**Mandate of the Special Rapporteur on the Independence of Judges and Lawyers**

 **Questionnaire on the Role, Composition and Functions of Bar Associations**

**- Portugal -**

1. **Please provide information on the way the legal profession is organised and regulated in your country. What are the legal bases for its establishment (e.g. constitutional provisions; ordinary law or other)? Please also indicate the main legal provisions protecting the right of lawyers to freely join or create a local, national or international association, and mention the existing associations.**

The value and importance of the legal profession in Portugal is expressly recognized in the Portuguese Constitution.

Article 20, no. 2, expressly foresees that everyone is entitled to legal information and consultation, legal representation and to be accompanied by a lawyer before any authority. Article 208 establishes that the law shall ensure all guarantees necessary for lawyers to represent their clients and regulate the exercise of legal representation, that is recognized by the Constitution as an essential element for the administration of justice.

Law no. 49/2004, of 24 August, regarding the acts which can only be performed by lawyers, and Law no. 145/2015, of 9 September, which approved the Statutes of the Portuguese Bar Association (*Ordem dos Advogados*), are the main instruments regulating the legal profession.

The constitution does not foresee the establishment of a lawyers association. It does, however, foresee, the possibility to establish public associations of professionals (under article 267, no. 4). Public associations of professionals are constituted to ensure the satisfaction of relevant specific public interest needs that the State cannot directly guarantee.

Law no. 2/2013, of 10 January, establishes the legal regime regarding the creation, organization and functioning of public associations of professionals. These associations are responsible for organizing its own rules of access and exercise of the profession, for determining the deontological applicable principles and rules and exercising disciplinary authority over its members.

The Portuguese lawyers’ bar association (*Ordem dos Advogados*) is the public association representative of lawyers (article 1(1) of the Statutes of the *Ordem dos Advogados*). It represents the lawyers in Portugal and its main functions are, *inter alia*, to defend the Rule of Law and the rights, freedoms and guarantees of citizens; cooperate in the administration of justice; guarantee that everyone has access to justice and effective legal protection; regulate the access and exercise of the profession and confer the professional title of lawyer; defend the interests of lawyers; exercise, in exclusive, disciplinary authority over lawyers and trainee lawyers; and issue opinions regarding any legislative initiative that is of interest to the exercise of the legal profession and legal representation in general, as well as propose any legislative measures deemed appropriate (article 3 of the Statutes). Registration in the *Ordem* is mandatory.

Freedom of association is a fundamental right enshrined in the Constitution (article 46). Nothing in the law prevents or restricts lawyers’ freedom of association (except where it may contradict the exercise of its functions or duties as a lawyer). The Young Lawyers Association (ANJAP) and the Law Firms Association (ASAP) constitute examples of associations created by lawyers and for lawyers.

1. **Does a professional association of lawyers play a role in the regulation of the profession?**

Yes. Article 3(j) of the Statutes of the *Ordem dos Advogados* establishes that the *Ordem dos Advogados* shall be heard regarding any legislative initiative that is of interest to the exercise of the legal profession and legal representation in general. It also establishes that the *Ordem* is competent to propose any legislative measures deemed appropriate.

**If so, please provide information on:**

1. **the exact denomination of the body;**

Within the *Ordem dos Advogados*, the General Council (*Conselho Geral*) – the nationwide executive management and regulatory body –, is the body responsible for defining the *Ordem*’s position before the sovereign bodies and the Public Administration in what regards the defence of the Rule of Law, rights, freedoms and guarantees, and the administration of justice; for issuing opinions regarding any legislative initiative that is of interest to the exercise of the legal profession and legal representation in general, as well as for proposing any legislative measures deemed appropriate (article 46(1) a)-c) of the Statutes).

1. **the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other);**

See answer to question no. 1.

1. **whether the association has been established as an ‘independent’ and self-governing association;**

Yes. Article 1(2) of the Statutes establishes that the *Ordem dos Advogados* is a legal person governed by public law which, in the exercise of its public powers, performs its functions, including the regulatory, independently from the States’ bodies, and is free and autonomous in its activity.

Further to this, Law no. 2/2013, of 10 January, referred to above, provides that public professional associations have administrative autonomy, as well as in what regards to assets and budget.

1. **the composition and appointment process of the executive body of the association.**

The President of the *Ordem dos Advogados* (*Bastonário*) and the *Conselho Geral* are the executive bodies of the bar association.

Pursuant the Statutes of the *Ordem dos Advogados*, the *Conselho Geral* is presided by the *Bastonário* and composed of 2 to 5 vice-presidents and 15 to 18 members (depending on the number of vice-presidents), of which, at least, 5 are registered as lawyers in the region of Lisbon, 4 in Oporto, and 5 in the other regions. Currently, the *Conselho Geral* has 21 members.

The members of the *Conselho Geral* are elected directly by the General Assembly. The election for *Bastonário* is simultaneous to the election of the *Conselho Geral*. The list of candidates that obtains more than half of the valid votes cast wins the election, and the first candidate of the winning list is appointed *Bastonário*.

In order to be elected for any of the bodies of the *Ordem dos Advogados*, lawyers must have a valid registration and be able to fully exercise of their rights. Furthermore, in order to be elected *Bastonário*, the candidate lawyer must have, at least, 10 years of professional practice and, to be elected member of the *Conselho Geral*, 5 years.

Only lawyers with a valid registration and be able to fully exercise of their rights can vote. The vote is mandatory and secret.

All the bodies of the *Ordem dos Advogados* are elected for terms of 3 years. Except for the *Bastonário*, the exercise of positions in the bodies of the *Ordem* is not paid.

1. **Please provide information on the relationship between the association of lawyers and the Executive, Legislative and Judiciary powers. In particular, please provide information on the role of the Ministry of Justice and/or the judiciary in relation to the establishment and functioning of this association.**

As referred in answer to question no. 2(c), the *Ordem dos Advogados* is independent from the State.

In what regards its relationship with the legislative power, we reiterate that the *Ordem* shall be heard regarding any legislative initiative that is of interest to the exercise of the legal profession and legal representation and that it is competent to propose any legislative measures deemed appropriate.

As for the executive power, pursuant the Organic Law of the Ministry of Justice, Decree-Law no. 123/2011, of 29 December, the Ministry of Justice has a consultative body (the *Conselho Consultivo da Justiça*). The functioning of this body is regulated by Decree-Law no. 187/2000, of 12 August. The composition of this body includes a representative of the *Ordem dos Advogados*.

Further to this, the *Ordem dos Advogados* is invited to participate in many working groups on subjects relating to the area of Justice.

Finally, regarding the judiciary, the Statutes imposes on lawyers a general duty of loyalty and of urbanity towards the courts. Lawyers and the *Ordem dos Advogados* play an essential role in the administration of justice, especially, in ensuring that everyone is entitled to access to justice and to effective legal protection (see answer to question 4(c)).

Law no. 62/2013, of 26 August, which regulates the organization of the judicial system, establishes that each judicial district shall have a consultative body composed of several members, including a representative of the *Ordem dos Advogados* who has its practice in that judicial district. This consultative body issues opinions on the activities’ plan and report; the internal regulations of the court and its sections; administrative issues or others regarding the organization and functioning of the judicial district; and human resources needs and budget. The body shall also be heard on other matters, such as the evolution of the court’s response to the requests and expectations of the community; the existence and maintenance of accessibility conditions and the quality of the spaces, equipment and services of the court; the resolution of problems of the service brought to its attention; complaints formulated by the public regarding the organization and functioning of the court or any of its services, as well as the regime of access to justice, in which case it shall propose measures to overcome deficiencies and improve its functioning to a number of entities, including the representative of the Bar; or other issues submitted to this body by the president of the court. Further to this, the *Ordem dos Advogados* participates in the process of selection and appointment of judges to the *Supremo Tribunal de Justiça* – a lawyer indicated by the *Ordem* forms part of the jury which evaluates the candidates and the *Bastonário* has a consultative vote in the appointment of the judges (Law no. 25/81, of 30 July, regarding the Statute of Judicial Magistrates).

1. **Please provide information on the role that professional associations of lawyers play with regard to:**
2. **the admission process to the legal profession and the licensing of lawyers;**

The *Ordem dos Advogados* is responsible for regulating the access to and exercise of the profession and to confer the title of lawyer, as well as to certify the quality of trainee lawyer (article 3(c) and articles 186 and ff. of the Statutes).

1. **the conduct of disciplinary proceedings against lawyers;**

The *Ordem dos Advogados* is exclusively competent for exercising disciplinary authority (article 3(g) of the Statutes). The Deontology Councils (which are 7, same as Regional Councils) are responsible for disciplinary first instance jurisdiction over lawyers and trainee lawyers whose professional domicile is located in the region. The Superior Council judges the appeals of the decisions of the Deontology Councils and judges, in first instance, disciplinary proceedings regarding current and former members of the *Ordem dos Advogados*’ bodies, including the *Bastonário*.

1. **the provision of legal aid;**

The *Ordem dos Advogados* plays a determinant role in ensuring that everyone has access to justice and the courts and effective legal protection.

The State is responsible for guaranteeing everyone’s right of access to justice. In this endeavour, the State shall develop mechanisms of cooperation with the associations which represent legal professions.

Law no. 34/2004, of 29 July, regulates the system of access to justice and to the courts (further regulated by Ordinances no. 1085-A/2004, of 31 August, and no. 10/2008, of 3 January). The objective of this system is to ensure that everyone, regardless of social, cultural or economic factors, knows and is able exercise their rights, as well as defend them. For this effect, the State implemented measures and mechanisms to provide legal information and legal protection, which involves both legal consultation and legal aid.

Legal protection shall be provided to people in a situation of financial hardship, under the terms established in the law.

Legal aid may include the appointment of a lawyer (patrono) and the payment of associated costs. The *Ordem* dos Advgados is responsible for the appointment of the lawyer. For this effect, the *Ordem dos Advogados* selects, among the voluntary candidates, the lawyers who will participate in the system and organizes the distribution of cases and shifts for urgent proceedings. The State ensures that the lawyers which take part of the system are adequately compensated.

1. **the protection of individual lawyers from any form of intimidation, hindrance, harassment or improper interference in the exercise of their functions;**

The *Ordem dos Advogados* represents the profession and defends the interest, rights, prerogatives and immunities of its members and shall denounce any action against them before national and international forums (article 3(e) of the Statutes). The Statute also foresees that lawyers shall the right to request the *Ordem*’s intervention to defend their rights and legitimate interests of the class (article 71).

1. **the development and implementation of legislation concerning the free exercise of the legal profession and the administration of justice.**

As mentioned above, the *Ordem dos Advogados* shall be consulted to issue an opinion on any legislative initiative regarding that is of interest to the exercise of the legal profession and legal representation and is competent to propose any legislative measures deemed appropriate.

More generally, the *Ordem dos Advogados* shall defend the Rule of law and the rights, freedoms and guarantees of the citizens, and cooperate in the administration of justice.

1. **Is membership in the professional association of lawyers mandatory to practice law in your country?**

Yes. Pursuant Law no. 49/2004, of 24 August, only lawyers with a valid registration in the *Ordem dos Advogados* can practice acts reserved to lawyers. The exercise of legal representation and legal consult are acts reserved to lawyer. These acts can also be performed by solicitors, although subject to the limitations established in the solicitors’ statute and in procedural law.

**In case membership is a prerequisite to practice law, please provide detailed information on the measures the State has taken to ensure access to justice in cases where there is a shortage of lawyers in the whole country or part of its territory.**

The system of access to justice regulated by Law no. 34/2004, mentioned above, ensures that everyone, regardless of social, cultural or economic factors, knows and is able exercise their rights, as well as defend them. The system is applicable nationwide.

Under this system, national and EU citizens, as well as stateless people and third-country nationals, with a valid residence permit in an EU country or provided that this right is recognized, by those countries, to Portuguese people in conditions reciprocity, who demonstrate that they are in a situation of financial hardship, are entitled to legal protection. This may include the appointment of a lawyer.

The *Ordem dos Advogados* is responsible for selecting, among the voluntary candidates, the lawyers who will participate in the system and for organizing the distribution of cases and shifts for urgent proceedings according to the availability expressed by the lawyers and geographical criteria.