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Modernising justice for inclusive growth: Leaving no one behind

This chapter provides an overview of a justice reform agenda in Portugal with a particular focus on measures aimed at modernisation, innovation capacity and strengthening citizen-centric approaches to access to justice.

Putting people at the centre of an innovative justice system

The transformation of justice institutions is a pressing necessity for many countries around the world. Their governance, policy design and service delivery can contribute to the efficiency of a country's justice system. Citizens and businesses expect better and faster results, and more responsive, targeted and effective services, including access to legal information, legal assistance and dispute resolution. This requires new thinking, innovative ways of working, prioritising the needs of people at the centre of institutions, policy and service delivery frameworks – in the justice sector as well as in other policy areas.

In recent years, Portugal has seen the emergence of an increasingly ambitious agenda that has guided the transformation of the justice sector. The country is taking active steps towards modernising its justice system to ensure its inclusiveness and responsiveness to the needs of people. Multiple reforms in the past two decades have sought to make the justice sector more transparent, accessible and effective (Gomes, 2007; Dias and Gomes, 2018). The most recent initiatives include the *Justiça + Próxima* programme, which encompasses the *Tribunal +* flagship project, *Court +* as well as *Simplex +*, a cross-governmental modernisation plan. These initiatives are linked to the government's overall vision, which provides a solid anchoring in the development of the priorities in the country.

Through a combination of these efforts, Portugal has become one of the few countries actively introducing a comprehensive package of administrative simplification, digitalisation and innovation measures across the justice sector. With these reforms, Portugal demonstrates its commitment to the dissemination of a culture of innovation and people-centricity across the justice sector.

Yet, some of the challenges faced by justice systems, similar to other public service areas, include slow adoption of technology, often outdated and complex processes, and declining trust and confidence of people and businesses. This is particularly challenging as they involve independent judiciaries, prosecutors and other agencies, public, judicial and private alternative dispute resolutions (ADRs), including at different levels of government, and other stakeholders.

In addition, citizen expectations continue to rise as innovations in other sectors improve service delivery, while governments, courts, legal and other services, often struggle to keep up. For example, legal and justice services, not unlike other services, often rely on paper forms while many others are increasingly delivered in a mobile environment. Indeed, emerging evidence from a wide range of sectors suggests that one of the most effective ways to improve trust in government is by improving the quality of the government service delivered. Portugal recognises that it has a unique opportunity to transform its legal and justice services to become more people-centric and user-driven – with technology as a core enabler of service provision.

To this end, Portugal has approached the OECD to support the implementation of new measures aimed at modernisation and development of approaches that put people at the centre and create innovation capacity in Portugal's justice system, designing citizen-centric approaches to access to justice. This review *Justice Transformation in Portugal: Building on Successes and Challenges* seeks to take stock of the government transformation efforts, identify results and make policy recommendations aimed at enhancing the responsiveness and accessibility of legal and justice services with regards to the needs of citizens and economic actors. The analysis draws on policy documents, direct insights and information collected during a fact-finding mission and stakeholder interviews in the jurisdictions of Lisbon and Sintra in October 2018, as well as desk research. A preliminary draft was fact-checked and preliminary analysis was discussed and validated with governmental stakeholders in March 2019.

The review takes into account a set of OECD criteria for people-centred legal and justice service delivery, setting out guiding principles to support governments in designing and delivering more people-centred legal and justice services (Box 1.1).

It also builds on OECD work for regulatory and administrative simplification, digital government, effective governance and service delivery.

Box 1.1. OECD Criteria for people-centred legal and justice services

Evidence-based planning

People-centred legal and justice services are based on and respond to an empirical understanding of the legal needs and legal capabilities of those who require or seek assistance.

Accessibility

People-centred legal and justice services are accessible and designed to overcome actively the range of barriers to the assistance they require.

Availability

People-centred legal and justice services are available across the justice chain and provided in a range of formats, programme and service types.

Prevention, proactivity and timeliness

People-centred legal and justice services are proactive and contribute to the prevention of legal problems and a timely resolution. Recurring legal problems are addressed on a systemic basis to address underlying causes, thereby preventing reoccurrences.

Appropriateness and responsiveness

People-centred legal and justice services are appropriate and responsive to the individual, the issues they face and their situation. They are tailored, proportionate, efficient and flexible to accommodate local circumstances.

Empowerment

People-centred legal and justice services are empowering, enable people's meaningful participation in the justice system and build people's legal capabilities.

Equality and inclusion

People-centred legal and justice services are inclusive and targeted at those most in need, responsive to specific access needs of particular groups likely to suffer from social and economic disadvantage, of those who are otherwise marginalised or vulnerable and those with complex needs. They are designed to contribute to equality, poverty reduction and social inclusion.

Outcome focus and fairness

People-focused legal and justice services contribute to fair process and fair outcomes and to better and more sustainable procedural, substantive and systemic outcomes, including increased trust and confidence in the justice system and better justice system performance, and to the attainment of social objectives such as socioeconomic inclusion.

Collaboration and integration

People-centred legal and justice services are part of a coherent system that provides seamless referrals and integrated services through collaboration among legal, justice and other human service providers. People get access to all the services they need to solve the legal and related non-legal aspects of their problems holistically, regardless of the entry point for assistance.

Effectiveness

People-focused legal and justice services are effective and continually improved through evaluation, evidence-based learning and the development and sharing of best practices.

Source: OECD, (2019), Equal Access to Justice for Inclusive Growth: Putting People at the Centre, Paris, <https://doi.org/10.1787/597f5b7f-en>.

Justice transformation for people, communities and business

Towards people-centred justice ecosystems for the 21st century

Similar to most OECD countries, public institutions in Portugal have been facing rising citizen expectations of public sector performance and declining public trust and confidence. These trends affect the full chain of the justice sector, including courts, prosecutors, alternative dispute resolution (ADR) mechanisms and legal services – with people demanding greater efficiency and transparency of institutions, faster and more streamlined proceedings, more people-centred and more responsive services and better enforcement. As other OECD countries, Portugal inherited systems which are slow to change, based on complex practices, processes and procedures and outdated legacy information technology (IT) systems, which in many cases contributed to inefficient services, unnecessary duplication and increased margins of error, and hence suboptimal use of taxpayers' resources and low client satisfaction (such as victims and witnesses).

Furthermore, the growing complexity of criminal justice cases (e.g. white-collar and financial crimes, cyberattacks, online fraud and cybercrime) demands greater co-ordination, efficiency and data interoperability among different justice stakeholders. Such complexity also increases trial time, which can result in substantially greater numbers of backlogged cases.

In this context, Portugal, similar to many OECD countries, is taking active steps to make its justice system more accessible, efficient and responsive to the needs of people and businesses, also with a view to strengthening their transparency and trustworthiness. These efforts are also taking place in the context of tight financial constraints (Box 1.2), thus putting pressures on the government and the judiciary to identify new and innovative ways to deliver more and better services for less.

Box 1.2. Justice modernisation under the 2011 Memorandum of Understanding with the International Monetary Fund (IMF) and the European Union (EU)

With a view to stabilising public debt, Portugal signed, on 17 May 2011, a Memorandum of Understanding (MoU) on Specific Economic Policy Conditionality with the European Commission, the European Central Bank (ECB) and the IMF, known as the Troika. It required Portugal to implement a wide range of austerity measures over a three-year period, which extended to almost every area of governance, from social security to education, healthcare and justice. The MoU foresaw a number of measures (objectives) for the justice sector (Chapter 7), which aimed to:

1. Improve the judicial system by ensuring effective and timely enforcement of contracts and competition rules.
2. Increase efficiency by restructuring the court system and adopting new court management models.
3. Speed up judicial proceedings by reducing court backlogs and facilitating out-of-court dispute settlements.

In particular, the judicial system had to identify areas for cost-cutting and carry reforms with reduced resources (Dias, 2016, p. 34).

As a result of a wide range of reforms, the Troika approved Portugal's exit from the EUR 78 billion bailout and the IMF applauded the country for reforming the judicial system. Trends identified by the EU in 2017¹ marked that the reforms in the corporate insolvency and restructuring frameworks helped foster a stronger focus on companies' recovery by introducing out-of-court insolvency frameworks. The latest 2019 European Semester pointed out that the efficiency and performance of the Portuguese justice system significantly improves but still face challenges mainly in administrative, tax and insolvency proceedings, including the low-resolution rate, long duration of proceedings, uneven enforcement of rulings.

The austerity measures were seen as being associated with a number of challenges during that period, such as the shutdown of the court and case management system (Citius) for approximately two months in 2014 and the deteriorating physical condition of the buildings (Dias and Gomes, 2018).

Source: EC (2011), *Portugal - Memorandum of Understanding on Specific Economic Policy Conditionality*, http://ec.europa.eu/economy_finance/eu_borrower/mou/2011-05-18-mou-portugal_en.pdf; Dias, J.P. (2016), "The transition to a democratic Portuguese judicial system: (Delaying) changes in the legal culture", <https://doi.org/10.1017/S1744552315000373>; Dias, J.P. and C. Gomes (2018), "Judicial reforms "under pressure": The new map/organisation of the Portuguese judicial system", *Utrecht Law Review*, Vol. 14(1), pp. 174-86; EC (2017), "Country report Portugal 2017, including an in-depth review on the prevention and correction of macroeconomic imbalances", Commission staff working document, European Commission, <https://ec.europa.eu/info/sites/info/files/2017-european-semester-country-report-portugal-en.pdf>; EC (2019), "Country Report Portugal 2019, including an in-depth review on the prevention and correction of macroeconomic imbalances", Commission staff working document, European Commission, https://ec.europa.eu/info/sites/info/files/file_import/2019-european-semester-country-report-portugal_en_0.pdf.

These justice improvement efforts are on the whole aligned with the broader trends in public modernisation across OECD countries, which involve the following shifts:

1. *More people-centred approaches in governance, policymaking and service delivery* – By reorienting policymaking, governance and service design processes towards people, their needs and preferences rather than institutions. This also involves efforts in co-creating and co-producing services and policies (which in turn calls for greater access to public data, availability of analytical tools, and mechanisms to monitor outcomes), which turn people into partners and collaborators. This requires balancing between internal improvements through greater efficiency and effectiveness of processes and meeting of external demand and needs.
2. *More simplified processes* – Effective design and delivery of services for the people calls for efforts to rethink and streamline the processes and procedures to facilitate user experiences in accessing legal and justice services. This requires getting under the skin of how courts, ADR mechanisms, legal aid and assistance processes operate and putting the needs of users at the centre.
3. *Greater innovation and digitalisation in service delivery* – Modernisation through simplification, innovation and technology hold great potential for improving public services and the public sector at large, including with regard to legal assistance and justice. This requires targeted efforts to

encourage an organisational culture which promotes innovation and development of an environment, allowing for the systematic generation of ideas.

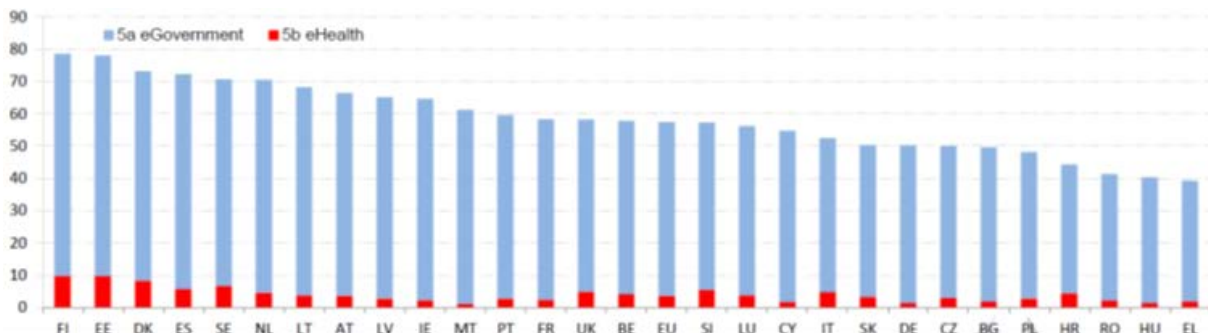
In Portugal, justice sector modernisation efforts are taking place as part of broader efforts to strengthen quality and satisfaction with service delivery. For example, in 2018, in the area of digital public services, Portugal has demonstrated above-average performance in comparison to EU member states (EC, 2018b)² (Figure 1.1).

Moreover, with regard to online service completion (which refers to the share of administrative steps related to major life events that can be done online), Portugal has been among the top performers, which provides a solid foundation for expanding this approach to the justice sector (Figure 1.2).

A combination of these efforts to simplify and streamline the processes, innovation and technology, in turn, can improve and integrate services, reduce waiting times, enhance engagement of various stakeholders and improve management of cases by reducing the number of ineffective trials.

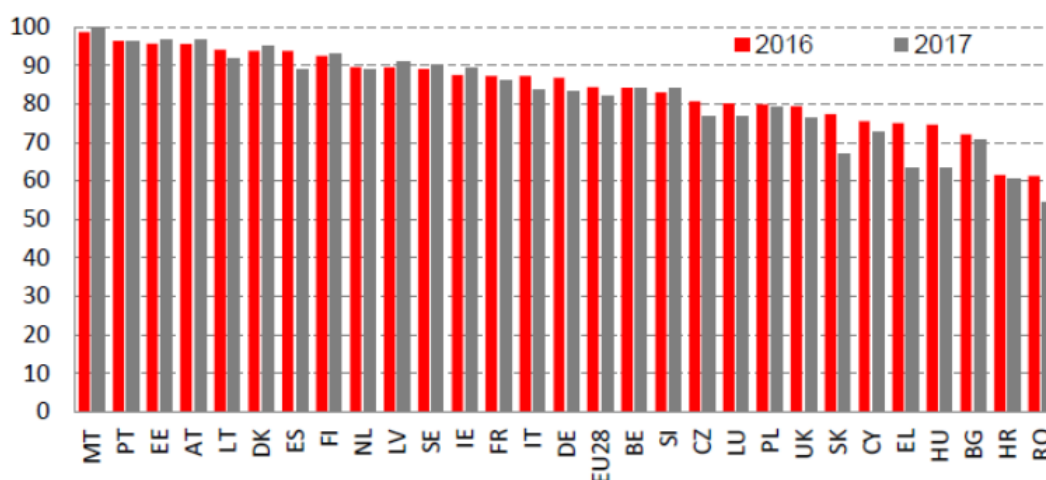
Trustworthy, effective and efficient justice institutions can guarantee fair proceedings and give legal certainty to citizens, businesses and investments. Indeed, the OECD Policy Framework for Investment (PFI) has pointed out that when conditions for access to justice are not guaranteed or are inefficient, such as the case of complex, costly and extensive judicial processes, the business sector, including small- and medium-sized enterprises (SMEs), may limit their commercial activities (OECD, 2015c). As such, the rule of law and timely legal and justice services offer opportunities for business to flourish, taking into account elements such as the level of impact on legal frameworks, research and development (R&D), access to financing, supplementary fair markets that channel resources to productive sectors, and any restructuring and displacement that may accompany them (OECD, 2018). The other way around, crime and violence combined with delayed and corrupt justice may have a negative impact on corporate projects and investment risks, thus affecting competitiveness and economic growth (OECD, 2018).

Figure 1.1. Digital Economy and Society Index (DESI) 2018, Digital public services in EU countries



Source: EC (2018a), *DESI Report 2018 - Digital Public Services*, http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=52244.

Figure 1.2. Online service completion in EU countries, 2016-17



Source: EC (2018a), *DESI Report 2018 - Digital Public Services*, http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=52244.

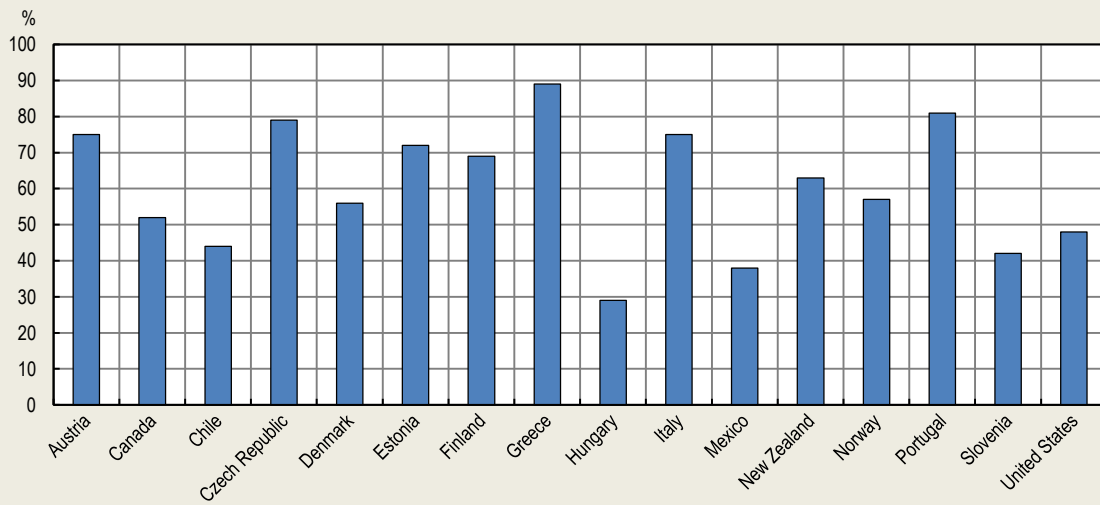
In addition, the modernisation of the justice sector provides a strong foundation to strengthen the responsiveness of justice and legal institutions services in meeting the legal needs of people and businesses (Box 1.3). A study carried out in 2015 by *Direção-Geral da Política de Justiça* (DGPJ) and the High Institute for Political and Social Sciences of the University of Lisbon highlighted that while the current legal aid and assistance system³ ensures efficiency in guaranteeing access to justice, there could be scope for further improvement (e.g. assessing the relevance of the legal need, use of legal aid for ADRs, etc). As such, the Portuguese authorities are currently reviewing the legal aid framework, including through the review of the legislation. Having a thorough understanding of people's needs and experiences could support the authorities in these efforts to develop a modern legal need and assistance system (see Chapter 5).

Box 1.3. Legal needs in Portugal

In accordance with the global legal needs research, most people experience some forms of civil legal problems over the course of their life. As in other OECD countries, two-thirds of Portuguese respondents report experiencing at least one legal problem over the course of two years⁴ (Figure 1.3). The most frequently mentioned problems relate to consumer issues, housing, money and public services. As in most countries, justiciable problems tend to particularly affect certain disadvantaged groups (e.g. recipients of social benefits, people from low-income groups). In all countries, legal problems expose people to direct and indirect impacts (e.g. a loss of employment or income opportunities, exposure to violence).

Source: Based on the information provided by the Government of Portugal and adapted by the OECD.

Figure 1.3. Share of respondents who report at least one justiciable problem



Note: Legal problem with a level of seriousness of 4 or more on a 0-10 scale.

Source: World Justice Project (2018), *Global Insights on Access to Justice: Findings from the World Justice Project General Population Poll in 45 Countries*, World Justice Project, Washington, DC; author's calculations.

There are also indications, that the share of legal needs that are met is higher in Portugal than in many comparable countries. At 30%, the share of respondents who lack legal capability (in the sense of not knowing where to obtain information and assistance to solve their legal problem) is lower than in most OECD countries. Importantly, one-fourth of respondents who faced a legal problem had received professional assistance, which constitutes one of the highest shares among OECD countries. However, access to professional advice seems to increase rather strongly with the level of income. Finally, 65% of the legal problems reported in the survey had been resolved, of which only 5% had been addressed through the formal legal system.

Source: World Justice Project (2018), *Global Insights on Access to Justice: Findings from the World Justice Project General Population Poll in 45 Countries*, World Justice Project, Washington, DC; OECD (2019), "Building a business case for access to justice", OECD White Paper.

Notes

¹ Under the economic adjustment programme for Portugal 2011-2014.

² The digital public services dimension consists of six indicators: the eGovernment users measured as a percentage of those Internet users who need to submit forms to the public administration (eGovernment users indicator); the extent to which data that is already known to the public administration is pre-filled in forms presented to the user (pre-filled forms indicator); the extent to which the various steps in dealing with the public administration can be performed completely online (online service completion indicator); the degree to which public services for businesses are interoperable and cross-border (digital public services for businesses indicator); the government's commitment to open data (open data indicator); and the percentage of people who used health and care services provided online without having to go to a hospital or doctors surgery (eHealth services indicator).

³ Legal aid in Portugal is regulated by Law 34/2004 of 29 July (amended by Law 47/2007 of 28 August, Law 40/2018 of 08 August, and Decree-law 120/2018 of 27 December) and Ordinance 10/2008 of 3 January (amended by Ordinance 210/2008 of 29 February, 654/2010 of 11 August and 319/2011 of 30 December). Under such regulation, legal aid encompasses legal information (as a duty of the state to carry out activities to disseminate knowledge on the rule of law and on the legal regime) and legal protection. Legal protection comprises two strands: legal advice and legal assistance to a specific case brought before a court, a justice of the peace or an ADR centre as defined by a ministerial ordinance. Legal assistance, on the other hand, can be granted in the following types: i) exemption from court fees and other costs of the proceedings; ii) appointment of a lawyer and payment of his/her fees (according to a pre-established schedule of fees approved by ministerial ordinance); iii) benefit of paying court fees and other costs of the proceedings by instalment; iv) appointment of a lawyer and benefit of paying fees by instalment, according to the same schedule of fees mentioned previously; and v) appointment of an enforcement agent.

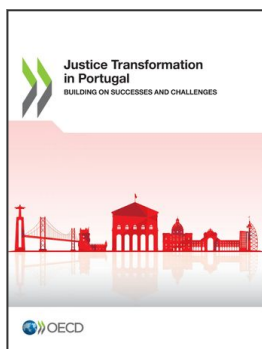
Both legal advice and legal assistance are provided by lawyers enrolled, on a voluntary basis, in the legal aid system according to their preferential fields of practice. Legal advice or legal assistance is granted to persons or legal entities who meet the legal criteria for economic insufficiency and the types of legal assistance are granted according to the level of economic insufficiency.

The procedure among the different institutions that concur to provide legal aid relies on tailor-made information systems. The attribution of the benefit of legal advice or legal assistance is decided by the Social Security Institute and is supported by AJUDIC – an information system developed by the Social Security. Lawyers are appointed by the Bar Association, through an information system called SINOA (*Sistema de Informação da Ordem dos Advogados*) that allows lawyers to register the state of the case, to interact when necessary with the Bar Association (to ask to be excused from a case for example) and to request their fees at the end of the case. Lawyers' fees are paid by the state (according to a pre-established schedule of fees approved by ministerial ordinance that takes into account the various types of cases) through the IGFEJ supported by another information system – the SICAJ (*Sistema de Confirmação dos Pedidos de Pagamento de Apoio Judiciário*).

⁴ The key advantage of the General Population Poll (GPP) is to deploy the same methodology in all countries (World Justice Project, 2018). GPP results should be interpreted with caution due to the inherent limitations of surveys and the differences of institutional and cultural context between countries. As everyday issues might not represent a substantial legal need, the analysis is restricted to problems above a certain threshold of (reported) seriousness (in the sequel, justiciable problems are defined as problems with a reported level of seriousness of 4 or more in a scale going from 0 to 10).

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