



**Report on the activities of “Vulture Funds” and the impact on human rights
– Human Rights Council Advisory Committee**

Reply to the Questionnaire – Portuguese Ombudsman

Considering the definition of “vulture funds” provided in the Questionnaire sent by the Human Rights Council Advisory Committee, this is a matter which does not constitute object of the Portuguese Ombudsman’s intervention. This goes beyond, in all its aspects, the respective scope of competences.

Nonetheless, as a National Human Rights Institution, the Portuguese Ombudsman is very attentive and concerned with all situations that may put at risk the enjoyment of Human Rights, particularly the ones that affect more acutely those who are exposed to increased risks of exclusion.

In fact, the sole reference recently made in Portugal to such funds is dated August 2014. On this date, a financial crisis of shapes and dimensions very serious and with potential aggravated by the endemic effect that it could have in terms of contagion across the remaining operators in the banking market, was set in BES – Banco Espírito Santo, S.A..

On that occasion, some media reported that top managers of these funds were considering to sound out the Portuguese market to assess the possibility of buying BES and other GES – Espírito Santo Group companies’ bonds at a substantially reduced cost to that of its normal market value.

No complaint was then or in the meantime directed to the Ombudsman on this matter. It is believed that this is unknown to common people. However, the



Ombudsman received and continues to receive several complaints from individuals who have purchased BES securities and who are unable to obtain the respective refund.

It was explained to those complainants that the Ombudsman cannot intervene directly with BES/Novo Banco, due to the private nature of these credit institutions.

As regards the actions of *Banco de Portugal* (Bank of Portugal) and of *Comissão do Mercado de Valores Mobiliários* (Portuguese Securities Market Commission) on the BES's financial crisis, it should be noted that the resolution measures then implemented cannot be censored or approved by the Ombudsman. In fact, such measures respect to the discretionary power that those entities enjoy as responsible for the prudential and market conduct supervision of credit institutions, financial companies and payment institutions and for supervising and regulating the capital market.

In what respects the impact of “vulture funds” on the Portuguese public debt, and although Portugal was recently subject to a financial assistance program, a real threat at that level, namely on the enjoyment of human rights, did not become public or by other means come to the knowledge of the Ombudsman.

Hence, being a reality unknown, it is not possible to provide any concrete example of situations where the refund of such funds could have hit human rights of Portuguese citizens or measures that could have been adopted by the Ombudsman to prevent such negative effects.

In any event, and taking into account the Ombudsman's statutory framework competences, this type of action would always be forbidden, either by intervening with the Government or the courts.



Indeed, in view of the principle of separation of powers enshrined in the Constitution of the Portuguese Republic, it is not for the Ombudsman to suggest the Government to accept or refuse the public debt repayment, either that was requested by the “vulture funds” in a judicial court action or out-of-court dispute, or the terms and conditions of such debt repayment. This relates to options of strict political nature which does not fall within the competences of the Ombudsman.

Likewise, the principle of the sovereignty of courts prevents the Ombudsman to influence, in any form or without any justification, decisions made by the judges. This includes human rights protection.