



Pro Bono Practices and Opportunities in Portugal

INTRODUCTION

Access to justice in Portugal is a right provided by the Constitution, and lawyers have a general duty to help protect this right. Portugal has increased its efforts to make legal assistance available to those who cannot afford it through a system that involves cooperation between Portuguese Social Security services and the Portuguese Bar Association. In addition, several NGOs in Portugal provide legal assistance to the public in particular areas such as criminal law, consumer law and refugee law. In recent years, law firms have started their own pro bono programs, providing legal assistance, usually to non-profit associations.

OVERVIEW OF THE LEGAL SYSTEM

The Justice System

Constitution and Governing Laws

Article 110 of the Portuguese Constitution provides that the President of the Republic, the Parliament, the Government and the Courts constitute bodies of the State. Portugal is a semi-presidential Republic with a President elected by universal suffrage for a five-year term¹. The President is the Head of State². The Government is formed by the Council of Ministers, headed by the Prime Minister, who is politically accountable to the President and Parliament. The President does not have a seat in the Council of Ministers (but can be invited to do so). The Government is appointed by the President³, following elections. The legislative power is exercised by Parliament, elected for four-year terms⁴. The President may order the dissolution of Parliament or the dismissal of the Government.

Legislative responsibility is attributed to the Parliament⁵ and the Government⁶ (on matters that are not the exclusive responsibility of the Parliament). Laws must be signed by the President and counter-signed by the Government.

Courts administer justice and are independent from the other bodies of the State. Judges of the courts enjoy security of tenure and cannot be transferred, suspended, retired or removed from office except in cases expressly laid down by applicable legislation.⁷

The Courts

Levels, relevant types (e.g. family and housing courts), and locations

The Portuguese court system is comprised of two main types of courts: (i) the administrative and tax courts, with jurisdiction to settle disputes arising from legal relationships of a public law nature (administrative or fiscal), and (ii) the judicial courts, whose jurisdiction covers civil, commercial and criminal law matters in general.

The judicial courts are organised into three levels: (i) first instance courts (which may, according to the scope of matters with which they are entrusted, be general jurisdiction courts or specialised jurisdiction courts); (ii) the courts of appeal (*Tribunal da Relação*), located in Lisbon, Porto (or Oporto), Coimbra,

¹ Id. at Article 128 of the Portuguese Constitution.

² Id. at Article 120.

³ Id. at Article 187.

⁴ Id. at Article 171.

⁵ Id. at Article 164 and 165.

⁶ Id. at Article 198.

⁷ Id. at Article 216.



Guimarães and Évora, and (iii) the Supreme Court of Justice, located in Lisbon. The precise jurisdiction of each of these judicial courts is determined on the basis of several criteria, namely: subject-matter, territorial scope, hierarchy and value of the proceedings.

The Constitutional Court is a special court established directly by the Constitution and has unique competences related to the review of the constitutionality of legislative and judicial acts as provided by the Constitution.⁸ It is composed of 13 judges. The Constitutional Court sits in Lisbon.

Appointed vs. Elected Judges

Judges of judicial courts are appointed after their approval in a public competition by the Judiciary Superior Council.⁹ Judges of the Constitutional Court are the only elected judges in Portugal, elected by the Parliament. Of the 13 elected judges, at least six must originate from other courts and; at least six must be jurists (generally lawyers or legal scholars).¹⁰

The Practice of Law

Education and Licensure

In order to practice law in Portugal, a lawyer (*advogado*) must be registered with the Portuguese Bar Association.¹¹ The Portuguese Bar Association was created by Law No. 11,715 of June 12, 1926,¹² and is organised into seven districts: Lisbon, Porto, Coimbra, Évora, Faro, Açores, Madeira. Its current articles of association are set forth in Law No. 15/2005 of January 15, 2005.

In order to register with the Portuguese Bar Association, an individual must have (i) obtained a law degree from an accredited university; (ii) undertaken a 24-month internship divided in two phases: (a) six-months of training on the regulations and principles applicable to the profession, at the end of which the candidate must sit four exams in order to pass to the second training phase and be able to appear in Court, and (b) 18-months of practical training in a law firm, having a lawyer with at least five years of professional experience as a tutor; and (iii) passed a final entrance examination to the Portuguese Bar Association.¹³

Pro bono specific rules and requirements

There are no legal requirements on attorneys to practice pro bono in Portugal.

The Role of Foreign Lawyers (as applicable)

Fully qualified lawyers from other member countries of the European Union are allowed to practice law in Portugal.¹⁴ So are lawyers qualified in Brazil, subject to a previous request of enrolment with the Portuguese Bar Association and the fulfilment of certain conditions (e.g., proof of due registration with the Brazilian Bar Association, and proof of professional address in Portugal).¹⁵ Foreign citizens who obtained their degree in Portugal may be registered with the Portuguese Bar Association in the same way as Portuguese citizens provided their country of nationality grants reciprocal rights to Portuguese citizens.¹⁶

⁸ Article 277 et. al. of the Portuguese Constitution.

⁹ The Judiciary Superior Council is established by the Portuguese Constitution (Article 218) to guarantee the independence of the judges of judicial courts. It has competence to appoint, transfer and promote judges, as well as to apply any disciplinary action.

¹⁰ Article 222 (2) of the Portuguese Constitution and Article 13 of the Constitutional Court Law.

¹¹ Articles 61 and 200 of the Statutes of the Portuguese Bar Association approved by Law No. 15/2005, of January 15, 2005 ("Law No. 15/2005" or, as defined in the main text, "the Statute").

¹² Available online at: <http://www.oa.pt/> (last visited on September 4, 2015).

¹³ Id. at Article 188.

¹⁴ Id. at Article 196.

¹⁵ Id. at Article 194.

¹⁶ Id. at Article 194.



Demographics: Number of Lawyers per Capita; Number of Legal Aid Lawyers per Capita.

According to the Portuguese Bar Association, in 2008 there was one lawyer per 350 inhabitants in Portugal, which is a comparatively high rate within Europe.

Also according to the statistical portal Pordata, in 2014 there were approximately 16 lawyers for each judicial magistrate.¹⁷ This statistic shows an increasing trend since the 1990s, when the number of lawyers per magistrate was 11.1.

Legal Regulation of Lawyers

Legal activity in Portugal is regulated by Law No. 15/2005, which provides the ethics rules with which lawyers must comply (the “**Statute**”). Article 61 provides that only lawyers duly registered with the Portuguese Bar Association can practice ‘acts of lawyers’, namely representing a client in court or other legal matters and provide legal advice.¹⁸

The Statute also sets forth the legal regime of “impediments or incompatibilities”. In general, to perform the functions of a lawyer with due independence, a lawyer may be prohibited from undertaking certain occupations, such as becoming a member of the government, or a judge, accountant or real estate mediator.

The Statute also sets out the rules on confidentiality, public discussion on professional matters and advertisement. The Statute is highly protective of the confidentiality obligations and duties of a lawyer. The waiver of such duties requires special approval before a court and the Portuguese Bar Association.

Moreover, a lawyer should not discuss pending proceedings in public. In specific circumstances, for example, to protect the client from offenses, a lawyer may request permission to do so to the competent district council of the Portuguese Bar Association.

Advertisement of legal services is very restricted. A lawyer is entitled to inform the public about his or her services provided that the information is accurate and not misleading.

In Portugal, lawyers and clients are not allowed to agree to contingency fees. However, lawyers and clients may agree to success fees or results-based fees.

LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

The Right to Legal Assistance

In Civil Proceedings¹⁹

The Portuguese Constitution guarantees access to law and judicial review for everyone. Furthermore, it prohibits access to justice being denied because of a lack of financial means, and confirms that everyone has the right to legal information and counsel, by means of legal aid, if necessary.²⁰ This constitutional right of access to justice is enshrined in Law No. 34/2004, of July 29, 2004,²¹ Administrative Ordinances

¹⁷ See <http://www.pordata.pt/Portugal/N%C3%BAmero+de+advogados+por+magistrado+judicial+ao+servi%C3%A7o+nos+Tribunais+Judiciais-649> (last visited on September 4, 2015).

¹⁸ Pursuant Article 1 of the Law No. 49/2004, holders of a Master in Laws or Ph.D. in Law are authorised to provide legal advice.

¹⁹ In the context of civil and commercial litigation, representation by a qualified lawyer is compulsory in legal proceedings involving potential appeals and in any cases directly brought before a court of appeal (Tribunal da Relação) or the Supreme Court of Justice.

²⁰ Article 20 of the Portuguese Constitution.

²¹ Law No. 34/2004 was amended by Law No. 47/2007, of August 28, 2007. Law No. 34/2004 revoked by Law No. 30-E/2000, of December 20, 2000, which first introduced the current structure of access to justice being required through social security services. Law No. 34/20004 transposes into the Portuguese territory the European



Nos. 1085-A/2004, of August 31, 2004, No. 10/2008, of January 3, 2008 and No. 11/2008, of January 3, 2008 (in each case, as subsequently amended); and Internal Regulation No. 330-A/2008, approved by the general council of the Portuguese Bar Association.²²

According to Law No. 34/2004, no one should be prevented from being informed of, exercising or defending their rights due to their social or cultural status, or lack of financial means.²³ Access to justice includes the provision of “legal information” and “legal protection” mechanisms.²⁴

The Ministry of Justice is in charge of ensuring access to “legal information,” and fulfils this obligation by providing publications and other measures which contain information on legal rights and duties. In addition, the Ministry of Justice is responsible for ensuring that all individuals have a means to exercise these rights.²⁵

“Legal protection” involves: a. “legal advice or consultancy” and/or b. “legal aid.”²⁶

Legal advice or consultancy

Legal advice/consultancy generally includes providing an individual with guidance regarding the application of laws to particular issues. It may also include providing an individual with extra-judicial steps or informal mechanisms of reconciliation. Law firms and “legal consultancy offices” (*gabinetes de consulta jurídica*) created by the Portuguese State, together with the Portuguese Bar Association, may provide legal advice or consultancy in relation to any type of legal issue.²⁷

Legal aid

Legal aid includes the payment, by the State of legal fees to lawyers who represent individuals or non-profit legal entities in need. It also includes providing a total or partial exemption or a deferment of payment of court fees and other procedural charges.²⁸ Legal aid may be granted for the resolution of any type of legal dispute or litigation, before any type of court, and will include any appeals as well as enforcement of legal decisions.²⁹

Legal protection in both instances can be requested from the Portuguese Social Security services directly by the individual or non-profit organization in need, or by a lawyer on behalf of its client. The request is decided by the District Services of the Social Security Office with jurisdiction over the area where the applicant resides.³⁰

Directive No 2003/8/CE, of January 27, 2003, concerning the improvement of access to justice in cross border disputes, available online at http://ec.europa.eu/justice_home/judicialatlascivil/html/pdf/national_law_la_por_en.pdf (last visited on September 4, 2015).

²² See http://www.oa.pt/CD/Conteudos/Artigos/detalhe_artigo.aspx?sidc=31834&idc=31890&idsc=30361 (last visited on September 4, 2015).

²³ Law No. 34/2004, Article 1(1).

²⁴ Id. at Article 1(2).

²⁵ Id. at Article 4.

²⁶ Id. at Article 6.

²⁷ Id. at Articles 14 and 15.

²⁸ Id. at Article 16.

²⁹ Id. at Articles 17 and 18.

³⁰ See Social Security Guide On Legal Protection, available at www4.seg-social.pt/documents/10152/15011/proteccao_juridica (last visited on September 4, 2015).

In Criminal Proceedings³¹

The same legal provisions and rules described above regarding legal assistance in civil proceedings apply to legal assistance in criminal proceedings.

State-Subsidised Legal Aid

Eligibility Criteria, i.e., eligibility limitations based on:

Financial Means (income and assets guidelines)

According to the Article 8-A of Law No. 34/2004, State-Subsidized Legal Aid – comprising legal advice or consultancy and legal aid – is granted to individuals who have a monthly income equal to or lower than three quarters of the social benefits index (approximately €315). The social benefits index has been €419,22 since 2009.³² Individuals that have a monthly income higher than three quarters of the social benefits index (approximately €315), but equal to or lower than two and half times the social benefits index (approximately €1048), are entitled to legal aid, but not to legal advice or consultancy.

Applicant Type (individual client versus agency/NGO), etc.

Under Law No. 34/2004, only individuals and non-profit organisations can benefit from State-Subsidized Legal Aid.

Mandatory assignments to Legal Aid Matters

Are private lawyers required to accept matters assigned to them by a court or legal aid scheme, or are assignments voluntary?

The Portuguese Bar Association requires lawyers to assist in increasing access to justice within their local communities.³³ Portuguese lawyers may volunteer to have their names included in the list of lawyers available to provide legal assistance based on Law No. 34/2004, and to provide legal assistance in one of the Legal Consulting Offices set up by the Portuguese Bar Association.

Are private lawyers compensated, even at a reduced fee, for such assigned matters?

As a general rule, lawyers are expected to charge an adequate amount for their services (Law No. 15/2005, Article 100) and are prohibited from advertising free legal services (Law No. 15/2005, Article 89 (4)(b)). At the same time, it is a duty of lawyers registered with the Portuguese Bar Association to assist with increasing access to justice (Law No. 15/2005, Article 85 (2)(f)).

Lawyers may receive payments by the Portuguese state if they provide services under Law No. 34/2004. Outside this scenario, however, the legislation is not clear about whether lawyers that decide not to charge for their services could be in breach of professional ethics. Although there is no formal process for this scenario, it is advisable that lawyers wanting to engage in pro bono work to contact the Portuguese Bar Association to obtain prior authorisation for providing the free services or confirm that no such authorisation is needed.

³¹ Legal representation by a qualified lawyer (Portuguese law does not distinguish between solicitors and barristers) is required in criminal cases for acts where the Criminal Procedure Code requires the appointment of a defence lawyer. See Criminal Procedure Code, Article 64, which provides that representation by Lawyer is mandatory in interrogations, during judgment, in appeals and in every act if the plaintiff is blind, deaf, dumb, illiterate, does not speak Portuguese or is under 21 years old.

³² The amount is approved by the State Budget of each year. In 2015, the amount was approved in Article 117 of the Law No. 82-B/2014, available in http://www.dgo.pt/politicaorcamental/OrcamentodeEstado/2015/Or%C3%A7amento%20Estado%20Aprovado/Documentos%20do%20OE/Lei_82-B_2014-OE2015_versaoDR.pdf (last visited on September 4, 2015).

³³ Law No. 15/2005, Article 85 (2).



Unmet Needs and Access Analysis

In Portugal, State-Subsidized Legal Aid is regarded as a universal system for providing access to justice for individuals who may not have sufficient income. It provides a service that helps inform the type of legal aid that may be granted to a specific person³⁴ based on their personal situation. There have been complaints that the income thresholds (as described above) are too low, resulting in the lack of assistance to people who would still have low income, albeit they might be above such legal threshold.³⁵

In recent years, extensive delays in judicial proceedings reaching the courts have been regarded as one of the main obstacles to access to justice. In 2012, the Portuguese state was sued before the European Court of Human Rights in 36 cases involving the right to a fair trial within a reasonable time.³⁶ In 2013, statistics indicated that the 'congesting rate' in Portugal, representing the difference between closed and pending proceedings in judicial courts, is 193%.³⁷

Alternative Dispute Resolution

Mediation, Arbitration, Etc.

Mediation and arbitration are being developed in Portugal, in specialised areas relating to commercial and corporate law. There is also a network of arbitration centres that resolve any conflicts related to consumer law³⁸ and trademarks, corporate and domain names.³⁹

Ombudsman

Citizens have direct access to the free services of the Ombudsman. They have the right to make complaints to the Ombudsman, regardless of their age, nationality or residence. A complaint may be submitted individually or collectively, independent of direct interest, personal or legitimate, via the Ombudsman website: <http://www.provedor-jus.pt/>. Pursuant to Article 23 of the Constitution, complaints can only be made against actions or omissions by Portuguese public authorities. The Ombudsman does not have the power to take decisions, but sends recommendations to the competent bodies, as necessary, in order to prevent or make good any injustices.

PRO BONO ASSISTANCE

Pro Bono Opportunities

Private Lawyers

There is no formal obligation for private lawyers to undertake pro bono activities.

Law Firm Pro Bono Programs

Portuguese law firms generally have pro bono programs providing free legal assistance to charity institutions that work in the social, cultural or educational areas. Law firms often have designated pages on their firm websites dedicated to pro bono programs and the contact information of lawyers engaged in the programs.

³⁴ Available at <http://www4.seg-social.pt/calculo-do-valor-de-rendimento-para-efeitos-de-proteccao-juridica> (last visited on September 4, 2015).

³⁵ See http://www.dn.pt/Inicio/interior.aspx?content_id=991899 (last visited on September 4, 2015).

³⁶ See <http://www.publico.pt/portugal/noticia/maioria-das-queixas-por-atrasos-na-justica-resolvida-por-acordo-no-tribunal-europeu-1618125> (last visited on September 4, 2015).

³⁷ See <http://www.pordata.pt/Portugal/Taxa+de+congest%C3%A3o+nos+tribunais+%28percentagem%29-631> (last visited on September 4, 2015).

³⁸ See <http://www.arbitragemdeconsumo.org/index.php> (last visited on September 4, 2015).

³⁹ See https://www.arbitrare.pt/en/centro_a.php (last visited on September 4, 2015).



According to the Thompson Reuters Foundation Index of Pro Bono 2015⁴⁰, 75% of Portuguese firms have a pro bono coordinator in place and have a pro bono committee.

Non-Governmental Organisations (NGOs)

Some non-profit organisations and associations in Portugal offer legal support services to the public. For instance, the Association of Support to Victims (*Associação de Apoio à Vítima*) (“**APAV**”) provides support, including legal assistance, to the victims of crimes and their families, through offices spread across different locations in Portugal.⁴¹ Another example is DECO, an association that provides support to consumers and indebted individuals, including offering legal assistance to help consumers enforce their rights and solve conflicts.⁴² The Portuguese Counsel for Refugees provides assistance in relation to human rights.⁴³ Moreover, the Portuguese Ministry of Justice lists different associations that have organised arbitration centres (*Centros de Arbitragem de Conflitos de Consumo*) in order to solve conflicts in respect of consumer law issues.⁴⁴

Bar Association Pro Bono Programs

The Portuguese Bar Association has a network of “Legal Consulting Offices”, which are staffed by volunteer lawyers and where any individual may obtain guidance regarding legal matters.⁴⁵

Legal advice provided under this consultancy mechanism is free of charge for interested parties, although the applicable regulations limit the number and duration of consultancy requests any one person may benefit from. In addition, in the past, the Portuguese Bar Association has organised an annual “Legal Consulting Day”, during which lawyers are available at a number of locations to assist the public with legal questions.

University Legal Clinics and Law Students

In Portugal, as a rule it is forbidden for non-qualified lawyers to provide legal advice or to accept to legally represent a client before the court, even for pro bono matters.

Legal agents (*solicitadores*) and trainee lawyers may exceptionally represent clients in certain legal matters where the law does not require the intervention of a qualified lawyer, such as in the case of injunction proceedings.

Others

There are some state organisations that provide legal consulting assistance to the public concerning specific legal areas, such as the Authority for Working Conditions (*Autoridade para as Condições do Trabalho*), which provides legal advice on labor law issues.

⁴⁰ Available at <http://www.trust.org/contentAsset/raw-data/870662fb-5deb-4549-8cc5-d4e3d02b311f/file?bylnode=true> (last visited on September 4, 2015).

⁴¹ See <http://www.apav.pt/apav.html> (last visited on September 4, 2015).

⁴² See <http://www.deco.proteste.pt/> (last visited on September 4, 2015).

⁴³ See <http://www.cpr.pt/> (last visited on September 4, 2015).

⁴⁴ See <http://www.arbitragemdeconsumo.org/> (last visited on September 4, 2015).

⁴⁵ See http://www.oa.pt/CD/Conteudos/Artigos/detalhe_artigo.aspx?sidc=32530&idc=32533&idsc=19112 (last visited on September 4, 2015). To benefit from this assistance, one should contact the Portuguese Bar Association (General Council), which will indicate the Legal Consulting Office closer to your residency area: https://www.oa.pt/contenudos/contactos/lista_contactos.aspx?idc=31631 (last visited on September 4, 2015).



Historic Development and Current State of Pro Bono

Historic Development of Pro Bono

Portuguese lawyers have always provided pro bono services to their clients, especially lawyers in individual practice. In recent years, however, there has been an increase in the number of law firms with pro bono programs. Moreover, the Portuguese Bar Association has been promoting pro bono activities, as mentioned above, with the creation of Legal Consulting Offices. These programs have provided helpful assistance to individuals and non-profit organisations in their day-to-day activities.

Current State of Pro Bono including Barriers and Other Considerations

Laws and Regulations Impacting Pro Bono

“Loser Pays” Statute

Decree-Law No. 34/2008 (as amended) provides that the losing party must pay to the winning party the fees paid to the court and 50% of the amount of the fees paid by both parties to the court, as compensation for the payments made to lawyers.

Rules Directly Governing Pro Bono Practice

There are no specific rules for pro bono activities. The ethics rules governing legal activity generally also apply.

As outlined previously, lawyers are prohibited from advertising free legal services (Law No. 15/2005, art. 89 (4)(b)) and the advertisement of legal services is very restricted.

Practice Restrictions on Foreign-Qualified Lawyers

Foreign-qualified lawyers are not specifically restricted from providing legal services. European and Brazilian qualified lawyers can provide legal services as long as they are registered with the Portuguese Bar Association. Lawyers from other jurisdictions need to comply with the general provisions for the registration in the Bar Association.

Socio-Cultural Barriers to Pro Bono or Participation in the Formal Legal System

Public concerns about the formal legal system

The main criticism of the Portuguese legal system in recent years relates to extensive delays in judicial proceedings. Important reforms have been implemented to address these concerns. For example, the Financial Assistance Program agreed in 2011 with the European Union and the IMF required the reform of the Portuguese Civil and Criminal Procedure Codes. The new Codes were approved in 2013.

Opposition from the Bar

The Portuguese Bar Association has restricted the advertisement of pro bono services,⁴⁶ and has also restricted the provision of pro bono services by a non-profit organization, since according to the Bar legal consulting can only be provided by a lawyer or by a legal consulting office organized by the Portuguese Bar Association in cooperation with the Ministry of Justice.⁴⁷

Pro Bono Resources

The Portuguese Social Security published a guide with information of how to obtain legal protection/aid from the state. It can be found at http://www4.seg-social.pt/documents/10152/15011/proteccao_juridica (last visited on September 4, 2015).

⁴⁶ See General Council's Opinion no. 34/PP/2009, available at http://www.oa.pt/Conteudos/Pareceres/detalhe_parecer.aspx?idc=5&idsc=158&ida=119841 (last visited on September 4, 2015).

⁴⁷ See General Council's Opinion no. 12/PP/2011-P, available at <https://www.oa.pt/upl/%7Bd6602f75-d5b6-448e-b745-7df792f0f7af%7D.pdf> (last visited on September 4, 2015).



CONCLUSION

The Portuguese state has increased its efforts to make legal protection available to those who cannot afford it. State-subsidised legal protection is available for those who qualify and several non-governmental associations provide legal assistance to the public, for instance in relation to criminal law, consumer law and refugee law. In recent years, there has been an increase in the number of law firms developing and promoting pro bono programs. Furthermore, the Portuguese Bar Association has been promoting pro bono activities, through the creation of Legal Consulting Offices.

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