. Appointments end once a conviction becomes final, forcing prisoners to reapply for legal aid for each subsequent issue, such as early release, sentence modification or prison leave. This re-application process is cumbersome, particularly given the obstacles faced by prisoners in accessing the necessary documents and completing the formalities with Social Security.

Practical limitations compound these structural barriers. Legal aid lawyers are appointed on a per-act basis in the execution phase and compensated only for discrete interventions, rather than for the overall management of a prisoner's legal situation. The framework for reimbursement is highly restrictive, covering only a small number of prison visits and a narrow range of expenses, with lawyers expected to advance their own resources until proceedings are final. Although recent reforms have improved the timeliness of payments, the practice of end-loaded remuneration places an undue financial burden on lawyers and discourages sustained engagement in prison-related cases.

The lack of specialisation further undermines effectiveness. Lawyers are appointed through a centralised system based on broad categories such as criminal law, without regard to expertise in prison litigation. This means that prisoners may be represented by lawyers with little or no experience in this area. Field research also highlighted disparities in the quality of legal aid representation, with some lawyers showing strong commitment despite financial disincentives, but many others providing only minimal assistance. Privately retained lawyers, by contrast, are generally able to devote more time and resources to cases, reinforcing inequalities of access to justice between prisoners with financial means and those dependent on legal aid.

Taken together, these shortcomings indicate that while Portugal's legal aid system is formally broad in scope and rooted in constitutional guarantees of access to justice, in practice it leaves prison litigation at the margins. The combination of limited coverage, financial disincentives, procedural barriers to re-application, and lack of specialisation means that prisoners face significant hurdles in securing effective legal assistance for the protection of their rights during sentence execution.

SCOPE OF LEGAL AID TO PRE-TRIAL DETAINEES' ENFORCEMENT OF RIGHTS IN DETENTION

The scope of legal aid in prison litigation in Portugal is limited. It does not apply to internal complaints or administrative procedures within the prison system. Legal aid is available before the court for the execution of sentences, but legal representation is only reserved for cases where questions of law are raised. Prisoners are formally entitled to legal representation in disciplinary proceedings, although the legal framework is ambiguous: while the Code governing sentence execution recognises the right to be assisted by a lawyer, the law on legal aid restricts coverage to court litigation, leaving the issue to the interpretation of Social Security services.

Legal aid is primarily rooted in criminal proceedings, where an appointed lawyer remains assigned to the case until the judgment becomes final. This appointment does not extend into the

execution phase of the sentence. Once the conviction is final, prisoners must submit a fresh application for legal aid if they require assistance with matters relating to sentence implementation, early release, prison leave, or other post-conviction proceedings. This re-application process involves filling in forms through the Social Security services, a task that many prisoners are unaware of, or lack the capacity and resources to complete, creating significant practical barriers to access.

Prisoners are entitled to legal assistance in disciplinary proceedings, as well as in hearings concerning early release and prison leave. Representation is always permitted, but it is mandatory only when questions of law are raised, for example in judicial review of prison service decisions, or in proceedings involving individuals declared criminally irresponsible due to mental illness and placed in forensic units (Article 147 of the Code). Beyond these situations, there is no general right to continuous legal representation during the execution of the sentence. In practice, this means that legal aid lawyers are appointed on a per-act basis, with compensation tied to the specific action undertaken, such as a modification request or early release application. Prisoners cannot rely on a legal aid lawyer for the overall management of their sentence.

The scope of legal aid is also legally ambiguous when it comes to disciplinary procedures. While the law on legal aid restricts coverage to litigation before courts of law, the Code governing sentence execution provides that prisoners may be assisted by a lawyer in disciplinary proceedings. This lack of clarity has led to inconsistencies, with the decision to grant legal aid for disciplinary cases depending on the interpretation of the Social Security services handling the request.

Legal aid does not cover administrative procedures, including those directed by the prison administration. Violations of fundamental rights in prison may therefore only be litigated if they fall within the competence of criminal or civil courts, in which case legal aid can be requested on general terms. Complaints and requests made within the prison administration, however, do not fall within the perimeter of legal aid.

There is no specialisation within the legal aid system for prison litigation. Lawyers register for legal aid in broad categories such as criminal, civil, labour, or family law, and appointments are made through a centralised, blind allocation system. Any lawyer registered

in criminal law can be appointed to represent prisoners, regardless of whether they have expertise in prison law. As a lawyer interviewed explained, "there is no specialisation" in this field. The Bar Association confirmed that the only differentiation lies in the initial choice of broad legal area when enrolling in the system. Prisoners also frequently use legal aid to resolve non-prison issues, particularly family and children matters, which are handled under separate categories of legal aid.

Taken together, the current framework leaves prison litigation at the margins of the legal aid system. There is no right to continuous representation through the execution of the sentence, access depends on repeated applications to Social Security, and the absence of specialisation or systematic guidance means that the quality and availability of legal assistance in prison matters is highly variable.

LEGAL FRAMEWORK AND FUNDING OF LEGAL AID SCHEME

History of Legal Aid Scheme

The system of legal aid emerged with the new constitutional regime enshrined by the Constitution of 1976, as set out above. Throughout the various reforms of the penal and prison law in the course of the 20th and 21st centuries, one trend that has become evident is the 'jurisdictionalisation' of the implementation, i.e. not only a more detailed regulation by legal instruments, but also a greater intervention by the courts in the control and monitoring of execution and the protection of the rights of persons deprived of their liberty. Thus, the range of decisions that have to be taken by a court has progressively increased (e.g. early release, modifications of the form of implementation, confirmation of certain decisions taken by the prison services) and the range of decisions by the administration that the prisoner can challenge before the courts of execution of sentences has also increased.

This evolution is in line with the evolution of constitutional law. The Constitution guarantees the right to 'effective judicial protection', i.e. the right of citizens to access the courts when their rights are affected. The Constitution also guarantees the right of access

to the courts, which cannot be impeded by economic insufficiency. Therefore, it follows from this framework that the general rules on the right to legal assistance and legal aid apply to proceedings in the phase of the implementation of the sentence that require the intervention of a judge.

Current Legal Aid Framework

Law no. 34/2004, of 29 July[41] governs access to the law and to the courts, as noted above. The system is designed to ensure that no one is prevented, due to social or cultural condition or insufficient financial means, from knowing, exercising or defending their rights. This responsibility lies with the State, in cooperation with institutions representing the legal professions.

Importantly, there are limitations on access to legal aid that result from the Law itself, as noted above. Namely, the System of Access to Law and Courts is limited to specific issues or causes,[42] that do not include cases of penitentiary and disciplinary law in the non-judicial phases.

Under the legal framework, access to the law encompasses two dimensions: (i) legal information, which is provided by the Ministry of Justice in collaboration with relevant organisations, and may be ensured through protocols established for this purpose;[43] and (ii) legal protection, which includes both legal advice and legal aid.[44]

Legal advice consists of the technical clarification of applicable law in relation to specific issues or cases where legitimate personal interests or rights have been harmed or are under threat.[45] In practice, access to legal advice may be limited for prisoners, since regulations envisage this service being provided either in legal advice offices or in the offices of lawyers participating in the legal aid system. Where such offices are not established within prisons, detainees face considerable obstacles in accessing this form of protection.

41 Available in Portuguese at: LINK.

42 Law no. 34/2004, 29 July 2004, in particular, Article 6.

43 Article 4 of Law no. 34/2004. It is the responsibility of the State to carry out, in a permanent and planned manner, actions aimed at making the law and the legal system known, through publication and other forms of communication, with a view to providing a better exercise of rights and the fulfilment of legally established duties.

44 Article 6.

45 Article 14.

According to Article 16 of Law no. 34/2004, legal aid may take several forms: waiver of court fees and other procedural costs; appointment and payment of a legal representative **(patrono)**; payment of a legal aid lawyer **(defensor oficioso)**; payment of court fees and other costs in instalments; appointment of a legal representative with phased payment of fees; phased payment of a legal aid lawyer's compensation; and the appointment of an enforcement agent **(agente de execução)**.

The financing of legal aid relies on both the Bar Association budget, drawn from membership fees, and the State Budget, specifically through the Ministry of Justice and the Ministry of Labour, Solidarity and Social Security. Payments are managed by the Institute for Financial Management and Justice Equipment (IGFEJ), which operates under the Ministry of Justice.

COVERAGE AND SCOPE OF COMPENSATION

Ordinance no. 1386/2004, of 10 November, of the Ministries of Justice and Finance[46] approves the scheme of compensation for attorneys providing services under the legal aid system. This framework was updated by Ordinance no. 26/2025/1, of 3 February,[47] which revised the amounts payable by the State to attorneys for legal aid work, reflecting both inflation and changes introduced in procedural and administrative law.

Under the updated regime, compensation for legal aid lawyers in criminal proceedings is defined as a flat fee for the entire case, regardless of the number or complexity of actions undertaken. By contrast, compensation for legal aid lawyers in the phase of sentence implementation operates differently. In this context, no lawyer is appointed for the overall management of the execution phase; instead, appointments are made on a per-act basis, with remuneration tied to each specific action performed.

As noted above, Order no. 1386/2004 approved the remuneration scheme for lawyers and trainee lawyers providing services under

46 Available at LINK.

47 Available at LINK.

the legal aid system. This regime was recently updated by Ordinance no. 26/2025/1, of 3 February 2025, which raised the reference unit (RU) from 25.5 euros to 28 euros.[48] The fee table for legal protection, set out in the new Ordinance, is divided by areas of law, though it remains relatively general and not highly detailed.

With regard to remuneration in prison litigation during the execution phase, Ordinance no. 26/2025/1 provides that occasional interventions in isolated acts or proceedings are remunerated at 4 RUs (€112). Assistance to a defendant in custody or at police stations is remunerated at 5 RUs (€140). For each prison visit undertaken by a legal aid lawyer to confer with a defendant in custody or detention, up to a maximum of three visits, the remuneration is 4 RUs (€112).[49]

By comparison, civil proceedings are compensated at higher levels. Declaratory actions before a central civil court are remunerated at 58 RUs (€1,624), while before a local civil court ordinary proceedings are set at 22 RUs (€616) and special proceedings at 18 RUs (€504). For administrative proceedings, remuneration is fixed at 30 RUs (€840) for ordinary actions, 32 RUs (€896) for urgent actions, and 26 RUs (€728) for enforcement actions.

From the field research, several points became clear regarding how legal aid for prison litigation is financed and administered in practice. The amount of remuneration paid to legal aid lawyers varies depending on the type of case, the stage reached, and the number and length of hearings. Both lawyers interviewed confirmed that the amounts are governed by a fixed table approved by law. The Bar Association explained that the current framework introduces new variables, with fees now also adjusted according to the time spent on each session.

The scope of reimbursable costs is limited. According to one lawyer, additional fees are available for up to three trips to a prison establishment, currently set at €76.50 per trip, while other expenses such as books, office supplies or technical consultants are excluded. The Bar clarified that travel expenses to prisons are covered on a per-kilometre basis at €0.40, with proof of attendance required, and that flights may be reimbursed when travel from the islands (Azores and Madeira)

48 Reference Unit = ¼ account unit (1 account unit is equivalent to 102 euros).

49 Ibid.

is necessary. Parking and tolls are only reimbursed in connection with court attendance, not with visits to prisons. Overall, costs that can be claimed are narrowly circumscribed.

Payments are made by the State directly to the lawyer, never to the applicant or their family, and only once a case is final and no longer subject to appeal. According to the lawyers interviewed, this creates delays, with reimbursements often taking weeks or months. The Bar Association acknowledged the existence of delays in the past but stressed that the situation has improved considerably. Payments are now processed on a near-monthly basis, with requests generally resolved within a maximum of two months.

In practice, this system means that legal aid lawyers must often advance their own resources to cover the costs of representing prisoners, particularly in longer proceedings, and cannot rely on interim payments. Although reimbursements have become more regular, the financial structure continues to place the burden of expenses on individual lawyers during the course of litigation.

MECHANISMS OF APPOINTMENT AND REMUNERATION

The Portuguese legal aid system is based primarily on the appointment of a lawyer by the Bar Association. Beneficiaries cannot select their own lawyer and simultaneously request that the State cover the costs of that representation. Instead, legal aid lawyers must be enrolled for this purpose with the Bar, which appoints one upon request. This applies both where a candidate applies to Social Security and is granted legal aid, and where a person appears before a judge without a private lawyer, in which case a legal aid lawyer is immediately assigned.

According to lawyers interviewed, the predominant model is the direct appointment of a lawyer to a case. The Bar Association confirmed this understanding, clarifying that the system involves both the appointment of a lawyer and, in due course, the payment of a sum of money by the State. Remuneration is not provided directly by the client but by the State at the conclusion of the proceedings. As a result, lawyers may wait several years for payment in longer cases, often covering

costs from their own resources in the interim. The Bar Association acknowledged that this delay has raised concerns, and that some have suggested introducing the possibility of interim payments in protracted proceedings.

In practice, this means that legal aid in Portugal does not allow prisoners to privately appoint a lawyer and have the State cover the costs. All representation under legal aid follows from the centralised system of appointment administered by the Bar Association, with payment made only after the case has concluded.

EXTENT OF LEGAL AID COVERAGE FOR INTERPRETATION AND EXPERT EVIDENCE

Portuguese law establishes the right to interpretation and translation in Article 92 of the Code of Criminal Procedure. The general rule is that when a person who does not know or is not fluent in Portuguese participates in proceedings, a suitable interpreter must be appointed at no cost to that person (Article 92(1) of the Code of Criminal Procedure). In addition, the defendant may choose, again free of charge, an interpreter to translate conversations with their defence attorney (Article 92(7)). The law also provides that a defendant who does not know or is not fluent in Portuguese is entitled to receive written translations of the documents listed in Article 113(10), as well as any others deemed essential for the exercise of defence rights (Article 92(3)).

Outside these provisions, however, translation and interpretation costs are borne by the legal aid beneficiary and are not covered by legal aid. Similarly, legal aid does not extend to expert fees, such as technical or medical opinions, nor to the costs of obtaining copies of case files.

ELIGIBILITY

According to Article 7 of Law no. 34/2004, of 29 July, legal aid may be granted to any Portuguese national or EU national, as well as to foreign nationals without a valid residence permit in a member state of the European Union, provided that reciprocal treatment is assured under the laws of their country of origin. In all cases, applicants must provide sufficient evidence that they lack the necessary economic resources to cover the expected costs of the procedure.[50]

Importantly, eligibility for legal aid is not conditioned on the merits of the applicant's complaint, but solely on their financial situation.

APPLICATION PROCEDURE

The form to apply for legal protection is available on the website of Social Security.[51] In order to obtain legal aid, applicants must submit a legal aid application form together with supporting documentation. This includes a photocopy of their identification document (or residence permit in the case of foreign nationals); their most recent income tax return and settlement note, or, if unavailable, a certificate from the tax authorities confirming the absence of income; and pay slips from the last six months if they are employed. Self-employed applicants must provide VAT returns for the previous two months, proof of payment, and receipts issued over the last six months. Applicants must also provide proof of any benefits or pensions received, an updated property registration certificate or property matrix together with documents relating to real estate ownership, proof of shares or holdings in companies (including their value as of the day prior to the application or proof of acquisition), and, if applicable, logbooks and ownership records for any vehicles.

Applications are submitted electronically via the Social Security online platform (**Segurança Social Directa**), which generates proof of submission. In exceptional cases, applications may also be submitted in person at a social security office or by e-mail.

50 The assessment of economic insufficiency follows the rules established in Article 8-A and 8-B of Law no. 34/2004, of 29 July.

51 See LINK.

The requirements for legal aid are broadly the same across different types of judicial proceedings, whether criminal, civil, administrative, competition, or tax. The applicant must correctly identify the case number and the court where the case is pending. The only distinction lies in the deadlines. According to Article 18(2) of Law no. 34/2004, of 29 July, legal aid must be requested before the applicant's first procedural intervention, unless financial hardship arises later, in which case it must be requested before the first procedural step following the onset of hardship. For criminal proceedings, however, legal aid can be requested at any time until the deadline for appealing the first-instance decision.[52]

The law does not provide for any specific accommodations or extended deadlines for detainees.

EVALUATION AND GRANTING OF APPLICATIONS

The decision to grant legal aid is made by the highest official of the social security services in the applicant's area of residence.[53] This authority may require the applicant to submit additional evidence. The decision must be issued within 30 days. Before the final determination, the applicant must be notified of the intended outcome, giving them the opportunity to present arguments or provide further documents, particularly where the preliminary outcome is expected to be unfavourable.

If no decision is issued within the 30-day deadline, legal aid is automatically considered granted.

Decisions on applications for legal aid are not subject to complaint, nor to hierarchical or tutelary appeal. They may, however, be challenged before the courts under Articles 27 and 28 of Law no. 34/2004. Such challenges must be filed within 15 days of service of the decision. The court's ruling on the matter is final.

52 Article 44(1).

53 Article 20 of Law no. 34/2004, of 29 July.

FINANCIAL IMPLICATIONS FOR LEGAL AID RECIPIENTS FOLLOWING AN UNSUCCESSFUL CASE

The Code of Criminal Procedure sets out the circumstances in which parties are required to pay procedural costs. For defendants, liability for court fees arises only if there is a conviction at first instance and any appeal is entirely dismissed.[54] Assistants (victims who have chosen to participate in proceedings) are required to pay court fees in a number of situations, including: if the defendant is acquitted of all or part of the charges; if an appeal they have lodged or opposed is dismissed, in whole or in part; if proceedings are terminated due to their withdrawal or unjustified abstention; or if charges brought by them are rejected, in whole or in part. By contrast, no court fees are payable when proceedings are dismissed or suspended under Articles 280 and 281.[55]

The financial consequences for legal aid beneficiaries depend largely on the scope of the legal aid granted. Where legal aid covers both procedural costs and legal representation, the beneficiary bears no financial burden even if unsuccessful. However, if legal aid was limited to the cost of legal representation, all other fees and procedural costs remain payable by the losing party.

The bill of costs is prepared by the clerk of the first instance court within 10 days of the final decision becoming res judicata.[56] Where the amount due is equal to or greater than three UC, the debtor may request payment in instalments, provided that justification is given.[57]

If payment is not made within the prescribed period, the court may exercise a right of retention. Article 34(1) of the Regulation of Procedural Costs provides that once the deadline for voluntary payment has expired, and no complaint has been lodged or is still pending, the court may retain any property in its possession or any funds deposited with it. In addition, unpaid costs may be recovered through tax

54 Article 513(1) of the Code of Criminal Procedure.

55 Article 516.

56 Article 29(1) of the Regulation of Procedural Costs, Decree-Law no. 34/2008 of 26 February.

57 Article 33(1).

enforcement and coercive collection. Under Article 35(1) of the Regulation, the tax administration is responsible for enforcing recovery of costs, non-criminal fines and other monetary penalties established in legal proceedings. The court clerk's office must transmit the settlement certificate electronically to the tax authorities together with the final decision, which constitutes an enforceable title for the amounts specified.[58]

QUALITY OF LEGAL AID LAWYERS

Field research revealed diverging views on the quality of representation provided under the legal aid system compared with privately paid counsel. One lawyer observed that, while many honourable and competent lawyers work within legal aid, differences in quality are often significant and largely linked to the lack of resources available in this system. Another lawyer emphasised that privately retained counsel generally receive higher remuneration, which enables them to devote more time to each case, invest in training, and acquire materials that improve the quality of service. In their view, although there are examples of poor practice in the private sector and of high-quality work within legal aid, the overall standard of legal aid representation tends to be lower, with many lawyers putting limited effort into these cases and prioritising economic or pragmatic concerns over client interests.

The Bar Association adopted a more neutral position. Its representative stressed that quality depends primarily on the individual professional rather than on whether the lawyer is privately appointed or engaged through legal aid. They acknowledged that some legal aid lawyers go beyond what is expected, while others do only the minimum or less, but insisted that the decisive factor lies in the commitment and competence of the professional, not the funding source.

58 Article 35(2).

PRACTICAL OBSTACLES TO ACCESSING LEGAL AID

The process of filing and processing legal aid applications is marked by significant structural and practical barriers. While the formal framework provides for access to legal aid, field research shows that in practice prisoners face delays of weeks before they can even initiate an application, and appeals of refusals remain largely inaccessible despite their formal simplicity. The system depends heavily on intermediaries inside prisons, such as educators and social workers, whose availability and awareness vary considerably, creating unequal access to information and support. As a result, although reforms in recent years have improved processing times once applications reach the Social Security services, the overall organisation of legal aid continues to discourage prisoners from pursuing remedies in court, particularly in the field of prison litigation.

Reliance on Social Workers and External Assistance for Filing Legal Aid Claims

Applications for legal aid must be initiated within prisons by submitting standardised forms, usually with the assistance of an "educator" – the officer responsible for supporting prisoners throughout the implementation of their sentence. According to one prisoner interviewed, inmates must request a meeting with their assigned educator, who assists in filling out the forms and ensures they are forwarded to the competent authority. However, the limited number of educators creates significant bottlenecks. For example, in Lisbon Central Prison there are reportedly only around 20 educators for 3,000 prisoners, each responsible for approximately 150 inmates, meaning that a prisoner may wait at least 15 days for a meeting.

When disciplinary proceedings are initiated, prisoners are provided with a form informing them of their right to be assisted by a lawyer. Yet, this safeguard is undermined in practice. It is often assumed that only privately instructed lawyers can provide such assistance, reflecting a widespread belief that Social Security does not extend legal aid to disciplinary matters. Moreover, concerns were raised by the National Preventive Mechanism that in some prisons these forms are pre-filled with a waiver of legal assistance, or signed

without any choice being marked, raising doubts as to whether the right to legal representation is properly communicated.

For general legal aid requests, prisoners who cannot rely on family members or outside contacts typically receive assistance from their social worker in obtaining and completing forms. Both the National Preventive Mechanism and the NGO interviewed, however, stressed that not all social workers are equally informed about the scope of legal aid available to prisoners, creating disparities in the quality of support. As a result, even before a request is submitted, the ability of prisoners to access legal aid may depend heavily on the knowledge and commitment of individual staff members.

The quality of the forms themselves is not considered problematic: they are relatively short and simple, and the time needed to fill them depends primarily on whether the inmate has ready access to personal financial information. The more significant barrier is therefore procedural access to those who can provide or transmit the forms, rather than the complexity of the forms themselves.

Role of Prison Administration

Once completed, forms are forwarded by educators to the competent Social Security authority. According to the prisoner interviewed, this step generally functions as intended, and the prison administration was described as neutral in this respect. At the same time, both the NGO and the National Preventive Mechanism emphasised that the degree of support varies depending on the awareness of social workers, and this variability may determine whether an application progresses smoothly or stalls.

Appeal Proceedings on Refusals

Where legal aid applications are refused, prisoners may challenge the decision. Lawyers interviewed noted that while appeal proceedings are not legally complex, relying mostly on documentary evidence, they can be difficult to pursue without legal knowledge or support. The Bar Association explained that most applicants prefer to submit an administrative complaint to the Social Security services, since this can be done without a lawyer. As their representative explained, “if one does not have the money to pay a lawyer and their legal aid application has been rejected, they will hardly

have the money to challenge that decision in court." Article 27 of the Law on Access to Law confirms that appeals may be submitted directly by the applicant within 15 days of notification, without the need for legal representation. If this administrative challenge is unsuccessful, a further appeal may be lodged with the courts, but this step is rarely pursued by prisoners.

Organisation of Financial Aid

At the institutional level, the General Council of the Bar Association manages the centralised system of appointments, maintaining the registry of lawyers enrolled in legal aid and making blind appointments upon request from Social Security or the courts. Regional Councils are responsible for handling recusals, substitutions, and other procedural matters arising after the initial appointment.

The Bar Association emphasised that once Social Security approves an application, legal aid is automatically granted regardless of the subject matter. The Bar does not assess the substance of requests: its role is limited to ensuring the appointment of a lawyer once an application has been deferred. Where applications are refused, the only recourse is to challenge the decision administratively before Social Security or through the courts, as described above.

Processing Times

The processing time for legal aid applications varies considerably. The prisoner interviewed reported waiting around two months for a decision. By contrast, one lawyer noted that in cases of automatic appointments made by courts (e.g. during pre-trial stages), the procedure is much quicker, as Social Security approval is not required in advance. According to the Bar Association, however, the system has improved markedly in recent years. While delays were common in the past, reforms and integrated systems between Social Security, the justice system and tax authorities have streamlined the process. Decisions are now typically issued within the statutory 30-day period, and often in less time.

6 ORGANISATION OF BARS' AND LAWYERS' ACTION IN DETENTION

The Bar Association is responsible for appointing legal aid lawyers. Only attorneys (members of the Bar Association) are entitled to provide legal advice.

From our interview with a representative of the National Bar Association, it emerged that the Bar does not maintain a concrete policy specifically directed at legal counsel for prisoners. While the Bar centralises the organisation and implementation of the national legal aid system, it ultimately defers to the individual lawyers appointed to represent detained persons, whether in pre-trial detention or serving a sentence, the manner in which legal representation is to be carried out.

In practice, the representative explained, the system is "not organised." Lawyers are appointed, but it is left entirely to them to decide whether, and how, to engage with the prisoner, for example whether to visit them in prison at all. Once the appointment is made, the responsibility for directing the process rests solely with the appointed lawyer.

There are no guidelines, dedicated training, or specialised resources addressing the particular challenges of providing legal aid to persons in custody. Instead, requests for legal assistance from prisoners are treated in the same way as any other legal aid request. When asked whether the Bar Association intentionally structures its activities with a view to safeguarding the rights of prisoners in court, the representative responded clearly: "No, it doesn't. What it has is Legal Aid and lawyers who are appointed and who accompany the beneficiaries, whether they are prisoners or not."

RELATIONSHIP BETWEEN THE BAR ASSOCIATION AND PRISON ADMINISTRATION

The Bar Association described its relationship with the national penitentiary administration as "cooperative," noting that this cooperation takes place primarily through the Bar's Human Rights Commission. Following recent elections, the new Commission had not yet been established at the time of research, but it was explained that this body is the main channel through which the Bar engages with prisons, particularly with prison governors, and carries out visits.

When asked whether issues concerning the provision and sufficiency of legal aid to prisoners are addressed during these visits, the Bar indicated that they are not. According to the representative, the Commission monitors and follows up on prison conditions and the general situation of prisoners, but this does not extend to matters related to legal aid.

BAR ASSOCIATIONS AND THE MONITORING OF PRISON CONDITIONS

The Code grants the Head of the Bar Association and their team the right to visit penitentiary establishments (Article 66 §1 (a) and (d)). The provisions employ broad terminology that suggests their access is not subject to restrictions concerning scope or regularity.

Nevertheless, the General Regulation of Prisons introduces an additional procedural requirement: while such visits do not require prior authorisation, they must, as a general rule, be communicated in advance to the Director-General of Prison Services. Exceptions apply where a specific legal norm or convention provides otherwise (Article 125).

PROVISION OF INFORMATION BY BAR ASSOCIATION

Interviews with lawyers revealed that they were not aware of any booklets, digital tools, or other materials produced by the Bar Association specifically addressing penitentiary law, access to legal counsel in custody, or the practical challenges faced by lawyers providing legal aid in prisons. Both lawyers acknowledged that such resources could be valuable for practitioners working in this area.

This was confirmed by the representative of the Bar Association, who explained that the institution does not publish dedicated materials of this kind. The only information made available consists of documents or outputs resulting from conferences, such as those on forensic practice in prison law, which are subsequently placed online. Beyond this, the Bar Association does not provide or promote specific tools aimed at supporting lawyers engaged in prison-related work.

REGULATION OF BARS' INVOLVEMENT IN LEGAL SUPPORT TO DETAINEES

The organisation of legal consultations in detention is not mandatory for the Bar Association. Neither the Bar Association Statute nor the Law on Access to Law explicitly imposes an obligation or otherwise on the Bar to establish or organise such consultations within prisons. However, the Bar Association Statute[59] identifies securing access to law as one of the core functions of the Bar Association on a national level.

Although the legislation does not require the Bar Association to organise legal consultations in detention, the legal framework allows for them. The broad aims of the Law on Access to Law,[60] together with the constitutional duty of the Bar to secure access to law, mean that legal consultations for detainees fall within the

59 Article 3 §1(b).

60 Articles 1, 6, and 7.

scope of legal aid. In practice, such consultations may take place either when an inmate requests them through an application for legal aid, or when a legal aid lawyer is compulsorily appointed in cases where representation is mandatory.

ORGANISATION OF EDUCATIONAL AND TRAINING INITIATIVES ON PRISON LITIGATION

There are no special statutory qualifications required for lawyers working in detention or penitentiary law, nor is there mandatory continuous training in this field or others. The Bar Association is responsible for the design and delivery of initial training to trainee lawyers, and it also administers the examinations through which candidates are selected and admitted to the profession.[61] Penitentiary law is not included as a distinct subject in the training course offered to trainee lawyers, nor is it part of the final assessment at the end of their internship.

In practice, most lawyers working with inmates, whether privately appointed or acting under the legal aid scheme, acquire their knowledge "on the job".

Prison law is not taught as an autonomous subject in Portuguese law degrees, nor are there specialised master's programmes in the area. According to the General Directorate of Higher Education (Ministry of Education), there are currently 76 courses in law offered across seven public and six private universities, at undergraduate, master's, and doctoral levels. However, none include prison law as a central subject. Some exceptions exist in related fields. The Master's in Forensic Law offered by Católica University (a private institution) includes a module on "Execution of Sanctions" (Sanctionatory Law), which covers the Portuguese penal system with particular focus on enforcement of sentences, the purposes and principles of penalties, alternative sanctions, parole regimes, and the rights and duties of prisoners in light of national and international law, including the jurisprudence of the European Court of Human Rights. Similarly, Lusófona University offers a Master's in Criminal Sciences that

61 Article 3 §1(g) and Article 195 of the Bar Association Statute.

includes a module entitled "Punitive System," though no detailed course description is available.

Training opportunities specifically dedicated to penitentiary law are rare and isolated. In February 2025, the Lisbon department of the Bar Association organised a non-compulsory afternoon session for lawyers and trainee lawyers on forensic practice in penitentiary law. The programme included discussion on litigation before the European Court of Human Rights in matters concerning enforcement of sentences, the right to legal assistance in prison matters, and practical resources available to lawyers in this area.

In parallel, the Centre for Judicial Studies (Centro de Estudos Judiciários – CEJ), which provides initial and lifelong training for judges and prosecutors, has in recent years increased its focus on penitentiary law. For example, in May 2025, the CEJ offered an "Intensive Course on the Execution of Sentences." While these courses primarily target judges and prosecutors, they are also open to other legal professionals engaged in the enforcement of sentences.

Field research revealed mixed perspectives on the extent to which the Portuguese Bar Association provides training and capacity building on prison law and related procedural issues.

According to one of the lawyers interviewed, while the Bar has organised conferences on the subject, these remain insufficient in addressing practical procedural matters. In particular, the lawyer noted a lack of training and discussion forums dealing with disciplinary and judicial procedures from a practical perspective.

Another lawyer reported that such initiatives are organised only sporadically, at least in Lisbon. This lawyer indicated that they had recently been invited to deliver a training course at a local delegation of the Bar, focused on applications to the European Court of Human Rights concerning detention conditions, and that they had also been invited to provide a similar course at another local delegation.

The representative of the National Bar Association expressed uncertainty as to whether the Bar specifically organises seminars or training courses on penitentiary law. While acknowledging that the Bar runs a large number of training courses, some of which may relate to criminal or prison law, the representative could not identify any

dedicated or systematic provision. They further highlighted that courses on legal aid as a broad topic are among those with the lowest attendance within the Bar's training programme.

7 ROLE OF NGOS, LEGAL CLINICS, AND NATIONAL MONITORING BODIES OF PRISON CONDITIONS

CAPACITY OF ORGANISATIONS TO INTERVENE IN PENITENTIARY INSTITUTIONS AND PROVIDE LEGAL ADVICE

Access by non-governmental organisations (NGOs) to prisons for the purpose of promoting human rights is subject to prior authorisation by either the Minister of Justice or the Director-General of Prison Services.[62] By contrast, certain entities are entitled to visit prisons without prior authorisation, including representatives of international organisations responsible for the promotion and protection of prisoners' rights (as provided by international conventions binding on Portugal), the Ombudsperson, and the President of the Portuguese Bar Association.[63]

The participation of NGOs in the execution of sentences is regulated by Article 55 of the Code and Article 99 of the General Regulation of Prisons. Under these provisions, prison services are required to encourage the involvement of NGOs and voluntary organisations in a range of activities, including: (a) cultural and leisure activities; (b) social and economic support for prisoners and their families; and (c) programmes relevant to social reintegration, such as employment and housing support. NGOs may also contribute to activities designed to help foreign prisoners maintain ties with their culture of origin.

62 Article 66 §3 of the Code.

63 Article 66 §1(a) and (c) of the Code.

Such participation is subject to a written agreement with the Directorate-General for Prison Services, which must specify the objectives of the intervention, the actions to be carried out, the conditions of access for prisoners, and the mechanisms for coordination, evaluation, and termination. Prisons are responsible for providing initial training, supervision, and technical support to NGOs, as well as for monitoring and evaluating their activities. For reasons of order or security, the prison director may suspend or propose the termination of an NGO's collaboration in whole or in part.

There are no specific legal provisions granting human rights NGOs, university legal clinics, or national monitoring bodies the right to provide legal advice to prisoners. Instead, their involvement is governed by general rules on correspondence, visits, and delivery of documents, which may apply in practice. The terms and conditions for human rights NGOs visiting prisons are determined by the Director-General of Prison Services, and such visits are subject to the same identification, registration, and control requirements that apply to ordinary visits, as well as the corresponding security measures.[64]

It should also be noted that legal clinics are not a common feature of Portuguese law schools, which further limits the presence of such actors within the prison context.

STANDING OF NGOS

Portuguese law does not contain any express provision granting human rights organisations, or organisations specifically defending the rights of persons deprived of liberty, legal standing in proceedings before the courts for the execution of sentences or in other judicial proceedings of this kind.

By contrast, in the administrative courts there is a broader system of legal standing designed to protect constitutionally enshrined values. Under Article 9 §2 of the Code of Procedure in the Administrative Courts, NGOs, associations and foundations defending relevant interests, local authorities, and the Public Prosecutor's Office all have standing to bring or intervene in both main and precautionary proceedings aimed at safeguarding constitutional values such

64 Article 125 §4 of the General Regulation.

as public health, the environment, quality of life, cultural heritage, or urban planning. This provision allows claims to be raised before the administrative courts regardless of whether the claimant has a direct personal interest in the case. Accordingly, it would be possible, for example, for an NGO to act in representation of prisoners in cases concerning degrading prison conditions or insufficient access to legal aid, since both issues touch upon fundamental rights guaranteed by the Portuguese Constitution.

No similar rule exists in relation to proceedings before the courts for the execution of prison sentences (tribunais de execução das penas), where extended standing is not foreseen. In all cases, legal representation of parties before the courts must be undertaken by practising lawyers.

DEDICATED NETWORKS OF NGOS ON PRISON LITIGATION (OR LACK THEREOF)

Field research indicates that there are no NGOs in Portugal specifically dedicated to providing legal assistance or initiating litigation on behalf of incarcerated persons. While some NGOs are active within prisons, their role is primarily centred on social support rather than legal advocacy.

In terms of social support, one of the most active organisations in this field, founded in 2015 as a non-profit private charity, works with people in detention and recently released former inmates. Its mission is to promote the dignified reintegration of individuals who have been deprived of their liberty. The organisation does not provide legal aid, though it has established a partnership with a private law firm that offers pro bono assistance to recently released individuals. Its activities focus on two main areas: first, advocacy and public policy aimed at raising awareness and influencing lawmakers; and second, direct social support to prisoners and former prisoners through a range of programmes. Inside prisons, the NGO implements group interventions to promote social and labour market skills, while outside prison it runs a social business initiative, "Ceramics," designed to provide employment opportunities and thereby support reintegration into the labour market.

As far as this research could determine, NGO workers acting inside prisons make themselves known to detainees both informally, through word of mouth, and formally, by preparing and posting informative placards about their activities in areas where they work. However, such materials are not necessarily placed in prison wards, which means that prisoners who do not regularly pass through spaces such as schools or social workers' offices may remain unaware of the services available.

In general, the lack of NGOs specialising in prison litigation, coupled with the absence of university legal clinics with the authority to practise law, highlights a structural weakness in the ecosystem of prisoner rights protection in Portugal.

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DIGNITY

BRIDGING VIEWS FOR A RIGHTS-BASED APPROACH TO PRE-TRIAL DETENTION

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