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1st periodic report of Portugal on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance

June 2016

A. General information

1. – Introduction and methodology

Portugal signed the International Convention for the Protection of all Persons from Enforced Disappearance (hereinafter the Convention) on 6 February 2007. The Convention was approved for ratification by Resolution No. 2/2014 of the Assembly of the Republic and ratified by Decree No. 1/2014 of the President of the Republic, both published in the official journal (*Diário da República*) on 16 January 2014 (Series I, No. 11).

The instrument of ratification was deposited on 27 January 2014 and the Convention entered into force for Portugal on 26 February 2014 (Notice No. 36/2014, published in the *Diário da República* on 26 February 2014, Series I, No. 40).

Portugal made the declarations referred to in Articles 31 and 32 of the Convention recognizing the competence of the Committee on Enforced Disappearances (hereinafter the Committee) to receive and consider communications from or on behalf of individuals and States.

The present report, the first submitted by Portugal pursuant to Article 29 of the Convention, was drafted within the Portuguese National Human Rights Committee (PNHRC1), under the coordination of the Ministry for Foreign Affairs. The report is based on information provided by the Ministry of Justice (Directorate General for Justice Policy and the Directorate General for Probation and Prison's Services) and the Ministry of Internal Affairs (Secretariat General – Department for International Relations). The PNHRC is an interministerial body, established in April 2010 by a Council of Ministers Resolution, following a commitment undertaken during the first Portuguese Universal Periodic Review exercise, in December 2009. The PNHRC is responsible for interministerial coordination with the aim of promoting an integrated approach to human rights policies. The Committee aims to define Portugal's position in international *fora* and to implement Portugal's obligations under International Human Rights Law.

While analysing Portugal's compliance with the Convention, in addition to the present report, and as an integral part of it, the Common Core Document of Portugal should be taken into account. An updated version of this document was submitted in 2014 (HRI/CORE/PRT/2014 of 10 October 2014).

In line with the PNCHR practice and the reporting guidelines of the Committee, civil society organizations were also involved in the preparation of this report. The PNHRC held a meeting with NGOs on 18th May 2016 to discuss a first draft of the report and NGOs were able to make comments and drafting suggestions before the report was finalized. Furthermore, NGOs were encouraged to send "shadow reports"

1 http://www.portugal.gov.pt/media/2353413/cndh-plano-atividades-en-2015.pdf

to the Committee. This procedure has already proven its worth in past periodic reports and is now, since June 2011, a constant practice with all reports to the UN Human Rights Treaty Bodies.

The present report is published on the PNHRC's website under the section "International Human Rights Conventions"[2]

B. General legal framework under which enforced disappearances are prohibited

1. Constitutional framework for the protection and promotion of human rights

The legal and political structure of the Portuguese State derives from the Constitution of the Portuguese Republic, (hereinafter, the CPR or Constitution), which was adopted on April 2, 1976. For further information on the Portuguese Constitutional framework please refer to the core document on Portugal (HRI/CORE/PRT/2011).

In accordance with the CPR (Article 1), Portugal is "a sovereign Republic, based on the dignity of the human person and on the will of the people, and committed to building a free, fair and solidary society". The Portuguese State is a democracy based on the rule of law, freedom of expression, respect for and guarantee of the effective implementation of fundamental rights and freedoms and separation and interdependence of powers (Article 2 CPR). Political power is exercised by the people, through universal, equal, direct, secret and periodic suffrage, as well as by referendum and other forms provided for in the CPR (Article 10 CPR, which also guarantees a multi-party system).

In its foreign relations, Portugal is guided by the principles of national independence, respect for human rights, the rights of peoples, equality among States, pacific settlement of international disputes, non-interference in other States internal affairs and cooperation. The Portuguese State stands for the abolition of, *inter alia*, imperialism, colonialism and any other forms of aggression, domination and exploitation in the relations between peoples, and recognizes the right of peoples to self-determination, independence and development. Portugal maintains special ties of friendship and cooperation with Portuguese-speaking countries (Article 7 (1) to (4) CPR).

The CPR contains an extensive catalogue of "rights, freedoms and guarantees" and of "economic, social and cultural rights" (Titles II and III, Articles 24 to 79 CPR), which constitutionally enshrine most civil, cultural, economic, political and social rights provided for in international human rights treaties.

[2] http://www.portugal.gov.pt/pt/os-ministerios/ministerio-dos-negocios-estrangeiros/quero-saber-mais/sobre-o-ministerio/comissao-nacional-para-os-direitos-humanos/cidh.aspx

In addition to the fundamental rights and freedoms enshrined in the Constitution, Article 16 (1) inserts a very broad open clause according to which the application of fundamental rights and freedoms set out in applicable international laws is not precluded by the specific catalogue of rights set out in the Constitution. Moreover, constitutional and legal provisions concerning fundamental rights are to be interpreted and integrated in accordance with the Universal Declaration of Human Rights, as expressly stated by Article 16 (2).

Furthermore, norms and principles of general or common international law are an integral part of Portuguese legal order and norms contained in regularly ratified or approved international conventions are in force in the internal legal order provided that they have been published in the *Diário da República* and while they are binding upon the Portuguese State at the international level (Article 8 (1) and (2)).

The Constitution establishes a number of legal mechanisms, both judicial and non-judicial, intended to guarantee fundamental rights.

As far as judicial protection is concerned, Article 20 CPR enshrines the right to effective judicial protection, guaranteeing everyone's right of access to the courts in order to defend its rights. This right cannot be precluded by the lack of financial resources (Article 20 (1)).

The independence of the judiciary is guaranteed under Article 203 of CRP which states that courts are only subjected to the law. Court rulings are binding on all persons (individual and legal), public and private, and prevail over the decisions of all other authorities (Article 205 (2) CPR).

The Constitutional Court, that is in charge of supervising that State functions are performed in accordance with the CPR and of defending fundamental rights of citizens, plays a special role. At the heart of its vast and diverse range of competences, is the review of the constitutionality of laws, within which it acts as guardian of the Constitution.

Regarding non-judicial mechanisms, the CPR establishes the following procedures:

- The right to resist any order that contravenes one's rights, freedoms and guarantees and to use force in order to repel any aggression where resort to the public authorities is impossible (Article 21);

- The right to petition, which allows every citizen to defend one's rights, the Constitution, the laws or the general interest before sovereign bodies, Madeira and Azores self-government organs or any public authority (Article 52 (1));

- The right, afforded to all natural or legal persons who feel harmed by unfair or illegal public administration's acts or who had their fundamental rights violated, to have its case appreciated by the Ombudsman following a complain. The Ombudsman's mission is to ensure, through informal means, that justice and the legality of the exercise of public powers, namely through the issuing of

recommendations next to public bodies or bodies otherwise exercising activities of public interest;

- The right to lodge claims before independent administrative authorities that regulate sensitive areas such as the media (Regulatory Entity for the Media), data protection (*Comissão Nacional de Proteção de Dados*, the Portuguese Data Protection Authority) or access to documents (Commission on Access to Administrative Documents).

2. International framework: human rights treaties to which Portugal is a Party

Portugal is a State party to the main human rights treaties. It has accepted extensive obligations for the protection of human rights and has submitted to the authority of their respective international monitoring bodies.

Portugal has ratified the human rights agreements listed in paragraph 1 (Main international human rights conventions and protocols) of the core document on Portugal (HRI/CORE/PRT/2011, including Annex 2). The following updates to that list should be added:

With regards to the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (New York, 19/12/2011): signed on 28 February 2012 and ratified on 24 September 2013. Entry into force in the internal legal order on 14 April 2014;

With regards to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: signed on 24 September 2009 and ratified on 28 January 2013. Entry into force in the internal legal order on 5 May 2013;

With regards to the Hague Conference on Private International Law, among others, Portugal is bound by the following Conventions as a result of an REIO (Regional Economic Integration Organisation) participation clause: Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance: signed on 6 April 2011 and ratified on 9 April 2011. Entry into force in the internal legal order on 1 August 2014; Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations: signed and ratified on 8 April 2010. Entry into force in the internal legal order on 1 August 2013.

With regards to the Council of Europe: Convention on Cybercrime (Budapest, 23/11/2001): signed on 23 November 2001 and ratified on 24 March 2010. Entry into force in the internal legal order on 1 July 2010;

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote, 25/10/2007): signed on 25 October 2007 and ratified on 23 August 2012. Entry into force in the internal legal order on 1 December 2012.

C. Treaty-specific document

1. General legal framework under which enforced disappearances are prohibited.

Constitutional, criminal and administrative provisions regarding the prohibition of enforced disappearance

The practice of enforced disappearance constitutes a complex and multiple infringement of human rights, gravely offending the dignity of the human person and a whole set of fundamental rights deriving therefrom: the right to life, the right to liberty and security, the right to recognition of legal personality, the right to protection of the law, the right to a fair trial or the right not to be subjected to torture or other cruel, inhuman or degrading treatment.

Guaranteeing fundamental rights and freedoms and respect for the principles of a democratic state based on the rule of law (Article 9 CPR) is a fundamental task of the Portuguese State, and the Portuguese legal and constitutional framework is therefore inherently incompatible with the negation of the dignity of the human person underlying the practice of enforced disappearance.

The Portuguese Constitution inscribes other rights which bear a close connection with the protection against the practice of enforced disappearance:

- Human life is inviolable (Article 24);
- Every person's moral and physical integrity is inviolable and no one may be subjected to torture or to cruel, degrading or inhuman treatment or punishment. (Article 25);
- Everyone is accorded the right to personal identity (Article 26 (1));
- The right to freedom and security (Article 27), entails that no one may be in whole or in part deprived of their freedom, except as a consequence of a judicial conviction and sentence imposed for the practice of an act that is legally punishable by a prison term or the judicial imposition of a security measure (Article 27 (2)).

In an infra constitutional plan, reference should be made to Law No. 31/2004, of 22 July, adapting the Portuguese criminal law to the Rome Statute of the International Criminal Court and criminalizing conducts that constitute crimes in violation of international humanitarian law. The said law criminalizes enforced disappearance of persons as a crime against humanity "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack"(Article 9).

This is the only international treaty dealing with enforced disappearance to which Portugal is a Party to.

Status of the Convention in the domestic legal order, i.e. with respect to the Constitution and the ordinary legislation

Pursuant to Article 8 of the CPR, the provisions of the Convention become binding on the Portuguese State and are an integral part of Portuguese domestic law, applying on the same terms as the rules developed internally, and they don't need to be transcribed or transformed into national law.

Conventional rules prevail over ordinary legislation but are hierarchically subordinated to the CPR. On the other hand, the Convention rules are valid as law in the sense that they serve as legal basis to administrative regulations. They are not, however, entirely directly applicable, insofar as they are not *per se* feasible and need to be further specified through ordinary legislation (for instance, definition/typification of criminal offences and applicable penalties need to be laid down by criminal law).

Non-derogability of the prohibition of enforced disappearance

The absolute prohibition of enforced disappearances is a corollary of the principles of human dignity, liberty and security of person and of the fundamental right to a fair trial. Limitations/restrictions to fundamental rights and freedoms may only be made on the basis of a formal law and are limited by a principle of necessity and proportionality (Article 18 CPR).

The prohibition of enforced disappearance may in no circumstance be derogated under Portuguese law, including in the event of the declaration of a state of siege or of a state of emergency, as this would be contrary to the aforementioned principles (Article 19 CPR).

The principle of proportionality referred to in Article 19 (4) of the CPR is a strict limitation to the extent in which rights that may be restricted by the declaration of the state of siege or emergency.

Invocation of the Convention before the courts and direct enforceability

The rules of the Convention apply in domestic law with the same relevance of national law, as is clear from Article 8 (2) of the CPR, and therefore can be invoked by individuals and applied by the courts and the administrative authorities as long as they are self-executing.

Federal states

Portugal is not a federal state. It follows from Articles 5 and 6 of the CPR that Portugal is a unitary state. The Azores and Madeira archipelagos, as autonomous regions of the Portuguese Republic, have their own political and administrative statutes and self-government institutions.

Judicial and other competent authorities with jurisdiction/mandate over matters dealt with in the Convention

Matters relating to enforced disappearances fall within the competence of ordinary courts and courts of appeal (Courts of Appeal and Supreme Court of Justice). Similarly, law enforcement authorities - particularly in the frame of criminal investigations - and those responsible for prison administration are also competent for this matter, within their respective competences.

The Constitutional Court may intervene in specific cases that may be brought before it in order to assess the constitutionality of the domestic law (for example, the crime of enforced disappearances) *vis-à-vis* the standards set forth in the Portuguese Constitution.

Case law where the Convention has been enforced

Due to the recent ratification of the Convention, so far there is no case law concerning its enforcement.

Administrative measures giving effect to the provisions of the Convention

In addition to the commission of crimes, the Portuguese legal system also provides for other grounds for non-execution of administrative orders. Under the Portuguese law, the official that fulfills illicit orders shall be excluded from liability if he/she has first demanded or required that they be transmitted to him/her in writing, expressly mentioning that he/she considers them illegal. The doctrine also advocates disobeying acts that are null.

If during the waiting period for the response of the hierarchic superior to the complaint or demand for confirmation of the order in writing, the delay in the execution may be detrimental to the public interest, the subordinate (public official or agent) should immediately report it in writing to his/her immediate hierarchic superior and shall then execute the order without being held responsible for it. Otherwise, if he/she executes the orders and does not follow these procedures, he/she will liable for the acts performed.

It should also be mentioned that, contrary to what happens with flawed administrative acts, where the principle of legal certainty may determine the production of effects, an administrative act which violates human rights is null and void as a rule (Article 162 of the Code of Administrative Procedure).

The liability of the Public Administration for acts that lead to the violation of fundamental rights is foreseen in the CPR. In fact, Article 22 CPR determines that "the State and other public entities are civilly liable for actions or omissions that are committed in or because of the exercise of their functions and result in a breach of rights, freedoms or guarantees or in a loss to others."

Statistical data on cases of enforced disappearances disaggregated by, inter alia, sex, age, ethnic origin and geographical location

There are no available statistical data due to the fact that the crime of enforced disappearance has not, thus far, occurred in Portugal.

2. Information on substantive Articles of the Convention

Article 1

Regarding the legal regime of rights, freedoms and guarantees and its binding force, Article 18 of the CPR states:

a) The Constitution's provisions with regards to rights, freedoms and guarantees are directly applicable and binding on public and private entities;

b) The law may only restrict rights, freedoms and guarantees in the cases expressly provided for in the Constitution, and such restrictions must be limited to those needed in order to safeguard other constitutionally protected rights and interests;

c) Laws restricting rights, freedoms and guarantees must have a general and abstract nature and may not have a retroactive effect or reduce the extent or scope of the essential content of the constitutional provisions.

Sovereignty bodies may only suspend the exercise of rights, freedoms and guarantees in the case of declaration of state of siege or state of emergency under the terms set forth under the Portuguese Constitution. This suspension may only be declared in cases of actual or imminent aggression by foreign forces, serious threat to or a disturbance of the democratic constitutional order or public disaster, and may be territorially limited or apply to the entirety of the Portuguese territory.

The choice between the declaration of a state of siege or emergency, applicable in less serious situations, and the declaration and implementation thereof must respect the principle of proportionality and be limited to whatever measures are strictly necessary for the prompt restoration of constitutional normality, particularly as regards the extent, duration and means employed during these states of exception.

The duration of these exceptional states is limited to 15 days, renewable for equal periods of time, except in the case of war declaration, where the time limit is laid down by law and also subject to renewal.

The declarations of both the state of siege and the state of emergency must set out the grounds on which they are based and specify the rights, freedoms and guarantees whose exercise is to be suspended. In no circumstance may those declarations affect the rights to life, personal integrity, personal identity, civil capacity and citizenship, the non-retroactivity of the criminal law, defense rights, or the freedom of conscience and religion.

Furthermore, these declarations may only interfere with constitutional normality in accordance with the provisions of the Constitution and the law. In particular, they may not affect the application of the constitutional rules concerning the competences and *modus operandi* of the entities that exercise sovereignty or of the self-government organs of the autonomous regions of Azores and Madeira, or the rights and immunities of the respective officeholders.

In conclusion, even in the context of exceptional circumstances that may lead to the declaration of the state of siege and state of emergency, where the suspension of some rights, freedoms and guarantees can take place, the Portuguese constitutional framework does not enable or make legally feasible the enforced disappearance of persons.

Lastly, the legislation for the prevention and the fight against terrorism and its financing, as well as in relation to terrorist foreign fighters, does not include any provision in the context of a criminal investigation, to hold off the prohibition of enforced disappearance. Such an investigation is made in the existing constitutional framework and with full respect for human rights (Law No. 52/2003, of 22 August, and Code of Criminal Procedure, hereinafter CCP).

Article 2

The fundamental right to freedom and security for everyone is recognized in the Portuguese Constitution. The only exception admitted to this right is the delivery of a prison sentence or the judicial imposition of a security measure (Article 27 (1) and 2)).

Under Article 27 (3), the deprivation of freedom for the period and under the conditions laid down is admitted in the following cases:

a) Detention in *flagrante delicto*;

b) Detention or remand in custody due to strong indications of the willful commission of a crime that is punishable by imprisonment for a maximum term of more than three years;

c) The imprisonment or detention of, or the imposition of any other coercive measure subject to judicial control on a person who improperly entered or improperly remains in Portuguese territory, or who is currently the object of extradition or deportation proceedings;

d) The disciplinary imprisonment of military personnel, which imprisonment is subject to the guarantee of appeal to the competent court;

e) The subjection of a minor to measures intended to protect, assist or educate him in a suitable establishment, when ordered by the competent court of law;

f) Detention by judicial decision for disobeying a court decision or to ensure appearance before a competent judicial authority;

g) Detention of suspects for identification purposes, in the cases that are and for the time that is strictly necessary;

h) Committal of a person suffering from a psychic anomaly to an appropriate therapeutic establishment, when ordered or confirmed by a competent judicial authority.

Law No. 31/2004, of 22 July, which adapts Portuguese criminal law to the Statute of the International Criminal Court, providing for the criminalization of violations of

international humanitarian law, autonomously criminalizes enforced disappearance as a crime against mankind (Article 9 (i)):

«Crimes against humanity

Whoever, as part of a widespread or systematic attack against any civilian population, commits:

i) enforced disappearance of persons, understood as the detention, imprisonment or abduction promoted by a State or political organization, or with its authorization, support or acquiescence, followed by a refusal to acknowledge that deprivation of freedom or to provide any information about the situation or location of those persons, for the purpose of denying them protection, shall be punished by imprisonment for 12 to 25 years».

In addition, the crime of enforced disappearance, as provided for in the Convention, has some connecting elements with other unlawful conducts punishable under the Portuguese Criminal Code (hereinafter, CC).

Such is the case, for instance, of the crime of torture and other cruel, degrading or inhuman treatments foreseen and punishable under Articles 243 and 244 CC, the crime of coercion, foreseen and punishable under Articles 154 and 155 of the CC, the crime of illegal restraint, foreseen and punishable under Article 158 CC, the crime of slavery, foreseen and punishable under Article 159 of the CC, the crime of trafficking in persons, foreseen and punishable under Article 160 of the CC, the crime of kidnapping, foreseen and punishable under Article 161 of the CC, the crime of hostage taking, foreseen and punishable under Article 162 of the CC. Aggravating and mitigating circumstances are prescribed for most of these crimes.

Article 3

The exercise of criminal action in Portugal is guided by the principle of legality, both from a constitutional and infra-constitutional point of view (Article 219 of the CPR, and Articles 262 (2) and 283 of CCP.

This means that the Public Prosecution Service, as holder of the criminal action, is obliged to open an inquiry to establish the facts, as required by Article 262 (2) of the CCP which states that "the news of the commission of a crime always gives rise to the opening of an inquiry".

On the other hand, if during investigations sufficient evidence of the commission of a crime and of the identity of the alleged perpetrator has been collected, the Public Prosecution Service must bring charges against him/her, as determined in Article 283 CCP.

Portuguese law allows for detention in order to ensure the presence of the detainee before the judicial authority in a procedural act, as well as for the adoption of precautionary measures, identification, or even enforcement measures, dependent on the verification of certain legal requirements.

In fact, Article 27 (3) of the CPR provides that no one may be wholly or partially deprived of their freedom, except as a consequence of a judicial conviction and sentence imposed for the practice of an act that is legally punishable by a prison term or the judicial imposition of a security measure. As an exception to this principle, detention or remand in custody may take place where there are strong indications of the intentional commission of a crime punishable with a maximum imprisonment sentence of more than three years. Detention may also take place in order to ensure the immediate presence of the detainee before the judicial authority in a procedural act pursuant to Article 254 (b) of the CCP.

The reporting of a crime is mandatory for law enforcement authorities and for public officials who become aware of the commission of a crime in the performance of their professional duties (Article 242 CCP).

Article 4

Please refer to the answer provided to Article 2 above.

Enforced disappearance is separately defined as a crime in Article 9 of Law No. 31/2004, of 22 July. In addition, illicit conducts encompassed in the multiple, complex, crime of enforced disappearance may be punished as different crimes under the CC, such as abduction, abduction of children, arbitrary arrest, deprivation of liberty, torture, deprivation of life and other crimes.

Article 5

Please refer to the answer provided in Article 2 above.

Portugal has criminalized enforced disappearances committed as part of a widespread or systematic attack directed against any civilian population as a crime against humanity under Article 9 (i) of Law No. 31/2004 of 22 July which adapts the Portuguese criminal law to the Statute of the International Criminal Court. The definition retained is consistent with that of the Rome Statute of the International Criminal Court and of the present Convention, ie, the "arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time." The crime is punishable with an imprisonment penalty of 12 to 25 years.

Article 6

Portuguese criminal law establishes criminal liability for the perpetrators referred to in Article 6 of the Convention in accordance with Articles 26 (authorship) and 27 (complicity) of the CC, applicable pursuant to Article 4 of Law No. 31/2004, of 22 July.

According to Article 26 of the CC "whoever commits the act, by himself or through another, or takes direct part in its execution, in agreement or together with other persons as well as whoever intentionally induces another to commit an act is punishable as principal, provided that there is execution or commencement of execution."

In accordance with Article 27 of the CC "whoever, intentionally and by any form, renders material or moral assistance to the commission by another of an act with willful conduct" shall be punishable as an accomplice. As for applicable sanctions, Article 27 (2) determines that "the sentence determined for the principal is the same applicable to the accomplice specially mitigated."

With regards to the crime of enforced disappearance as a crime against humanity, Article 6 of Law No. 31/2004, of 22 July, states that "except as provided for in the Code of Military Justice, the military commander or person acting as such who was or should have been aware that the forces under his/her effective command and control or under his/her responsibility and effective control are committing or preparing to commit an offence foreseen under this law, and does not adopt all necessary and appropriate measures to prevent or repress its commission or to take it to the immediate notice of the appropriate authorities, shall be punishable with the sentence corresponding to the crime or crimes that were committed." This rule applies, with the necessary adaptations, to a superior as regards the control of subordinates under his/her effective authority and control.

In addition, the inaction of a hierarchically superior to put an end to the practice of a crime of enforced disappearance being perpetrated by a subordinate is addressed in Article 10 of CC, which provides that "when a legal type of crime includes a certain result, the act comprises not only the proper action to produce but also the omission of the proper action to avoid it (…)."

Article 7

The crime of enforced disappearance under Article 9 (i) of Law No. 31/2004, of 22 July, is punishable by imprisonment from 12 to 25 years. Twenty five years imprisonment is the maximum time limit foreseen for exceptionally serious crimes under Portuguese law (Article 41 (2) CC).

There are no specific aggravating circumstances provided for this crime. However, Article 71 the CC, which sets the rules for the concrete determination of the penalty that is to be applied (within the inferior and superior limits laid down by the criminal law, the "measure of the penalty") allows for the consideration of all circumstances that may work in favour or against the agent, namely the degree of wrongfulness of the fact, the mode of execution of the crime and the seriousness of its consequences or the conduct of the agent before and after the crime, in particular where this conduct is directed towards the reparation of its consequences.

Article 8

The Portuguese criminal law sets different prescription times for crimes, which vary according to the nature or seriousness of the crime. The only exceptions to this rule are the crimes of genocide, crimes against humanity and war crimes, which are not subject to a statute of limitation and may, therefore, be tried at any time.

Article 8 (1) of the Convention refers to paragraph 5, which is related to crimes against humanity. In compliance with the obligations deriving from the Convention, Article 7 of Law 31/2004, of 22 July, states that the prosecution and the penalties for the commission of crimes of genocide, crimes against humanity (which includes enforced disappearance, as follows from Article 9 (i) of the said Law) and war crimes shall not be subject to any statute of limitation.

Article 9

Jurisdiction of Portuguese criminal courts is defined according to the basic rule enshrined in Article 4 of the CC which states that, unless otherwise provided in an international treaty or convention, the Portuguese criminal law is applicable to acts committed in the Portuguese territory, regardless of the nationality of the agent, or on board of Portuguese ships or aircrafts. The territoriality principle is thus the primary criterion for the establishment of Portuguese criminal jurisdiction.

Under Article 5 (1)(f) of the CC, the Portuguese criminal law is also applicable to acts committed outside the national territory by foreigners found in Portugal and whose extradition has been requested, when constituting crimes permitting extradition and such extradition cannot be granted or it is decided not to hand over the agent in execution of an European arrest warrant or other instrument of international cooperation which bounds the Portuguese State.

Article 5 of the CC enshrines several principles that render the Portuguese criminal law applicable to crimes committed abroad by Portuguese nationals. Indeed, Article 5 (1)(e) of the CC establishes that "unless provided otherwise in an international treaty or convention, the Portuguese criminal law is also applicable to acts committed outside the national territory: (…) e) by Portuguese, or by foreigners against Portuguese, whenever:

- i) The agents are found in Portugal;
- ii) Such acts are also punishable by the law of the place where they have been committed, unless the place of the act is not subject to any punitive power; and
- iii) Such acts constitute a crime permitting extradition and such extradition cannot be granted or it is decided not to hand over the agent in execution of a European arrest warrant or other instrument of international cooperation which bounds the Portuguese State".

Under Article 5 (1)(f) of the CC, the Portuguese criminal law is also applicable to facts committed outside the national territory by foreigners found in Portugal and

whose extradition has been requested, when constituting crimes permitting extradition and such extradition cannot be granted or it is decided not to hand over the agent in execution of an European arrest warrant or other instrument of international cooperation which binds the Portuguese State.

As a supplementary criterion, Article 5 (2) of the CC determines that "the Portuguese criminal law is also applicable to acts committed outside the national territory to which the Portuguese State has, by international treaty or convention, bound itself to prosecute".

Finally, Article 5 of Law No. 31/2004, of 22 July, states that the provisions of this law are also applicable to acts committed outside the national territory, provided that the agent is found in Portugal and cannot be extradited or if it is decided not to surrender him/her to the International Criminal Court.

Thus, Portugal considers that national rules concerning the application of the Portuguese criminal law and the definition of jurisdiction are in compliance with the conventional standards, such as that of Article 11 of the Convention.

In addition, it should be noted that whenever the alleged offender is present in the territory of the reporting State and the latter does not extradite him/her, Portugal applies the principle of *aut dedere aut judicare*, as foreseen in Law No. 144/99, of 31 August, on international judicial co-operation in criminal matters.

Where extradition is not granted by Portuguese authorities on any of the grounds stated in Article 32 (1) or in Article 6 (1) (d) (e) or (f) of the aforementioned Law, criminal proceedings shall be initiated in Portugal for the offence on the grounds on which the request was made; the requesting State shall be asked to provide such information as is necessary. The judge may impose such provisional measures as he deems adequate.

There is no record of cases involving the crime of enforced disappearance in which mutual assistance was requested to the Portuguese authorities or of requests made by Portuguese authorities in this regard.

Article 10

Under Article 141 of the CCP the arrested defendant who is not to face trial immediately shall be examined by the examining judge within forty-eight hours following his/her arrest and for such a purpose a detailed description of the grounds for the arrest and of the evidence supporting such an arrest is given.

Article 143 of the CCP establishes that the arrested defendant who is not examined by the examining judge immediately after his/her arrest shall be brought before the competent public prosecutor of the area where the arrest took place and the public prosecutor shall then hear him/her briefly.

The following Articles of the CCP are also relevant:

«Article 254
Purposes

1 – The arrest to which the following numbers refer to is made:
a) In order for the arrested person to be submitted, within a maximum term of forty-eight hours, to trial under summary form of procedure or to appear before the competent judge for first judicial examination or for the applicability or execution of a coercive measure; or
b) To assure the immediate appearance or, if not possible, in the shortest term, but without exceeding twenty-four hours, of the arrested person before a judicial authority in a procedural act.»

The defendant who is not arrested in *flagrante delicto*, for the applicability or execution of a coercive measure is always submitted to the judge (Article 254 (2) CCP).

«Article 255
Arrest in *flagrante delicto*

1 - If a person is caught in the act of committing a crime punishable with sentence of imprisonment:
a) Any judicial authority or police entity makes the arrest;
b) Any person makes the arrest, if one of the entities mentioned in the previous paragraph is not present and may not be called in useful time.
2 - In the case foreseen in paragraph b) of the previous number, the person who has made the arrest immediately hands over the arrested person to one of the entities mentioned in paragraph a), who drafts a brief record of the hand over and proceeds according to Article 259.
3 - In the case of a crime whose procedure depends upon complaint, the arrest is only maintained when, in an act following the arrest, the holder of the right to file a complaint exercises it. In this case, the judicial authority or the police entity draws up or orders to be drawn up a record in which the complaint is registered.
4 - In the case of a crime which procedure depends upon private prosecution, there is no place to flagrante delicto arrest, but only to the identification of the infringer.»

«Article 257
Arrest outside the act of committing a crime

1 - Arrest out of *flagrante delicto*, arrest may only be made, by warrant of the judge or, in the cases where provisional custody is admissible, of by the Public Prosecution:
a) Upon reasonable grounds to consider that the person in question would not spontaneously appear before a judicial authority in the time limit that would have been established to him;
b) Where, in particular, any of the situations referred in Article 204 occurs that only detention allows to safeguard; or
c) Where it is essential for the victim's protection.
2 - The criminal police authorities may also order the arrest outside *flagrante delicto*, by their own initiative, when:
a) Concerning a case where provisional custody is admissible;

b) There are elements which justify the fear of evasion or continuation of criminal activity; and
c) Given the urgency of the situation and the danger in the delay, it is not possible to wait for the intervention of the judicial authority.»

« Article 262
Purpose and scope of the inquiry
1 - The inquiry comprises a set of legal steps aiming at the investigation into the commission of a criminal offence, at identifying its perpetrator(s) and detecting his/their responsibility and at finding and collecting evidence for the purpose of deciding whether or not to prosecute.
2 - Without prejudice to the exceptions covered by this Code, the report on a criminal offence always leads to an inquiry."

Anyone who is arrested shall be guaranteed the right to communicate with his legal representative and, being a foreigner, with the consular authorities in his/her country. In the case of a stateless person, the right to contact the consular authorities of the State of his/her habitual residence is guaranteed.

Article 16 of the Code for the Enforcement of Sentences and Measures Involving Deprivation of Liberty guarantees the arrested foreigner or the stateless person the right to contact the respective diplomatic or consular officer or other representative of their choice. This provision, as indeed all of the Code, applies to cases of detention or remand.

The Regulation of the Conditions of Detention in the Facilities at the Criminal Police (Polícia Judiciária, hereinafter PJ) and in Places of Detention in the Courts and in Services of the Public Prosecution, approved by Order of the Minister of Justice No. 12786/2009, of 19 May of 2009, specifies the immediate information to be provided to the detained person upon arrest, including information on the rights to appoint a lawyer and to communicate with a family member, a trusted person, embassy or consulate, as well as the delivery of an informative leaflet. The provision of this information should be documented, by drawing up a term of notification and delivery, which must be signed by the detained person. The refusal to sign the said term of notification and delivery must be registered therein.

The referred information shall be made in a language the detained person understands and given in the presence of an interpreter, whenever necessary. The same information is delivered in writing by the Criminal Police, the courts or the prosecution services, as appropriate, through the distribution of a leaflet available in several languages, also briefly indicating the rights and duties of the detained person. In addition, a panel with information on the rights and obligations of the detained persons, containing the full transcript of Articles 27 to 33 of the Constitution, and Articles 61, 250, 192 (2), 194 (8), applicable *ex vi* Article 260, all of the CCP, it is mandatorily displayed in places of detention in a clearly visible spot.

Article 5 of the said Regulation sets out the urgent contacts, stating that the detained person has the right to immediately contact a lawyer or defender; has the

right to immediately inform a family member or a person of trust on the situation he/she is in; a foreign detained person has the right to immediately contact with the consular authorities of his/her country. To exercise these rights, it must be provided to the detained person the use of the telephone of the service responsible for the detention, when there is no payphone.

In addition, after the arrest, the detained person must be assisted, as far as possible, to resolve pressing personal problems, particularly those related to the care and custody of minors or elderly in his/her dependence, left unattended as a result of the arrest. This assistance is to be provided in due time, by the service that made the arrest, without prejudice to the obligation to provide, with the competent authorities, the necessary follow-up care (Article 6 of the Regulation).

Every person arrested must be immediately informed of the death or serious illness of a close relative.

As regards the detention facilities run by the National Republican Guard (*Guarda Nacional Republicana* – GNR) and the Public Security Police (PSP), the Regulation of the Material Conditions of Detention in Police Facilities (Order No. 5863/2015, of 2 June 2015) applies. The Regulation sets the main general conditions and the conditions of detention of these police facilities. Moreover, it determines that the General Inspectorate for Internal Affairs (*Inspeção-Geral da Administração Interna* – IGAI), an inspection body with administrative and technical autonomy, systematically conducts unannounced visits to these detention facilities in order to assess compliance with legal standards. In addition, the Regulation stipulates that the detainee has the right to contact with a member of his family or of his personal relations and the right to have access to a lawyer and to medical care. According to its Article 24, reporting is mandatory for any police officer that witnesses an act of violence or inhuman or degrading behaviour of a detainee.

Portugal is party to the Vienna Convention on Consular Relations, concluded at Vienna on 24 April, 1963, which provides that the communications of the arrests shall be made to the consular offices.

Article 11

Under the CPR every citizen enjoys the rights and is subject to the duties enshrined in the Constitution (Article 12 (1)). The principle of equality states that all citizens have the same social dignity and are equal before the law and no one may be privileged, favored, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation (Article 13).

Foreigners and stateless people who reside or find themselves in Portugal enjoy the same rights and are subject to the same duties as Portuguese citizens. The

restrictions to their rights only concern political rights, the exercise of public functions that are not predominantly technical in nature and rights and duties that the Constitution and the law reserve exclusively to Portuguese citizens (Article 15 (1) and (2)).

Article 20 (1) of the CPR enshrines the right to effective judicial protection for everyone even for those who lack sufficient financial resources. Subject to the terms of the law, everyone ha**s** the right to legal information and advice, to legal counsel and to be accompanied by a lawyer before any authority (Article 20 (2)). Under Article 208 of the CPR the law shall ensure that lawyers enjoy the immunities needed to exercise their mandates and shall regulate legal representation as an essential element to the administration of justice.

Article 32 of the CPR lays down the minimal safeguards applicable in criminal proceedings, specifically providing for safeguards of the defense such as the right to appeal, the right to choose counsel and to be assisted by a lawyer in relation to every procedural act. The cases and stages of procedure in which the assistance of a lawyer is mandatory are defined by law. Under this provision, every accused person is presumed innocent until the sentence has acquired *res judicata status* and must be tried as quickly as it is compatible with the safeguards of the defense.

Pursuant to Article 32 (5) of Law No. 144/99, of 31 August, when extradition of a person is denied on the grounds of Article 6 (1) (d) (e) or (f) and of Article 31 (1), criminal proceedings are initiated regarding the facts underlying the request, and the necessary elements shall be asked to the requesting State (*aut dedere aut judicare* principle). The judge may impose precautionary measures as appropriate. The case is then submitted to the national judicial authorities to initiate the competent criminal proceedings. This follows from Article 5 (1) of Law No. 31/2004, of 22 July, which states that its provisions are also applicable to acts committed outside the national territory, provided that the agent is found in Portugal and cannot be extradited or if it is decided that he/she shall not be surrendered to the International Criminal Court.

Article 22 of the CCP sets out the criteria for the definition of domestic jurisdiction for offences committed abroad. As a general rule jurisdiction lays with the court of the area where the defendant has been found or resides.

The rights of the defendant provided for under Article 61 of the CCP apply regardless of the national status, and include, *inter alia*, the right to attend procedural acts, the right to be heard by the court or by the examining judge whenever a decision which may affect the defendant is at stake, the right to be informed on charges brought against him/her prior to making any statements before an authority, the right to refuse to answer any questions addressed by an authority on the charges brought against him/her, the right to choose a lawyer or ask the court to appoint a defence lawyer, the right to be assisted by a defence lawyer in all procedural acts and to communicate in private with one's counsel, the right to present evidence during the investigation phase and request any necessary investigatory measures to be undertaken, the right to be informed on ones' rights

by the judicial authority or criminal police body or the right to appeal, under the law, against any decisions to his/her detriment.

The competent authority for the investigation is the Public Prosecution Service who, under the CCP, is the holder of the prosecution. The Public Prosecutor in charge with the file may delegate the investigation of the crimes of enforced disappearances in the PJ, the body with exclusive competence for the investigation of serious crimes. Other police forces and services that become aware of a forced disappearance report the facts to the Public Prosecutor and the PJ in order for investigations to be initiated.

Article 12

Within the CCP, any person who has notice of a crime may report it to the Public Prosecutor, to another judicial authority or to the criminal police bodies, unless the applicable procedure depends on a complaint or private prosecution (usually limited to less serious crimes or crimes where the interests as stake are mainly private). The report of a crime may be given orally or in writing and is not subject to special formalities (Article 246 CCP).

The crime of enforced disappearance is a public crime, meaning that a formal complaint is not required in order for criminal proceedings to be initiated and that investigation and prosecution may be initiated *ex-officio* on the basis of information made available to or acquired by the Public Prosecution Service. If there are substantial grounds for believing that a person has been the victim of an enforced disappearance, the national authorities - the prosecution and law enforcement authorities, i.e., the PJ – shall undertake the necessary investigation of the facts.

According to the principle of legality, upon receiving a notice of the commission of a crime or of an alleged crime, the Public Prosecutor shall initiate the criminal proceedings with a view to confirm the commission of the crime and prosecute the perpetrators.

As far as investigation resources and right of access to places of detention in order to carry out investigations are concerned, Articles 174 and 251 of the CCP, concerning the carrying out of inspections and searches by the criminal investigation authorities should be mentioned.

«Article 174
Requirements

1 – An inspection of a person is ordered when there are signs that someone hides in his/her person any objects connected with a crime or which may be used as evidence.

2 - A search is ordered when there are signs that the objects mentioned in the previous number, or that the defendant or another person that should be arrested, are in a private place or interdicted to the public.

3 – Inspections and searches are authorised or ordered by decision of the competent judicial authority, who shall, whenever possible, supervise the action.
4 – The decision mentioned in the previous number has a maximum term of validity of 30 days, under penalty of nullity.
5 – Inspections and searches made by criminal police bodies in the following cases are safeguarded from the requirements set out in no. 3:
a) In the case of terrorism, violent criminality or highly organised, when there are grounded signs of the imminent commission of a crime which seriously endangers the life or integrity of any person;
b) In the case where the aimed persons consent insofar as the consent given is, by any form, documented; or
c) In the case of arrest in the act for a crime to which corresponds sentence of imprisonment.
6 – In the cases foreseen in paragraph a) of the previous number, the execution of the action is, under penalty of nullity, immediately communicated to the investigating judge and assessed by him in order for its validation."

«Article 251
Inspections and searches

1 – Besides the cases foreseen in Article 174 (5), the criminal police bodies may proceed, without prior authorisation from the judicial authority:
a) To the inspection of suspects in the event of imminent escape or of arrest and to searches in the place where they are found, with the exception of a house search, whenever they have grounded reasons to believe that objects related with a crime, capable of being used as evidence are hidden therein and that otherwise might be lost;
b) To the inspection of persons that have to participate or wish to attend to any procedural act or that, in the capacity of suspects, must be taken to a police station, whenever there are reasons to believe that they hide weapons or other objects with which they may commit acts of violence.
2 – Article 174 (6) is correspondently applicable.»

Legal parties to the proceedings are safeguarded against ill-treatment or intimidation as provided for in the Convention.

Law No. 93/99, of 14 July, governs the enforcement of measures on the protection of witnesses in criminal proceedings where their lives, physical or mental integrity, freedom or property of a considerably high value are in danger due to their contribution to the collection of evidence of the facts which are subject to investigation.

The protection measures may be extended to the witnesses' relatives and other people close to them.

Under Law No. 93/99, "witness" shall be understood as anyone who, regardless of its procedural law status, has information or knowledge necessary to the disclosure, perception or appreciation of facts constituting the object of the proceedings, the

use of which results in a danger to themselves or to others. The protection measures for witnesses may therefore encompass either the plaintiff or the victim of the crime himself/herself.

More recently, the new statute of victim (Law No. 130/2015, of 4 September) recognizes the right of all victims of crime to an adequate level of protection (Article 15), also extensive, where appropriate, to the victims' relatives on what concerns their security and protection of private life, whenever there are serious threats of reprisal, revictimization or strong indications that the right to privacy of the victim may be disturbed. Adaptation of police services to the special needs of victim has been enhanced in recent years with the creation of special rooms for attending victims has the targeted training of police staff. So far, the Public Security Police has trained 489 officers on victim support, including revictimization.

It should further be noted that, in Portugal, the victims or the plaintiffs have the power to react against the closure of the proceedings by the Public Prosecutor in charge, requesting the opening of the preliminary judicial stage (*instrução)* under Article 286 of the CCP. The purpose of this additional investigatory stage is to have the examining judge (*Juiz de Instrução*) confirm the decision to prosecute or to discontinue the proceedings with a view to establishing whether the case is to be tried.

Article 13

General principles regarding extradition in Portugal are laid down in Article 33 of the Constitution. As a rule, extradition of Portuguese nationals will only be admitted on the basis of reciprocal extradition arrangements agreed upon in international conventions, on cases concerning terrorism and organized crime and provided that the legal system of the requesting state gives sufficient guarantees of due process and provided that the requesting State gives assurances that it will return the extradited person to the Portuguese authorities in order for the person to have its sentence served in Portugal.

Furthermore, extradition is not admissible on political grounds or for crimes punishable with death penalty or with an otherwise irreversible violation of physical integrity and will not be granted, in principle, for crimes punishable with life sentence or with a penalty of indefinite duration, unless the requesting State is a Party to an international convention which is also binding for Portugal an gives adequate guarantees of the non-application of these penalties. These provisions do not prejudice the application of the norms governing judicial cooperation in the criminal field applicable within the scope of the European Union.

The admissibility of extradition when Portugal is the requested State (passive extradition) is regulated by international treaties and conventions and, in their absence or insufficiency, by the law on international judicial cooperation in criminal matters (Article 3 (1) of Law No. 144/99 of 31 August and Article 229 of the CCP). The application of Portuguese domestic law is therefore subsidiary.

Bilateral agreements concluded by Portugal on extradition do not contain any crime catalogues. The scope of application is defined according to the seriousness of the crime and of the applicable penalty punishment, usually for crimes punishable with sentences longer than one year in prison. Thus, all the bilateral agreements concluded by Portugal on extradition allow for the extradition for the crime of enforced disappearance.

It should also be noted that, pursuant to Article 7 (2) of Law No. 144/99, of 31 August, the following crimes are not considered of a political nature:

- Genocide, crimes against humanity, war crimes and serious offences under the Geneva Conventions of 1949;

- The crimes referred to in Article 1 of the European Convention on the Suppression of Terrorism, opened for signature on 27 January 1977;

- The acts referred to in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly on 17 December, 1984;

- Any other crimes to which the political nature has been withdrawn by treaty, convention or international agreement to which Portugal is a party.

Law No. 144/99 establishes a set of cases in which extradition is excluded, especially where there are reasonable grounds to believe that cooperation is requested for the purpose of prosecuting or punishing a person on account of his/her race, religion, sex, nationality, language, political or ideological beliefs or membership of a particular social group (Articles 6, 7, 8 and 32).

Article 14

Portugal is able to engage in the provision of mutual legal assistance, whether in the context of various bilateral agreements with other States or in the framework of multilateral instruments to which it is a Party.

In the absence of international agreements, the Portuguese law (Law No. 144/99, of 31 August) allows for various forms of international cooperation including extradition and mutual legal assistance in criminal matters. In any case, the Portuguese authorities may always provide legal assistance on a reciprocal basis. However, even in the absence of reciprocity, it is possible to satisfy a request for cooperation as long as such cooperation proves advisable on account of the nature of the fact or of the need to combat certain forms of serious crime, if it can contribute to improve the situation of the accused or his/her social reintegration or if it is useful to clarify the facts attributed to a Portuguese citizen.

Under Article 145 of that Law, the mutual legal assistance includes the provision of information, procedural acts and other public acts admitted by Portuguese law when found necessary to carry out the purposes of the case, as well as the

actions necessary for the seizure or recovery of instruments, objects or products of the offence.

The assistance comprises, inter alia, the notification of acts and the delivery of documents, obtaining evidence, searches, seizures, apprehensions, expertise, notification and hearing of suspects, defendants, witnesses or experts, the transit of persons and information about the Portuguese or foreign law and those relating to the criminal history of suspects, accused and convicted.

So far, Portuguese authorities didn't receive any requests for legal assistance relating to enforced disappearances.

Article 15

As already mentioned in connection with the previous provision, Article 145 of Law No. 144/99, of 31 August, gives some examples of what mutual legal assistance may cover. Thus, it can be applied also to the request for assistance to victims of enforced disappearance and to the request for search, location and release of disappeared persons and, in case of death, their exhumation, identification and return of remains.

Article 16

Portuguese law explicitly prohibits the expulsion, return, surrender or extradition of persons to a State where there are grounds to believe that they may be subject to any kind or persecution, including enforced disappearance. As referred to above, Article 33 of the CPR does not allow for extradition or surrender for offences punishable by death or other irreversible violation of physical integrity.

Law No. 144/99, of 31 August, further specifies that the cooperation request shall be refused, among other cases, (i) when it does not meet the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November, 1950, or other relevant international instruments in this matter, ratified by Portugal, (ii) if there are reasonable grounds to believe that cooperation is requested for the purpose of prosecuting or punishing a person on account of his/her race, religion, sex, nationality, language, of his/her political or ideological beliefs or his/her membership of a particular social group, (iii) when the fact concerned by the request is punishable by death or another sentence that may result in an irreversible damage to the integrity of the person (iv) if the offence is punishable with a lifelong sentence or with an indefinite duration of the imprisonment or safety measure.

In addition to the general requirements of the requests for cooperation provided for in Article 23 of Law No. 144/99, the extradition request must, in accordance with Article 44, demonstrate that the person who is to be extradited is subject to the criminal jurisdiction of the requesting State; contain proof in the case of a crime committed in a third State, that this State does not claim the extradited person because of this crime; contain a formal guarantee that the requested person will not be extradited to a third State or held in order to be prosecuted, to serve a sentence

or for another purpose, for facts other than those grounding the request and that are prior or contemporaneous to it.

The extradition process is an urgent procedure and includes an administrative and a judicial stage. In the administrative stage, the Minister of Justice, in view of the existing guarantees, decides if the request may proceed or whether it should be rejected outright by political reasons or opportunity or convenience. The judicial phase is within the exclusive jurisdiction of the second instance court (*Tribunal da Relação*) and is intended to decide, after the hearing of the person who is to be extradited, on granting the extradition. The decision to extradite is always subject to an appeal before the national courts by the Public Prosecutor or by the person who is to be extradited and has suspensive effect.

As for the departure and expulsion of foreigners, the legal regime of foreigners, regulated by Law No. 23/2007, of 4 July, as amended by Law No. 29/2013, of August 9, Law No. 56/2015 of 23 June and law No. 63/2015 of 30 June, forbids the coercive removal and expulsion to any country where the foreign citizen might be persecuted for reasons that justify the granting of asylum or subjected to torture or inhuman or degrading treatment in the sense of Article 3 of the European Convention on Human Rights (Article 143 of Law No. 23/2007).

The decision of coercive expulsion is taken by the National Director of the Immigrants and Borders Service (SEF) with the possibility of delegation (Article 140 of Law No. 23/2007). In contrast, the autonomous measure of judicial expulsion or the additional penalty of expulsion following conviction for a crime shall be determined by the competent judicial authority.

Article 17

The CPR enshrines the right to liberty and security of person as a paramount principle and the exceptions to individual liberty are strictly specified in the law (Article 2, above).

Secret or *incommunicado* detentions are not admissible under the Portuguese law and all detentions carried out by criminal police bodies must be communicated to the Public Prosecution Service in the shortest delay possible and duly registered and made available for consultation of inspective bodies (General Inspectorate for Internal Affairs and General Inspectorate for Justice Services and internal inspection departments of the police bodies), which may carry out unannounced visits. In the case where the detained person is a foreigner, the Immigrants and Borders Service (SEF) is informed. Moreover, in cases where the detainee is a minor or is accompanied by a minor, the minor will be immediately assisted.

Detention facilities also are inspected by other independent bodies, such as the Ombudsman and the Committee on the Prevention of Torture of the Council of Europe, even without prior notice.

The CCP foresees three forms of lawful deprivation of liberty: detention, pre-trial detention and imprisonment.

The measure of detention temporarily restricts the freedom of the detainee in order for him/her to be brought before a judge in the shortest delay possible and, in any case, never exceeding 48 hours. The detention will be unlawful when exceeding these limits.

The arrest may occur in *flagrante delicto*, made by any judicial authority or criminal police body, as provided for in Article 255 (1) and Article 256 of the CCP.

The arrest outside of *flagrante delicto*, in accordance with Article 257 of the same Code, is carried out by a judge order or by the Public Prosecution Service whenever the application of probation is admissible to the crime committed.

An arrest outside of *flagrante delicto* may only be executed by the PJ under the cumulative conditions laid down in Article 257 (2) of the CCP (that is, when it concerns a case where pre-trial detention is admissible; there is a justified fear of escape; it is not possible, given the urgency situation and danger incurred in the delay, to wait for the intervention of the judicial authority).

The detention may lead a defendant to remand in custody which is the most severe coercive measure in accordance with Article 28 of the CPR.

Whereas detention is intended to ensure the presence of the detainee, who may be just an intervening party or a suspect, pre-trial detention is only applicable to the defendant upon the verification of rigorous preconditions such as fear of escape, danger of disruption of the investigation or danger of continuation of criminal activity (Article 204 of the CCP) and it may have a maximum duration of four years (Article 215 of the CCP).

Pre-trial detention shall always be applied by the examining judge on the preliminary judicial stage or during the inquiry, or by the trial judge at any stage, even at the appeal stage.

The right of *habeas corpus*, provided as a guarantee against the unlawfulness of the detention, is recognised in Article 31 of the CPR and regulated in Articles 220 and 222 of the CCP. The detainee himself/herself or any citizen in possession of his political rights may bring an *habeas corpus* claim to the competent court, who must decide within a time limit of eight days following the application. This hearing is subject to the adversarial principle.

Imprisonment is a lawful form of deprivation of liberty when applied as a penalty subsequent to a conviction. The ultimate purpose of criminal penalties is, according to Article 40 (1) of the CC the protection of legal interests and the restoration of the confidence of society in the legal system (positive general prevention), and the reintegration of the perpetrator in society (positive special prevention). Imprisonment can only be applied by the trial judge, who, within the minimum and maximum thresholds the penalty, defines a concrete penalty proportionate to the guilt of the perpetrator and to the seriousness of the offence.

The defendant may be assisted by a lawyer in all procedural acts and has the right to communicate in private with his/her designated lawyer when under arrest (Article 61 (1) (f) of the CCP).

The presence of a lawyer is mandatory in some situations, particularly in interrogations of detained defendants or defendants in pre-trial detention, and in

interrogations carried out by a judicial authority in the preliminary judicial stage and at the trial, among others (Article 64 of the CCP).

The Code for the Enforcement of Sentences and Measures Involving Deprivation of Liberty establishes the general principles for the enforcement and the rights and duties of the detainees, particularly with regard to contacts with the outside, under the provisions of Article 58 *et seq*.

Persons deprived of liberty have the right to communicate and get visits from family members, spouses and other persons with whom they entertain significant personal relationships. Moreover, they may also get visits from lawyers, diplomatic and consular authorities or other visits that may be necessary in order to deal with professional, economic or otherwise urgent matters. The right to visit is guided towards the promotion of family, affective and professional ties between those deprived of liberty and the community.

Article 3 of the Code for the Enforcement of Sentences and Measures Involving Deprivation of Liberty establishes the guiding principles of the enforcement of sentences and measures involving the deprivation of liberty, ensuring respect for human dignity, constitutional rights and guarantees and other international law instruments.

Access to places of deprivation of liberty is granted to several competent and legally authorized authorities and institutions. Authorization for international monitoring and inspections carried by national preventive mechanisms under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or other regional human rights instruments, national human rights institutions or non-governmental organizations is given when requested. Since his designation as national preventive mechanism under the Optional Protocol, in 2014, the Portuguese Ombudsman has conducted almost 70 visits to places of deprivation of liberty, including prisons, education centres for juveniles or psychiatric hospitals, and has issued a number of recommendations for competent authorities with a view to improving national compliance with the standards of the Convention.

Portuguese authorities strive to promote a good relationship between inmates and prison staff. Compliance with human rights standards is monitored internally, by inspection services, and externally, by independent authorities such as the Ombudsman and other monitoring mechanisms such as that established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

The Office of Audit and Inspection (SAI) of the Directorate General for ~~of~~ Rehabilitation and Prison Services (DGRSP), which is coordinated by a Public Prosecutor, exercises its responsibilities *ex officio*, but also based on prisoners and their families' complaints or from news in the media. These complaints/news are always duly investigated through the opening of an inquiry.

The activity of the DGRSP is regularly scrutinised, since the prisons may at any time be visited by holders of sovereign bodies (including judges), as well as by representatives of international organizations with responsibilities in matters pertaining to the promotion and protection of the rights of prisoners, as stipulated

by the Code for the Enforcement of Sentences and Measures Involving Deprivation of Liberty. Prisons also respect the right of the prisoners to correspond freely with lawyers, notaries, solicitors , diplomatic and consular bodies, and sovereign bodies, Ombudsman, General Inspectorate for Justice Services (IGSJ) and President of the Portuguese Bar Association, without any control of the content of the communications.

Thus, prison services effectively fulfill their legal obligation to ensure freedom of communication between detainees or prisoners and the entities entrusted with the protection of the rights of prisoners.

It should be added that all actions of the prison services are guided by a principle of proportionality which limits the adoption of measures to those strictly necessary in order to ensure order and security in the prison environment. The Code for the Enforcement of Sentences and Measures Involving Deprivation of Liberty is fully complied with regarding disciplinary matters. Coercive means and measures are used in exceptional cases and only when this is absolutely necessary to restore safety and order in the prison. It is important to highlight that they are not used on a regular basis and that there are rules governing the use of such means. The compliance with these rules is controlled by the internal units, but also by the IGSJ.

As for information on the charges and to the right to appeal, the entrance, maintenance and release of prisoners in a security system only happens when any of the situations expressly provided by law occurs, that is, if there is any circumstance that poses a serious threat to the maintenance of order and security in the prison context that cannot be controlled in any other way other than the security regime, i.e., confinement or confinement in a security cell (solitary).

The decisions of the Director General of DGRSP regarding these measures are reported to the prisoners and to the Public Prosecutor at the Court for the Enforcement of Sentences for legality check. The fulfillment of the disciplinary measures is notified to the prisoners, in accordance with the Code for the Enforcement of Sentences and Measures Involving Deprivation of Liberty.

In addition, according to Article 3 of the Regulation of the Conditions of Detention in the Facilities at the Criminal Police and in Places of Detention in the Courts and in Services of the Public Prosecution, all persons deprived of liberty shall be informed promptly and in an understandable manner of the reasons for their detention and of their rights, and may exercise them from the moment of deprivation.

According to Article 10 of the Regulation (individual record of detention), for each detainee a record is made which must include:

a) Identification of the detainee and of the respective case;

b) Identification of the officers who took part in detention;

c) Day, time and place of detention;

d) Grounds for the detention;

e) Any injuries presented upon arrival;

f) Any incidents occurred during the detention;

g) Time of information of rights;

h) Any contacts with family, people of trust, lawyer, counsel, embassy or consulate;

i) Date and time of presentation to the judicial authority;

j) Date and time of the end of detention.

Articles 16 *et seq.* of Code for the Enforcement of Sentences and Measures Involving Deprivation of Liberty regulate the entry, affectation, the prison treatment program and release of the detainee.

It is worth to note the provisions of Article 16, which states that the entry of the detainee shall take place without the presence of other inmates and shall respect his/her privacy. The detainee is immediately informed of his/her rights and duties, explained and translated, if necessary, and the right to contact family members, people of trust and lawyer is guaranteed. The foreign detainee or stateless person is also guaranteed the right to contact the respective diplomatic or consular authority or another representative of his/her interest. The detainee is given a document stating his/her rights and duties.

Under Article 17, the admission of a detainee in a prison can only take place in the following cases:

a) Warrant of the court ordering the enforcement of the sentence or detention order;

b) Arrest warrant;

c) Capture, in case of evasion or unauthorized absence;

d) Voluntary presentation, which is subject to confirmation from the competent court;

e) Decision of the competent authority within the international judicial cooperation in criminal matters;

f) Transfer;

g) In transit between prisons.

Finally, it is also important to note that, under Article 23, the detainee is released by order of the court. In case of emergency, the release may be ordered by any dully authenticated means of communication and the warrant may be sent afterwards.

When the release of the detainee can create danger to the victim, the court shall inform him/her of the release date, and also reporting it to the police authority of the victim's area of residence.

Article 18

Detainees are recognised a wide set of rights, as follows from Article 27 of the CPR. Firstly and foremost, they own the right to be informed immediately and in a comprehensible manner of the reasons for the detention and of their rights (Article 27 (4)).

The detainee must be brought before a judge within a maximum of 48 hours, in order to be released or face the imposition of a coercive measure. The judge informs the detainee on the causes of the arrest, giving him/her the opportunity to comment on them, as follows from Article 28 of the CPR. This constitutional provision is reflected in the CCP, namely in Articles 140 *et seq*. The detainee has the right to choose or be appointed a legal representative before any authority, enjoying all the immunities required for the exercise of his/her mandate.

In addition, an most importantly, the detained suspect has the right to be granted the procedural status of defendant, pursuant to Article 57 of the CCP, to immediately contact a lawyer to communicate with him/her orally or in writing at any time of day or night, to inform an immediate family member or someone of trust of his situation, the right to contact immediately with the consular authorities of his/her country of residence in case he is a foreigner, the right to be helped in solving urgent personal problems, particularly those related to and care of children or elderly person depending on him and left unattended as a result of the arrest, and to be informed immediately of the death or serious illness of a close family member.

Under Article 90 of the CCP any person who demonstrates a legitimate interest thereof may request to be allowed the consultation of a record which is not under investigation secrecy and to be provided, at his own expenses, with a copy or extract or certificate of record or part thereof.

Additionally, as stated in Article 194 (10) of the same Code, in the event of provisional custody, the order is immediately communicated to the defence lawyer and, whenever the defendant so wishes, to a relative or person of his/her trust.

Article 19

Regarding data protection, Article 35 of the CPR provides, subject to the terms laid down by law, the right of access by every citizen to all personal data which concerns him, the right to the rectification and updating of those data, as well as the right to be informed of the purpose for which they are intended, as laid down by law. The concept of personal data, the terms and conditions applicable to its automated treatment and its linkage, transmission and use are defined by law. In order to ensure the protection of personal data, the establishment of an independent administrative entity is provided.

The Constitution also sets rules regarding the use of information technologies, preventing its use to process data concerning philosophical or political convictions, party or trade union affiliations, religious belief, private life or ethnic origins, except with the express consent of the data subject, with a legally express authorization and with guarantees of non-discrimination, or for the purpose of processing statistical data that are not individually identifiable.

Third-party access to personal data is prohibited, except in the cases provided for by law.

The free access to public-use information technology networks is guaranteed for everyone and the law shall define the regime governing cross-border data flows and the appropriate means for protecting both personal data and other data whose safeguarding is justified in the national interest.

Finally, the CPR affords the same level of protection to personal data contained in manual files.

According to national law, personal information, including medical and genetic data collected and or transmitted as part of a search for a missing person cannot be used or made available for other purposes, and is protected by the Law for the Protection of Data Protection (Law No. 67/98, of 26 October).

Law No. 5/2008, of 12 February, which establishes the database of DNA profiles for civil and criminal identification purposes, strikes a balance between the protection of individual rights and the effectiveness of the criminal investigations by setting the principles and rules that govern the collection, storage and use of DNA profiles and defining the operating rules of the database in Articles 1 and 4.

Pursuant to Article 3 (1) the database of DNA profile contains the profile of citizens, foreigners or stateless persons who are temporarily staying or that reside in Portugal.

Article 19 of this Law refers to the persons to whom the DNA profiles and the corresponding data are reported for prosecution purposes, in accordance with the applicable legal provisions.

Article 22 states that, as a rule, the access to data from this database is prohibited to a third party. However, upon written consent of the data subject, the descendants, ascendants, spouse or anyone living within a de facto union with the data subject may access the data as well as the presumptive heirs, after his/her death and upon authorization of the supervisory board.

Considering that the crossing of DNA profiles with personal identification data is a powerful tool in combating crime and an invaluable aid in civil identification which determines, nevertheless, special care regarding the safety and protection of privacy and fundamental rights of citizens, an independent supervisory body was created, the Supervisory Board of the DNA Profiles Database, with the purpose of ensuring that the processing of profiles and access to information are in conformity with fundamental rights, as provided for in Article 2 of Law No. 5/2008.

Pursuant to Article 8 (1), the collection of crime samples is carried out at the request of the defendant or ordered, ex officio or upon request, by the judge, under Article 172 of the CCP, and in accordance with paragraph 5, the collection «implies the delivery, wherever possible, in the very act of a document containing the description of the case and the rights and obligations arising from the application of this law and, *mutatis mutandis*, of Law No. 67/98, of 26 October (Law for the Protection of Personal Data)».

Upon collection of the data, the data subject has the right to be informed in accordance with Article 9 of Law No. 5/2008 and the right to information set out in Law No. 67/98.

The missing persons' database does not include genetic data or medical information.

Article 20

Under Article 20 (3) of the CPR "The law shall define and ensure adequate protection of the secrecy of legal proceedings". On the other hand, the CPR ensures the freedom of expression and information and the freedom of the press and the media (Articles 37 and 38). In order to balance these conflicting rights, it is up to the legislator to find the best solution on how to ensure the exercise of both rights.

According to the rules of criminal procedure (Article 86 (1) (2) and (3) of the CCP), criminal proceedings are public under penalty of nullity except in cases specifically provided for by law. However, upon request of the defendant, of the party assisting the public prosecutor or of the victim, after hearing the Public Prosecutor, the examining judge may determine that the proceedings are covered by the principle of confidentiality of judicial investigations during inquiry, where he believes that disclosure would affect the rights of those subjects or participants in proceedings.

Subject to validation of the examining judge within a maximum period of 72 hours, where the Public Prosecutor may determine that during the inquiry the proceedings shall be bound by the principle of confidentiality of judicial investigations, for the sake of the investigation or of the rights of parties.

Article 21

Under Article 261 of the CCP any entity that has ordered the arrest or to whom the arrested person is submitted to, must immediately release the person arrested as soon as it is clear that the arrest has been made by error of the person or outside the cases in which it was legally admissible or that the measure became unnecessary.

If the entity is not a judicial authority, a brief report of the event is drawn up and immediately transmitted to the Public Prosecution Service; in case of a judicial authority, the release is preceded by a judicial order. Upon release, the detainee always signs the criminal police body.

Upon release of the detainee, the criminal police body responsible for the detention registers the act of release, which is also signed by the released person.

Article 22

Article 369 of the CC criminalizes denial of justice and maladministration by punishing as a crime the officer who, within a procedural inquiry or judicial proceeding, administrative penalty or disciplinary proceeding, knowingly and unlawfully, promotes or fails to promote, leads or fails to lead, conducts or fails to conduct, decides or fails to decide or commits an act in the performance of the powers arising from his office. This provision is also applicable to the conducts established in Article 22 of the Convention.

In addition to being criminally liable, the officer is also subject to disciplinary measures.

In the case of judges and public prosecutors the measures provided for in the respective Statutes - Statute of the Public Prosecution Service and Statute of Judicial Magistrates – are applicable and, in the case of public officials the disciplinary regime set out by Law No. 35/2014, of 20 June, is applicable.

In addition, and as referred to above (please see answer to Article 17) all police and security forces and services (PJ , GNR, PSP, SEF, DGRSP) have internal and external supervision mechanisms aimed at ensuring compliance with the law and preventing gross human rights violations such as illegal deprivation of liberty (inspection services, unannounced visits, command chains overseeing compliance of procedures by their personnel, complaints books accessible in all detention facilities at the disposal of citizens and their authorized representatives, electronic records).

Article 23

Human Rights have been included in the training programmes of prison guards.

According to the provisions of Article 2 of Decree-Law No. 215/2012, of 28 September, the General Directorate of Rehabilitation and Prison Services (DGRSP) «has as its mission the development of crime prevention policies, the enforcement of sentences and measures and social reintegration and articulated and complementary management of educational and tutelary prison systems, ensuring conditions consistent with human dignity and contributing to the defence of order and social peace».

In the last training course for prison guards, a total period of time of 10H30 was dedicated to human rights issues. There were also training sessions given by members of Amnesty International in the field of Human Rights, and the relevant legal instruments, both national and international were addressed in detail. Within the COMJIB (Conference of the Ministers of Justice of Ibero-American Countries), Portugal is involved in a Working Group aimed at building an e-learning training program in human rights, in order to improve human rights training for prison staff in different countries.

The School of Criminal Police (*Escola de Polícia Judiciária*), provides training on human rights standards in the context of criminal investigations both in its initial and lifelong training courses.

Similarly, GNR and PSP have extensive training *curricula* in the area of human rights. In all subunits of GNR there is a continuous training program providing for weekly updates on the Portuguese legal system and the procedures applicable to the activities of the police. In the PSP, the theoretical training in human rights includes 1000 hours for officers, 300 hours for agents and an additional package of 300 hours for those acceding to a promotion course. Technical training includes 80 hours for agents and an additional package of 60 hours for those acceding to a promotion course. In addition, specific training provided under the "Proximity Policing Intervention" techniques is mainly aimed at ensuring that PSP officers always respect human rights in their interactions with suspects and victims.

The Centre for Judicial Studies (*Centro de Estudos Judiciários*), responsible for the initial and ongoing training of judges and public prosecutors, addresses various topics of fundamental rights and constitutional law in its courses and workshops.

Officers of the Immigrants and Borders Service (SEF) are also provided both with initial training and lifelong training on human rights issues.

Article 24

Article 67-A of the CCP includes several qualifications of "victim". Thus, "victim" is a person who, as a result of an act or omission committed under the criminal laws into force, suffered an emotional, moral or patrimonial damage. The "victim" also encompasses the close relatives and people who have suffered some kind of damage by intervening in assisting victims or preventing the victimization.

This provision also includes the notion of the especially vulnerable victim. This vulnerability is assessed on a case-by-case basis and special attention must be given to victims who have suffered considerable harm due to the severity of the crime, including victims of crimes motivated by discrimination based on special features or those that depend on the perpetrator that renders them particularly vulnerable (Articles 20, 21 and 22 of the Statute of the Victim, approved by Law No. 130/2015, of 4 September).

As follows from Article 8 of this law, the State must ensure that victims are provided with adequate information on the protection of their rights, in particular in accordance with Articles 11 and 12 of the Statute of the Victim.

Under these provisions, a crime victim is entitled to receive information about his rights or about the state of the judicial proceedings, except in situations covered by judicial secrecy, and the main decisions taken therein, as well as to receive information in a simple and clear way. When vulnerable and in need of support, the victim may be accompanied by a family member, a friend, a lawyer or a victim support technician to assist the victim in the understanding the information provided to her/him.

As previously mentioned, the Portuguese legal system enshrines the right to effective judicial protection for everyone, even for those who lack sufficient financial resources. Subject to the terms of Law No. 34/2004, of 29 July, under

Article 13 of the Statute of the Victim, the victim has access to legal assistance and, if necessary, to legal aid.

Also with regard to the victim's information, in the event of death, Decree-Law No. 411/98, of 30 December, establishes the legal regime of the removal, transportation, burial, exhumation, reburial and cremation of corpses and determines that the transportation to a foreign country of a corpse whose death has occurred in Portugal and the transport to a Portugal of a corpse whose death has been verified in a foreign country it shall be applied the provisions of the International Arrangements concerning the conveyance of corpses signed in Berlin in 10 February 1937[3] and of the European Agreement on the Transfer of Corpses of 26 October 1973[4], both ratified by Portugal.

Law No. 5/2008, of 12 February, established the creation of the DNA Profiles Database in Portugal for civil and criminal identification purposes, which is dependent on the National Institute for Legal Medicine and Forensic Sciences (INMLCF, IP) under the remit of the Ministry of Justice.

This database includes files with information from volunteer samples, files with reference samples of missing persons, samples from people convicted of a crime with an effective sentence of not less than three years in prison, by means of explicit consent of the sample holder and by order of the judge to the collection of the sample (Article 8 (1) and (2)) considering that this is the only way not to violate the right to informational self-determination of the individual, contained in Article 35 of the CPR.

Regarding victims and the legal regime in force to guarantee their protection, the deprivation of liberty contrary to the provisions of the Constitution or the law entails for the State the obligation to compensate the aggrieved person in accordance with the law (Article 27 (5)).

In Portugal, as a general rule, any claim for compensation shall be submitted on the criminal proceedings. Article 71 of the CCP provides that a claim for damages based on the commission of a crime is submitted in the respective criminal proceeding and may only be brought separately, before the civil court, in the cases foreseen in the law and set forth in Article 72 of the same Code.

Under Article 129 of the CC the compensation for losses and damages arising from crime is governed by civil law.

The principles dressed in Articles 483 *et seq.* of the Portuguese Civil Code (hereinafter the CivC) are applicable to the present situation. Thus, under Article 483 of the CivC «whoever, whether by willful misconduct or by negligence unlawfully infringes the rights of another person or any legal provision intended to safeguard the interests of others must compensate the injured party for damages arising from such violation».

The general rule is that the party obliged to compensate for damages must restore the situation to what would have existed if the event that led to the

[3] Approved by Decree-Law No. 417/70 of 1 September.
[4] Approved by Decree-Law No.31/79 of 16 April.

damage had not occurred (Article 562 of the CivC). Whenever this is not possible, the indemnity should be calculated in terms of monetary value (Cf. Article 566 of the CivC). The compensation should include the loss suffered directly as a result of the event that led to the damages and also any profits that the injured party failed to obtain as a consequence of that event (Article 564 of the CivC).

With regard to procedures to recognize the legal status of the disappeared person, the CivC has divided the legal regime pertaining to missing persons into three different stages: provisional curatorship (Articles 89 to 98), definitive curatorship (Articles 99 to 113) and presumed death (Articles 114 to 121).

With reference to provisional curatorship, if the missing person did not have an appointed legal representative and there is a need to administrate his assets, the court will appoint the spouse, his presumed heirs or those who have an interest in the preservation of his/her assets as a provisional curator. In order to strike a balance between the interests of the missing person and those who have a legitimate interest, particularly as regards property rights and inheritance rights, the provision of security by the curator is required who also has to submit annually a management report.

After two years without any news, if the missing person did not have an appointed legal representative, or otherwise after a period of five years, the Public Prosecution, the spouse, the missing person's heirs or those who can claim any right over his assets upon his death, may lodge a request to issue the definitive curatorship. The court appoints the heirs and those to whom the missing person's assets have been delivered as definitive curators and may require them to provide security. The definitive curatorship entails a series of consequences in the field of succession.

Under national law, none of the three different stages entail the dissolution of marriage, although the rules governing presumed death contain a provision covering the remarriage of the surviving person.

All persons enjoy the right of association recognized under Article 46 of the CPR. The only restriction to this right is that the association must not aim to promote violence and their purpose may not be contrary to the criminal law.

Associations pursue their purposes freely and without interference from the public authorities, and may not be dissolved by the State or have their activities suspended other than in cases provided for by law and then only by judicial decision.

Under Decree-Law No. 274/2009, of 2 October, that lays down rules concerning consultation procedures of entities, public and private, by the Government in the framework of the preparation of legal texts subject to approval by the Council of Ministers or members of the Government, associations of families of disappeared may have a role in the draft of relevant legislation.

Article 25

Children have the right to protection by society and by the State from all forms of abandonment, discrimination and oppression and from the improper exercise of authority in the family or any other institution (Article 69 of the CPR).

An adoption can only be reviewed when the consent of the adopter, of the child's parents or of the child was not given when required by law, and in cases where the consent of the adopter or of the child's parents has not been given freely. The adopted child aged 16 or over has the right to access to information held by the competent authorities concerning his or her origins, within the limits set out by law.

In this regard, the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the Council Regulation (EC) No. 2201/2003, of 27 November 2003, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility that contribute for the child protection in case of wrongful removal or retention of the child are worth mentioning.

As already mentioned in response to Article 14, Portugal may provide the broadest mutual legal assistance, particularly in the search, identification and tracking of children subjected to enforced disappearance or whose parents or legal guardian have been subjected to enforced disappearance, or of children born during the captivity of a mother who has been subjected to enforced disappearance. Portuguese police authorities run a database of missing persons which includes personal information such as age and information on physical features.

The best interest of the child principle is enshrined in multiple legal texts, such as the Civil Code, the adoption legal regime[5], the Protection of Children and Young People in Danger Act[6], the Tutelary Act[7] or CCP.

Under Portuguese law, children enjoy the right to express their views in a wide range of matters that concern them. For instance, in the context of the Protection of Children and Young People in Danger Act or of the adoption procedure (if the child has more than 12 years old), children must be heard in the respective procedures.

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[5] Law No. 143/2015, of 8 September and several provisions of the Civil Code.

[6] Law No. 147/99, of 1 September, as amended by Law No 142/2015, of 8 September.

[7] Law No. 166/99, of 1 September, as amended by Law No 4/2015, of 15 January.