

Reference LW/FCP/KY

Dear Madam/Sir,

**Subject: Human Rights Council Resolution 31/6**

Regarding Human Rights Council resolution 31/6, concerning the rights of persons with disabilities, the Portuguese Ombudsman, in its quality of National Human Rights Institution, has the honor to hereby attach its contribution to the preparation of a study on article 13. º of the United Nations Convention on the Rights of Persons with Disabilities.

**I- Introduction**

According to Article 13.º of the United Nations Convention on the Rights of Persons with Disabilities,

*“1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.*

*2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.”*

**II- The Ombudsman role**

The Portuguese Ombudsman is, by the nature of its duties, a firm advocate and a constant protector of fundamental human rights, acting either in response to complaints or on its own initiative, in response to facts that he becomes aware of by any other means.

The Ombudsman is an independent State Body, elected by the Parliament and designed to receive complaints against actions or omissions by the Public Authorities. Complaints regarding relations between natural persons in a special power relationship are also within the scope of the activity of the Ombudsman as they are within the scope of the protection of rights, freedoms and guaranties. Finally the Ombudsman can act by its own initiative when fundamental rights are disrespected.

In addition to the traditional activity of the Ombudsman in the restauration of justice and legality, the Portuguese Ombudsman is, since 1999, the National Human Rights Institution accredited with status A, in full compliance with the Paris Principles.

The Portuguese Ombudsman is also the National Preventive Mechanism for the effects of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or De-grading Treatment or Punishment (OPCAT), with the special responsibility of creating an effective system of prevention of torture and other cruel treatments or punishments. As the National Preventive Mechanism, the Ombudsman visits e.g, detention centers, psychiatric hospitals, temporary shelters, and military and police prisons.

The Ombudsman, traditionally engaged in the promotion and defense of human rights, is especially concerned with all persons perceived to be more vulnerable, e.g. people in the penitentiary system, foreigners and migrants, children, elders and people with disabilities.

At the office of the Portuguese Ombudsman functions the Department on Children, Elderly Persons and Persons with Disabilities (N-CID) that takes into account the specific needs of these three particularly vulnerable groups of citizens.

Since 2011, the Portuguese Ombudsman maintains a toll-free telephone hotline to receive complaints regarding Persons with Disabilities and to disseminate information about their rights and specific legal benefits such as technical support, social support, health care, education and others, thereby contributing to a more inclusive and participatory society.

During 2015 the Ombudsman visited all the existing educational centers for young people in Portugal and issued 5 Recommendations directed at the Ministry of Justice, The Public Prosecutor´s Office, the High Council of the Judiciary, the Health Minister and the Director General for Social Rehabilitation. The aim of the Ombudsman’s visits was to acquire a deeper understanding of the organization of those facilities and to assess its functioning according to juvenile justice standards.

Since 2016 the Ombudsman is developing a project named “Ombudsman, prisons and the 21st century: reports of some visits” and the diary of some visits” aiming at describing, in a personal way, the environment of a prison facility seen by the eyes of a visitor. The diary of those visits is published in the Ombudsman site.

**III- The Ombudsman’s commentary**

Overall, the Portuguese legal system has a comprehensive and coherent legislative framework to ensure that the rights of persons with disabilities are recognized and can be exercised. Although there is always floor for improvement, the Portuguese legislator has been especially attentive to human rights issues and has legislated accordingly.

However, the Ombudsman identifies three types of barriers that can make the persons with disabilities access to justice difficult: lack of proper information, lack of access (related to accessibility and communication) and financial constraints.

It seems undeniable that in order to exercise or defend their rights, persons with disabilities have to be clearly informed on one’s rights and remedies, thus being important that persons with disabilities have easy access to educational material on their rights.

Moreover, in order to fully exercise and protect those rights it is also important that people are able to identify which acts constitute administrative or criminal offenses and the way to see them through, either resorting to the legal system or to the alternative dispute resolution system.

Another rather undeniable fact is that persons with disabilities face difficulties regarding communication and accessibility. When a person with disability is unable to communicate on an equal basis with the police, prosecutor, judge, lawyer or forensic evidence technicians or if he/she is unable to access police stations, courts, office of lawyers and health care facilities the exercise or the defense of his/her rights can be difficult.

A third problem often arises in the person with disability’s access to justice: the lack of economic resources. Financial constraints have a direct impact in one´s access to justice as it can affect one´s ability to engage in litigation due to the difficulty to pay for procedure and legal counsel’s fees.

According to the Ombudsman’s experience in the matter, barriers to the exercise of persons with disabilities rights do not result so much from lack of legal provision but are a consequence of erroneous interpretation of rules and their ratio by the administration. As a consequence the Ombudsman has acted in several occasions, expressed his legal opinion and address critical remarks and recommendations to the services involved. At the same time the lack of awareness and understanding of people with disabilities’ human rights by the general population makes it difficult to put into practice.

Another difficulty identified by the Ombudsman in this matter regards the Administration’s lack of financial resources. In order to adapt current practices to ensure access and full participation of persons with disabilities in the justice system the administration needs to allocate extra material and human resources. Bearing in mind the extreme difficulty to extend a Public Budget, the Ombudsman has suggested to the entities involved concrete measures to overcome those difficulties.

**IV- The Ombudsman contributions to the questionnaire**

**1. Does your country have laws, policies or guidelines on access to justice, at any level of government, which ensure persons with disabilities, particularly women and children with disabilities:**

**a. to participate in judicial and administrative proceedings on an equal basis with others in their role as witness, juror, complainant, defendant or other, including through the provision of procedural and age-appropriate accommodations (please identify and share the text of those provisions);**

The principle governing the rights and duties of persons with disabilities in the Portuguese legal system is set forth in the Constitution of the Portuguese Republic (CRP)[[1]](#footnote-1) and further developed in domestic law. According to the CPR, citizens with physical or mental disabilities fully enjoy the rights and are subject to the duties enshrined in the Constitution, save for the exercise or fulfilment of those for which their condition renders them incapable.

As persons with disabilities can exercise every right unless the law clearly states otherwise, according to the Portuguese legal system, there shall be no limitations for the exercise of any right not foreseen in the law. Moreover those limitations can only be applied by a court.

Regarding persons with disabilities’ rights the Portuguese Constitution does not only proclaim those rights but also imposes clear obligations upon the state.

In addition, the State undertakes to implement a national policy for the prevention of disability and the treatment, rehabilitation and integration of disabled citizens and the provision of support to their families, to educate society in such a way as to make it aware of the duties of respect and solidarity towards them, and to undertake the charge of ensuring that their rights are effectively fulfilled, without prejudice to the rights and duties of their parents or guardians.

The definition of a person with disability according to Portuguese law[[2]](#footnote-2) is *“a person that by loss or anomaly, congenital or acquired, of body functions or body structures, including the psychological functions, present particular difficulties which may, in conjunction with environmental factors, hinter or limit their full and effective participation on an equal basis with others.”*

As to the measures put in place to ensurethe participation of persons with disabilities in judicial and administrative proceedings on an equal basis with others according to their role they vary according with the type of disability.

Although civil capacity differs from criminal liability and mental disabilities have different regimes from other types of disability, the Portuguese Legal system shows coherence when addressing the issue of the participation of persons with disabilities in legal proceedings. Every person has legal personality and therefore enjoys full legal capacity, unless deprived of that capacity by a court decision.

However, there are cases in which the law recognizes value to visible signs of mental impairment (cognitive impairment, intellectual impairment) as in the case of those signs being a marriage impediment or a basis for the inability to exercise legal tutorship over the property of a child/young adult (minor).

Apart from those measures destined to protect other persons from the effect of a person’s mental impairment, there are several institutes designed to protect or assist those with impairment.

Judicial interdiction and inability are both permanent (non-temporary) court orders for the protection of mentally ill persons as well as persons unable to care for themselves or/and his property.

According to the Portuguese Civil Code, any person that, by effect of mental impairment, hearing and speaking impairment is unable to take care of his own person and administer his estate can be subject to judicial interdiction. The court decision on interdiction includes the designation of a tutor to act on behalf of the impaired person.

In less serious cases, any person that, by effect of mental impairment, deafness or muteness (hearing and speaking impairment) is unable to administer his estate (however being able to take care of his own person) can be subject to judicial inability. The court decision on inability includes the appointment of a curator with the view to representing and assisting the disabled person.

All the same, it must be stressed that the mere fact of a person being mentally disable is not sufficient, *per se*, for a person to be subject to judicial interdiction or inability. It is also required by the law that the person is unable to care for her own person and/or administer her estate.

The Code of Civil Procedure[[3]](#footnote-3) (CCP) also foresees special rules for ensuring the participation of a hearing, speaking or hearing-speaking impaired person in the proceedings.

Whenever those impaired persons give testimony or render statement the judge can determine that the questions shall be made in writing and answered orally or vice-versa. If they are unable to read or write, the judge shall appoint a proper interpreter.

Similarly, the Notary Codehas special rules for hearing, speaking or hearing-speaking, visually impaired persons and for the mentally ill persons.

According to the Notary Code[[4]](#footnote-4), whenever a contracting party is unable, on account of deafness, to hear the reading of a certain document, he/she shall read it aloud. If that party is unable or incapable of reading, he/she can designate a person that, in the presence of all the participants, reads the document for a second time and gives him/her an explanation on the content of that document.

The mute or the deaf-mute participant, capable and able to read and write, shall state, in writing, in the very instrument and prior to the signatures that, he/she has read it and recognized it to express his/her will. Whenever that person is unable or incapable of writing, he/she must manifest his/her will through comprehensible signs for both the notary and the other participants. If this last way of expressing his/her will is not possible, an interpreter, chosen by the disable person shall participate in the act.

The Civil Code foresees mental impairment[[5]](#footnote-5) as a cause for non-liability for damages unless the person has voluntarily caused that temporary impairment (e.g. through alcohol or drug abuse).

Criminal law also includes rules destined to overcome practical difficulties regarding some type of physical disability as well as norms applicable to mental disability. In criminal law there are special rules regarding criminal responsibility and execution of sentences addressed to mentally impaired persons. A person considered incapable of, at the moment of the practice of the criminal act, assess the unlawfulness of that act or considered incapable of acting according to that assessment, is not criminally responsible and therefore cannot be sentenced to imprisonment.

In the above-mentioned case if, after the analysis of the mental impairment and the seriousness of the offense, there are reasonable grounds to believe that, in the future, similar acts may be committed, the court can order the hospitalization of the mentally impaired person *in lieu* of ordering his/her imprisonment. With the hospitalization of the mentally impaired person following a court-order, the criminal justice system aims at addressing concerns of public safety through medical treatment instead of addressing them through punishment by imprisonment.

Even when a person is not considered insane and thus sentenced with imprisonment, some degree of mental impairment at the time of the crime or following the practice of the criminal act may advise alterations to the imprisonment execution rules in order to grant that person the necessary treatment.

Although in Portugal, young people under 16 are not criminally responsible, pursuant to Law n.º 166/99, the commitment of an offense by a young person between the age of 12 up to 16 can be punished by an educative measure.

In addition, according to the Criminal Code, there is special legislation regarding young person between the age of 16 up to 21.

Regarding young offenders, the Portuguese system seeks educative solutions instead of prison sentences, although in more serious cases of young person age 16 and up both can coexist. Furthermore, cases involving young people are decided by family courts.

Criminal law also foresees special rules for the rendering of statements of people with disabilities.

According to the Code of Criminal Procedure[[6]](#footnote-6) whenever a hearing impaired person has to render statement, a capable sign language/lip reading/writing interpreter shall be appointed free of charge. When a speaking impaired person is to give testimony or render statement the questions shall be made orally and the answers shall be provided in writing except when the person is unable to read, in which case a capable interpreter is nominated.

In addition to the above-mentioned rules applicable to testimony given by a person with disability, there are special rules for the protection of witness/victims.

Within the witness protection law there are special rules regarding especially vulnerable witness (the witness's special vulnerability may be caused namely by his being too young or too old, because of his health condition or by the fact that he has to make a testimony or a statement against a person of his own family, or against a restricted social group to which he belongs in a condition of subordination or dependence) applicable to persons with disability. Such rules include the appointment by the judicial authority of a social welfare officer or any other person specially prepared to assist the witness and the designation of an expert to provide the witness with psychological support.

Pursuant to the Portuguese law, the expression “witness” includes victims as it means *“…any person who, notwithstanding his status towards the procedural law, is in possession of any information or knowledge necessary to the disclosure, apprehension or evaluation of facts subject to investigation and which are likely to represent a danger to that person or to others.”*

Law N.º 130/2015, September the 4th, establishes minimum standards on the rights, support and protection of victims of crime.

According to Law n.º 130/2015, individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime. They should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed.

Jury trials are rare in Portugal. They are admissible in serious criminal cases[[7]](#footnote-7) (when punishable with a sentence of imprisonment of 8 years or more) at the request of the public prosecutor, the defendant or the offended party. Jury trial functions with three judges and four jurors (members of the public)

Regarding the generic capacity to be a juror, the law[[8]](#footnote-8) sets forth cumulative requirements. Only Portuguese citizen’s registered as voters, having concluded mandatory schooling, bellow the age of 65 years old, enjoying full capacity to exercise their civil and political rights and without any disease, physical or psychological impairment rendering them unable to perform the duties of a juror are able to being selected.

**.b. to have individual legal standing in all administrative and judicial procedures, including the right to be heard as part of their right to fair trial;**

The Portuguese legal system contains special rules for the protection of the disabled *arguido*[[9]](#footnote-9) (defendant).

**According to article 64º of the Code of Criminal Procedure, t**he assistance by a defense counsel is compulsory:

*“In any procedural acts other than the formal declaration as defendant, whenever the accused person has any visual, hearing or speaking impairment or is illiterate, cannot speak or understand the Portuguese language, is less than 21 years old, or where the issue of his excluded or diminished criminal liability has been raised;”*

**The Code of Criminal Procedure in its article 68. º also allows for the legal representative of an incapable offended person as well as entitles certain relatives of that person to act as a party assisting the public prosecutor.**

**As stated in the previous answer, article 93º of the Code of Criminal Procedure contains rules for the participation of a hearing, speaking or hearing-speaking impaired person in criminal proceedings.** Whenever the person is incapable of reading or writing the competent authority shall appoint him a proper interpreter.

The appointment of an interpreter also occurs when the statements should be made in a court hearing and the court determines the intervention of an interpreter.

The above mentioned rules are applicable to oral requests and oaths.

**c. to have access to effective remedies that are appropriately proportional to the right(s) infringed and which are tailored to their specific situation; and**

Discrimination of a person on a basis of its disability constitutes an administrative offense: an *“Ordnungswidrigkeit”.*

Law No. 46/2006, August 28th, prohibits and punishes discrimination on the basis of disability and aggravated health risk, covering both direct and indirect discrimination.

The above mentioned law foresees pecuniary and ancillary sanctions applicable to both natural and legal persons acting in violation of any fundamental right or refusing the exercise of any economic, social, cultural or other rights on the basis of discrimination.

According with article 3 of the abovementioned law, direct discrimination occurs whenever, in the same or similar circumstances, a person with disability is treated less favorably than a person without the disability.

Indirect discrimination occurs when a rule or policy is neutral (is the same for any person) but has an unfair effect on people with a particular disability.

This law prohibits several discriminatory practices such as the refuse to or restriction from accessing public transportation, schools, medical facilities or the refusal to or the conditioning of access to real property acquisition/ rental and adds prohibitions to the ones included in the Labor Code, among others. The practice of any discriminatory act constitutes an offense, punished with an administrative fine and ancillary sanctions. The competent entity to receive discrimination complaints under Law 48/2006 is the National Institute for Rehabilitation (INR).

The INR receives complaints and redirects them to the competent entities for the investigation and sanctioning of the offenses (e.g. Authority for Labour Conditions, High Commission for Migration). The INR is also in charge of issuing an annual report on the number of complaint procedures regarding Law 46/2006*.*

 The Ombudsman provides, regularly, data on the communications/complaints received regarding violations of the rights of persons with disability foreseen in Law n.º 46/2006, thus contributing for the drafting of the INR 2014 and the 2015 annual reports.

According to the Ombudsman data, 55 procedures were instructed regarding complaints received in 2013 and 46 complaints were investigated regarding communications received in 2014.

Thus, during 2014, 41 procedures were terminated due to the following reasons:-14 cases were dismissed, in 16 cases a suitable solution was obtained by the public entity concerned, in 8 cases a warning advice was issue to the public entity concerned, in 1 case the ombudsman found that no further actions remained possible, in 1 case the complainant was redressed to the competent entity and in a last case the complainant withdrew the complaint.

During 2015 the motives for the termination of 17 of the 46 procedures initiated included dismissal, redress to the competent entity, suitable solutions obtained by the public entity concerned, the issuing of a warning advice by the Ombudsman and the withdraw of the complaint.

Within the Portuguese Criminal system crimes can have mitigating and aggravating circumstances. Thus, crimes foreseen in the Criminal Code such as homicide, domestic violence, ill-treatment, violation of labor security rules, threat, coercion, stalking or forced marriage when committed against a person with disability are considered aggravated crimes and therefore more seriously punished.

The reasoning behind this legislative option is the fact that, as disability renders the person especially vulnerable, the commitment of an illicit act against that person is particularly censurable.

Hate crimes regarding disability, that is; criminal offenses committed against a person motivated by an offender’s bias against disability, such as homicide or ill-treatment can be punished with the maximum penalty of 25 years imprisonment.

Whenever the public prosecutor takes notice that a crime was committed against a disabled person an inquiry is opened and an investigation commenced. If the defender is considered guilty a criminal penalty will be imposed.

The practice of any discriminatory act against a person with disability entitles this person to a compensation for material and non-material damages according to general rules on compensation.

In the cases of civil liability the law provides for the mandatory publishing of judgements. However, the identity of the victim will only be made public upon his/her consent.

**d. to have effective access to justice in the context of disasters, migration and asylum-seeking, conflict and post-conflict situations and transitional justice, and formal or informal systems of customary, indigenous and community justice, among others.**

Article 20 of the Constitution of the Portuguese Republic[[10]](#footnote-10) establishes that everyone is guaranteed access to the law and the courts in order to defend those of his/her rights and interests that are protected by law, and justice may not be denied to anyone due to lack of sufficient financial means.

Subject to the terms of the law, everyone has the right to legal information and advice, to legal counsel and to be accompanied by a lawyer before any authority.

The Portuguese law on asylum is part of the common policy on asylum of the European Union, including the Common European Asylum System. Thus, domestic law is in accordance with European standards as it transposes several directives on the matter.

Law n.º 27/2008[[11]](#footnote-11), June, 30, sets the conditions for the grant of asylum and subsidiary protection.

According to this law, disabled persons (including persons with serious illnesses and persons with mental disorders) are considered particularly vulnerable persons and for that reason their specific situation is taken into account in the assessment of the special reception needs, in the rendering of accommodation and when providing health care.

According to domestic law on legal aid[[12]](#footnote-12) , national citizens as well as citizens from European Union countries or persons residing in a European Union country have the right to legal aid in the absence of sufficient financial resources.

Legal aid shall be provided to non-European Union citizens on the basis of reciprocity.

In addition to the domestic framework on legal aid the Portuguese administration as well as several autonomous bodies within the civil society have volunteer proactive solutions to arising problems.

As an example of the circumstance’s tailored solutions, in 2015, as Portugal was preparing to receive refugees due to the migrant crises, the Bar Association created a legal aid service specially directed at the refugees aiming at providing information regarding access to justice in Portugal. This exceptional and temporary service was provided by lawyers on a voluntary basis.

Other initiative was initiated in July 2016. Also with the migrant crisis in mind, the Portuguese Bar Association joint the project “Association European Lawyers in Lesvos” organized by the Council of Bars and Law Societies of Europe (CCBE) aiming at sending European lawyers to the island of Lesbos to support Greek lawyers in the provision of legal assistance to migrants requiring international protection.

The public administration through regulation 203/2016 created the National Immigrant Support network where legal information and help is provided.

**2. Do you have examples from your country on:**

**a. how procedural and age-appropriate accommodations are provided and applied, including protocols or other guidelines;**

In order to ensure effective access to justice for persons with disabilities on an equal basis the state shall provide persons with disabilities with procedure and age-appropriate accommodations.

As to physical access, Decree-law N.º 163/2006 establishes accessibility requirements for buildings. According to the law, accessibility requirements differ for existing and new buildings. Thus, while new buildings are subject to tight rules on accessibility, existing buildings shall not be required to comply with the requirements of a new building. Existing buildings are exempted from accessibility construction works when those works are considered difficult or technically infeasible and disproportionally costly. Exemption from accessibility construction works also applies to historic buildings or when those works affect cultural and historical patrimony. The fact that public services, including courts, police stations or mediation facilities, are usually functioning in old or historic buildings entails special difficulties to the disabled person.

However, as stated in the previous report, an effort has been made in terms of reasonable adaptation, e.g, adaptation of inquiry and interrogation rooms for persons with physical disabilities; acquisition of telescopic ramps and loading platforms; construction of specific health facilities for persons with disabilities; specific car parking spaces for persons with disabilities; creation of barrier-free service desks that can accommodate wheelchairs and other support devices; acquisition of ergonomic chairs for employees with disabilities; application of handrails, tactile command buttons inside and outside elevators, as well as alarm systems in elevator wells; adaptation of websites for use by persons with reduced accessibility, particularly the visually impaired.

As technology can be an important help for effective access to justice, the Public Administration has created various online services as well as support hotlines and the use of accessible web design is increasing.

Regarding the obligation pending upon the State to provide for appropriate accommodations for children some considerations are considered to be relevant.

 According to Portuguese law, children have the right to participate and be heard in judicial proceedings.

As children with disabilities are more at risk of being abandoned, neglected or abused it is important that the justice system provides effective age-appropriated accommodations while they seek legal redress.

Family and Criminal law are two main fields were children interact with judicial proceedings and, as a consequence, the judicial system has been taken the special needs of children into consideration in those two fields.

As formal court room hearings may have an intimidating effect on children it is considered in the best interest of the child that children be heard in a more relaxed atmosphere and less formal room where close proximity to the judge and prosecutor are ensured. For the same reasons, the hearing of a child shall be conducted in a more accessible way in terms of language and duration.

In family law (custodial or adoption cases) the child can bring by herself a matter to the attention of the court and can be represented by her/his own legal counselor whenever her interest conflicts with the interest of her parents or legal representative.

In criminal law there are different methods to gather evidence aiming at protecting the child witness or the child victim, such as the recording of the child deposition prior to trial and its preservation for possible use at trial *in lieu* of live testimony.

**b. training programmers on the right of access to justice for persons with disabilities for judges, lawyers, prosecutors, police, social workers, language and sign language interpreters, legal aid centers, other judicial and administrative bodies intervening in judicial or quasi-judicial instances;**

Non Applicable.

**c. education programmes on the right of access to justice for persons with disabilities for law students as well as in schools of social work, sign language interpretation, forensic science, psychiatry and psychology, among other relevant faculties; and**

Non applicable.

**d. legal aid programmes, public and/or private, which include the right of access to justice for persons with disabilities in their practices, including the availability of support and liaison services for courts or other judicial or quasi-judicial instances**.

Each institution, including courts or other judicial or quasi-judicial instances, is responsible for assessing its needs in terms of material and human resources. Following their assessment, each institution is also responsible for requesting to the competent State department the means deemed necessary to ensure the institution’s full functioning.

As an example, a protocol between the Federation of the Portuguese Associations of Deaf People and the Ministry of Justice was established in order to ensure citizen’s rights, whenever a deaf person shall participate in civil proceedings thus making it possible for any citizen or legal counselor to request a sign language interpreter in all of the services within the Minister of Justice, e.g. courts, prisons, forensics health care facilities, according to the Circular Order n.º 25/2000, October the 23rd.

**3. Does your country have laws, policies and strategies to ensure the participation of persons with disabilities on an equal basis with others in the judiciary or other judicial or quasi-judicial instances, including in their role as judges, witnesses, jurors, lawyers or any other active party to judicial or quasi-judicial procedures?**

As stated above, citizens with physical or mental disabilities fully enjoy the rights and are subject to the duties enshrined in the Constitution, save for the exercise or fulfilment of those for which their condition renders them incapable.

Each legal profession has its own rules and requirements of entry, however there are common requirements such as holding a law degree and being approved in specific training for that profession.

Some professions require psychological testing in order to determine the adequacy of the candidates to future functions while others require individual interviews with the candidate.

Access to the profession of public prosecutor or judge involves a public competition where several methods of selection are applicable.

However, in order to enroll in the public competition, candidates must comply with minimum requirements.

Requirements include being a Portuguese citizen or a citizen of a Portuguese Speaking Country permanently residing in Portugal to whom, according to the law and on the basis of reciprocity, is recognize the right to act as public prosecutor or judge; to hold a Law degree or legal equivalent degree and to comply with the general requirement to become a civil servant (have attained the age of 18 years, is not prohibited to perform public duties or disqualified for the exercise of those functions[[13]](#footnote-13), have the physical fitness and psychological profile for the exercise of those functions and comply with the mandatory vaccination rules).

In order to access the profession of lawyer, it is necessary to hold a Portuguese law degree or a university-level law qualification from outside Portugal, deemed to be equivalent to a degree or recognized as being of the same level in addition to complete a traineeship lasting 18 months.

The training is administer and supervised by the Bar Association and comprises two stages; the first training stage lasting six months, and the additional training stage lasting 12 months.

After the attendance of the two training stages the candidates must take and pass the written and oral Bar exam.

According to the Statute of the Portuguese Bar, persons not fully enjoying their civil rights or having been declared by a definitive court order unable to care for themselves or/and their property cannot enroll in the Portuguese Bar Association.

Within the Portuguese legal system, the use of mediation is admissible in family, labour, criminal, civil and commercial matters. The system also allows for (there is also) extra-jurisdictional mediation.

While family, labour and criminal mediation have their own structures, civil and commercial mediation occurs in small claims courts and is part of the judicial process.

Although each area of mediation has its own rules for conducting mediation, there are common requirements for exercising functions as a mediator. In order to be a mediator one must have completed 25 years, be in full exercise of his/hers civil and political rights, have an adequate university degree, have attended a training course approved by the Portuguese Ministry of Justice, be of good repute and master the Portuguese language.

**4. Does your country monitor and collect disaggregated data with respect to access to judicial or quasi-judicial procedures concerning:**

Non applicable.

**a. the participation of persons with disabilities in judicial or quasi-judicial procedures, including the number of complaints submitted, nature of complaints and outcomes;**

Non applicable.

**b. persons with disabilities obtaining remedies and the nature of those remedies, whether they are adequate, effective, prompt and appropriate, responding to their specific situation;**

Non applicable.

**c. persons with disabilities being convicted, the nature of their sentence, and whether they benefitted from safeguards of the right to fair trial on an equal basis with others; and**

Non applicable.

**d. the opening and conduct of impartial and independent investigations of human rights violations of persons with disabilities, particularly those relating to the right to life, liberty and security of the person, freedom from violence, abuse and exploitation, and freedom from torture or cruel, inhuman or degrading treatment or punishment.**

Non applicable.

1. An English version of the Portuguese Constitution is available at the Parliament’s website: http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf. [↑](#footnote-ref-1)
2. Law n.º 38/2004, August the 18th. [↑](#footnote-ref-2)
3. Article 135.º of the CCP. [↑](#footnote-ref-3)
4. Article 66.º of the Notary Code. [↑](#footnote-ref-4)
5. Article 488 of the Civil Code. [↑](#footnote-ref-5)
6. Article 93 of the Code of Criminal Procedure. [↑](#footnote-ref-6)
7. Except cases of terrorism or highly organized crime. [↑](#footnote-ref-7)
8. DL n.º 387-A/87, de 29 de Dezembro REGIME DE JÚRI EM PROCESSO PENAL [↑](#footnote-ref-8)
9. According to the Documentation and Comparative Law Office, <http://www.gddc.pt/codigos/notas-de-traducao_ingles.html> *“The status of arguido (defendant) is granted when an inquiry has been opened or an investigation is led regarding a specific person, if there are grounds to suspect that such person has committed a criminal offence and when that person is heard by a judicial authority – Public Prosecutor or Examining Judge – or a criminal police body, or where a coercive or patrimonial guarantee measure must be imposed or the suspect is detained. When acquiring the status of arguido, the person benefits from a set of procedural rights and duties covered by law.”* [↑](#footnote-ref-9)
10. <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf> [↑](#footnote-ref-10)
11. Amended by Law n.º 26/2014. [↑](#footnote-ref-11)
12. Article 7.º of the Law n.º 34/2004. [↑](#footnote-ref-12)
13. Certain crimes committed by public officials in the performance of official duties can be sanctioned with a prohibition to perform public duties. [↑](#footnote-ref-13)