

**questionnaire related** **to**

**the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful**

1. Please describe your national institution’s concern and practice with the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court.

Portugal has an Ombudsman, who is also a national human rights institution fully in accordance with the Paris Principles and accredited with “A” status since 1999. It is an organ expressly provided for under Article 23 of the Constitution, with competence to receive “complaints against actions or omissions by the public authorities” and to address to the competent bodies “such recommendations as may be necessary in order to prevent or make good any injustices”

Under the Constitution and his Statute, the Portuguese Ombudsman's activity results primarily of complaints that are submitted to him/her by the citizens.

The Portuguese Ombudsman does not develop its activity directly before private individuals. In fact, as referred to in article 2 of the Statute of the Portuguese Ombudsman (Law 9/91, of 9th April), the activities of the Ombudsman shall focus namely on the activity of central, regional and local public administration services, the Armed Forces, the public institutes (indirect state administration), the Government owned companies or the companies whose capital is mostly public and the concessionaires operating public services or exploiting state property.

Article 22 of the Statute states that the sovereign bodies, such as judicial courts, shall not be subject to the Ombudsman's inspection and supervision, save for their administrative activity and for the acts performed under the superintendence of the Administration. Any complaints relating to judicial activities which, due to their very nature, do not fall outside the Ombudsman’s scope of activities shall be dealt with through the Supreme Judicial Council, the High Council of Public Prosecution and the High Council of the Administrative and Fiscal Courts, as applicable. Therefore, judicial proceedings shall not be addressed by the Ombudsman in respect of the principle of separation of powers.

Notwithstanding, it must be stressed that the only complaints that have been accepted about illegal detention are concerned with taking people to police stations, and the right not be held in custody for more than a few hours, which can also be explained by two legal procedures of the Portuguese legal system: the obligation to bring the detainee before a judge within forty-eight hours and habeas corpus.

Nevertheless, the Ombudsman has decided to inspect the places of detention of citizens in order to assess, particularly:

a) The physical conditions (location, accessibility, safety and service);

b) The working conditions of staff, and other personnel;

c) The conditions of detention of citizens;

d) The compliance by agents of the Portuguese Public Security Police with legal requirements provided for specific procedures, such as the submission of complaints, the arrest of citizens, the submission of complaints concerning domestic violence, the interventions under the Law on the Protection of Children and Young People in Danger, issues relating to the elderly population and the Mental Health Act.

Under article 21 of the Statute “in the performance of his duties, the Ombudsman has powers to make, with or without prior notice, inspection visits to any area of activity of the central, regional and local administration, including public services and civil and military prisons, or to any other entities under his control, hearing their bodies and officials and requesting such information, and the exhibiting of documents, as he may deem adequate” and “to undertake such investigations and enquiries as he may deem necessary or convenient, where he may use, for the purposes of collecting and producing evidence, all reasonable means, provided that such means do not collide with the rights and legitimate interests of citizens”.

Recommendations were made on the subject to the police chiefs and the Government.

1. How far is the right of anyone deprived of his or her liberty to bring proceedings before court part of the laws of your country?

Anyone deprived of his or her liberty by arrest or detention has the right to bring proceedings before court.

Under article 28 of the Constitution, within at most forty-eight hours, all detentions shall be submitted to judicial scrutiny with a view to either the detainee’s release or the imposition of an appropriate coercive measure. The judge shall become acquainted with the reasons for the detention and shall inform the detainee thereof, question him and give him the opportunity to present a defense.

Anyhow, habeas corpus is always available.

Under article 31 of the Constitution “Habeas corpus shall be available to counter the misuse of power in the form of illegal arrest, imprisonment or detention. Application for it shall be made to the competent court.” and the same article states that “Application for a habeas corpus order may be made by the person so arrested, imprisoned or detained, or by any citizen exercising his political rights”.

The same constitutional standard states that “within eight days of an application for habeas corpus the judge shall rule thereon in a hearing that shall be subject to pleading and counter-pleading”.

1. Please describe the most common problems individuals face in their realization of the right in your country.

The Portuguese Ombudsman has no knowledge of specific problems in this field.

1. How does your national institution assist individuals who do not enjoy the right to bring proceedings before the court?

As stated before, under the Portuguese Constitution all individuals have the right to bring proceedings before court, namely habeas corpus.

1. Does your national institution assist your country in the realization and implementation of this right? If yes, please explain how.

As stated before, judicial proceedings shall not be addressed by the Ombudsman in accordance with the principle of separation of powers.

However, if the Ombudsman received a complaint about illegal detention, he/she could file an emergency procedure to ascertain the situation, namely the compliance with the legal obligation to present the detainee/defendant before a judge within forty-eight hours.

It is within the Portuguese Ombudsman remit the ability to carry out an inspection visit to the place where the citizen was detained.

1. How would the general principles and guidelines that the Working Group has been entrusted to elaborate on the realization of the right to bring proceedings before court best support your work?

Once the Ombudsman has not received any complaints on this issue, it has not been under consideration.

1. In your view, how would these general principles and guidelines best support your country?

Once the Ombudsman has not received any complaints on this issue, it has not been under consideration.