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**AN OVERVIEW OF THE PORTUGUESE LEGAL AID SYSTEM:
CHALLENGES AND COMPARATIVE PERSPECTIVES**

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1. Introduction

The objective of this study is to provide an overview of the Portuguese model of access to law and justice in a comparative perspective to other systems that are currently adopted around the world, seeking to point out its structure and main challenges. It is a preliminary outcome of the author's research conducted during his tenure as a visiting researcher at the Centre for Social Studies, University of Coimbra, in the first half of 2025. This report is the first to detail the legal aid system of a Southern European country at an ILAG Conference.

As is well known, the assurance of effective access to rights and justice in European nations is founded in Article 6 of the European Convention on Human Rights (ECHR). Although it does not explicitly guarantee the right to free access to justice in civil matters, the landmark case "Airey v. Ireland" has established that it is mandatory for States to provide individuals with free representation by legal counsel when it is essential for effective access to Court or when the absence of such assistance would result in a denial of a fair hearing. This right aligns with the globally recognized term

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"legal aid," the parameters of which have been deemed not exclusively connected to access to the Courts of Justice. In this sense, the concept of legal aid includes the provision of legal advice, support and representation to individuals or groups unable to afford private legal services. This public interest service, primarily offered by lawyers and paralegals, aims to resolve specific legal issues and is partially or wholly supported by the state, including court fee waivers and other financial concessions. In a more comprehensive sense, legal aid also encompasses access to legal information, legal education, and additional services that are offered through alternative conflict resolution methods and restorative justice processes.

In addition to the European legal system's determination, which is derived from the aforementioned Article 6 of the ECHR and also from Article 47 of the Charter of Fundamental Rights of the European Union, the obligation of States to ensure effective access to rights and justice has been recognized in the national legal systems of numerous countries, mainly after the 1960s. These foundational legal frameworks underscore the necessity for effective access to rights and justice, emphasizing that justice must not only be an ideal but a tangible reality for all individuals. This recognition corresponds to what Mauro Cappelletti refers to as the First Wave of the Global Access to Justice Movement in his well-known studies. This movement has significantly shaped contemporary understandings of legal rights and their accessibility. Very well analyzed by Mauro Cappelletti's pioneering studies, this movement has laid the groundwork for ongoing reforms aimed at dismantling barriers to justice, thereby fostering a more equitable legal landscape and enabling societies to progress toward the realization of justice for all. Portugal was not entirely unaware of this movement; however, the process of establishing a system that would guarantee equal access to rights and the courts was sluggish and less comprehensive and sophisticated than that of other countries.

This essay starts with a brief outline of Portugal, including its political-constitutional framework, some demographic and socio-economic data, a general view of its judicial system structure, and associated legal professions. We will present a historical overview of the development of the Portuguese legal aid model, explaining its legal and constitutional foundations and the essential characteristics of its present structure and operation. We will adopt a comparative approach when suitable, mainly

concerning other nations with significant cultural and legal affinities, particularly those in Southern Europe and Latin America, with particular emphasis on Brazil.

The parallelism of the Portuguese legal aid service model to those used in other southern European countries, like Spain, France, and Italy, is noteworthy. However, despite the historical importance of both Portugal and Spain in the colonization of many countries in the Americas, there is a marked contrast in the legal aid models that ultimately predominated in most Latin American nations. In the context of Portugal, we are explicitly considering the model adopted by Brazil, which, as it is known, was colonized by the Portuguese. The prevailing model in Brazil and most Latin American nations is that of salaried lawyers, with services provided by Public Defender's Offices². In contrast, Portugal and other Southern European countries primarily utilize the *judicare* model schemes, which, however, have been deemed relatively more precarious compared to those existing in more economically advanced Northern European countries. It seems plausible that the salaried model's prevalence in Latin American countries is a result of the United States' notorious influence on these countries throughout the 20th century. In that country, the staff model has notoriously predominated in the organization of legal aid services, particularly with respect to public defense in criminal matters.

This essay is, as pointed out above, based on ongoing research that is being conducted in the first half of 2025 at the University of Coimbra. For this reason, it will ultimately give only preliminary conclusions. For academic purposes, this work should be regarded as a draft, currently in progress, intended for discussion and the exchange of ideas, with the aim of achieving a definitive version upon completion of the research.

² For more details on the prevalence of the salaried lawyer model, specifically regarding services delivered by the Public Defender's Office in Latin America, we recommend the paper authored by Diogo Esteves and Cleber Francisco Alves, presented at the "International Conference on Access to Justice and Legal Services" in 2018 at the UCL Centre for Empirical Legal Studies (London), available for download at: https://www.ucl.ac.uk/empirical-legal-studies/sites/empirical-legal-studies/files/diogo_esteves_and_cleber_alves_paper_ucl_conference.doc. This subject was also the theme of the doctoral thesis submitted by Diogo Esteves to the Postgraduate Program in Sociology and Law at UFF in 2023, titled "Assistência Jurídica na América do Sul," which has not yet been published.

2. Country Details and Justice System Data

Portugal is a unitary nation-state located in southern Europe, with its origins as a sovereign country tracing back to 1143 AD, when the kingdom of the same name was established. In the 19th century, it became a constitutional monarchy and, since 1910, it has been a republican regime. Throughout the 20th century, for over 48 years, the nation was under authoritarian government (from 1926 to 1974). The 1974 Revolution, which is commonly referred to as the "Carnation Revolution," was the catalyst for the establishment of a representative democratic regime under the rule of law. This process culminated in the promulgation of the 1976 Constitution of the Portuguese Republic. The country adopted a semi-presidential republican political system. Article 110 of the 1976 Constitution recognizes the following as the sovereign bodies of the State: the President of the Republic, the Assembly of the Republic, the Government, and the Courts. Despite being a unitary state, the Constitution acknowledges local authorities with a degree of autonomy, consisting of 308 municipalities divided into 3,092 parishes (*Freguesias*). It encompasses, in addition to the European mainland, the autonomous island regions of Madeira and Azores. Portugal has been a member of the European Union since January 1, 1986.

The entire country occupies an area of 92,230 square kilometers and has a population of 10.6 million inhabitants. The population of foreign immigrants living in the country has risen markedly in recent years. The government agency AIMA reported that 1,546,521 is the estimated number of foreigners residing in Portugal at the end of the year 2024³, representing approximately 15% of the nation's population. Brazilians constituted the largest foreign community in the country (368,449), followed by Angolans (55,589), Cape Verdeans (48,885), and British (47,409). It also should be noted that a significant percentage of residents possess Portuguese citizenship despite not being born in the country, mostly comprising Brazilians of Portuguese ancestry (this would be the reason why, according to data from the Brazilian Ministry of Foreign Affairs, the number of Brazilians living in Portugal would be 513,000 at the

³ This figure refers to December 2024 and is presented in the report released by AIMA - Agency for Integration, Migration and Asylum, accessible for download at: <https://aima.gov.pt/media/pages/documents/4a518251d7-1744128191/relatorio-intercalar-recuperacao-de-processos-pendentes-na-aima-populacao-estrangeira-em-portugal.pdf>

end of 2023⁴). There is a lack of precise statistical data regarding this group, which, although not classified as immigrants in a technical sense, is perceived as such in practice.

The nominal Portuguese GDP, as reported by the World Bank (2023), was US\$ 289.11 billion⁵. As to OECD metrics (2022), 12.8% of the Portuguese population was deemed as living in poverty⁶. In 2025, Portugal ranks 40th globally on the Human Development Index (HDI), with a score of 0.88, much lower than top performers such as Switzerland (0.97), Norway (0.97), and Iceland (0.972), yet far above the global average of 0.756⁷.

Regarding statistics and data from the legal field, as of 2023, there were 40,065 lawyers registered with the Portuguese Bar Association (OA). This rate equates to an average of about one lawyer per 265 inhabitants. Over 57% of lawyers are women, totalling around 22,800 female lawyers. Among the total number of registered lawyers, those of Brazilian origin have significantly increased in recent years, accounting for approximately 10% of the total qualified lawyers in the country in 2023. The percentage can be considered high, particularly when accounting for the total number of Brazilian immigrants in Portugal, which constitutes approximately 3.5% of the country's population, as previously noted. These very high figures are a result of the reciprocity regime that was in effect until 2023, allowing lawyers registered with the Brazilian Bar Association to automatically register with their Portuguese counterparts, and vice versa.

With respect to the numbers of other legal professionals, in 2023 there were around 1,800 career judges serving in the various Portuguese Courts and around 1,600 public prosecutors (members of the Public Prosecution – *Ministério Público*). In Portugal, the State's formal judicial machinery represents the core and, by far, most important structure for dispute resolution. Nonetheless, the relevance of alternative methods to legal adjudication is gradually being considered, so aiming to reduce the duration of

⁴ This figure appears in a report released by the Brazilian Ministry of Foreign Affairs at the end of 2023, accessible for download at: <https://www.gov.br/mre/pt-br/assuntos/portal-consular/BrasileirosnoExterior2023.pdf>.

⁵ See: <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=PT>.

⁶ See: <https://www.oecd.org/cfe/leed/social-economy/oecd-global-action/country-fact-sheet-portugal.pdf>.

⁷ See: <https://hdr.undp.org/data-center/country-insights#/ranks>.

judicial processes and render the system more efficient and suited to various kinds of conflicts while decreasing litigation expenses. Both civil society and the government have been encouraging the promotion of alternative dispute resolution (ADR) ⁸ through arbitration, mediation, conciliation, and resolution of conflicts, particularly concerning consumer conflicts.

Since 2001, Justices of the Peace have been established across Portugal as an alternative to the conventional court system (at specific levels), emphasizing local justice and the informality and simplification of procedures, encouraging civic participation of the involved parties, and promoting equitable resolution of disputes through mutual agreement. While court fees are not exempt, the national legal aid system applies to all cases before the Justices of the Peace. Their methods and procedures are designed to offer expedited and cost-effective dispute resolution, fostering consensual conflict resolution through mediation. This approach promotes less stressful and more harmonious forms of dispute resolution for litigants, enhancing self-regulation, particularly in small claims collection, thereby better addressing the parties' fundamental needs and expanding access to justice.

3. Historic Overview of the Portuguese Legal Aid Scheme

The inaugural statute addressing the right to legal aid in Portugal was enacted on August 17, 1899⁹. Legal aid is understood as the appointment of a lawyer or solicitor by the relevant judge to represent a case at no cost, along with the waiver of prior payment for the expenses associated with filing the lawsuit in Court. That original legislation provided that the authority to recognize economic insufficiency and grant the benefit would rest with a commission specifically designated by the district judge. Throughout the 20th century, a series of legislative modifications came to pass, as happened in a 1944 alteration under the authoritarian regime of the "Estado Novo," which transferred the responsibility for benefit provision to local government organizations (*Juntas de Freguesia*). In 1970, a new system was implemented

⁸ See: <https://dgpj.justica.gov.pt/English/Alternative-Dispute-Resolution>.

⁹ COSTA, Salvador da. *O Apoio Judiciário*. Coimbra: Almedina, 11^a ed, 2024, p. 8.

whereby the provision of legal aid became a procedural judicial incident with the judgment rendered by the presiding judge of the case. This regime allowed representation and defense in Court not only by lawyers and solicitors but also by interns training for legal careers, members of the Public Prosecutor's Office, or Court employees in the absence or impediment of those named before. This regime lacked any mechanism for financial compensation for lawyers or solicitors assigned to offer legal aid.

Following the democratization of the country after the 1974 Revolution, the new Portuguese Constitution of 1976 was approved, which established in Article 20, No. 2, the guarantees of access to law and justice. This article was modified in the Constitutional Reforms of 1982 and 1989, thereafter termed "access to law and the Courts" and explicitly encompassed the "right of all, pursuant to the law, to legal information and consultation and to legal representation." In 1997, a change was made to this rule to include the right to "access to law and effective judicial protection," and it also stated that people have the right to legal help not just in Court but with "any authority," recognizing the right to defend oneself in any legal situation involving police, public prosecutors and any other public authorities.

Despite being enshrined in the new Constitution since 1976 as both a citizen's right and a State obligation, the system remained for over a decade under the outdated and anachronistic framework of a charitable and ethical-deontological nature, wherein lawyers provided services to economically disadvantaged individuals without financial compensation from public funds. In 1987, over a decade after the enactment of the democratic Constitution, a new statute was approved regulating the payment of lawyers for services rendered under the legal aid framework. This new law stipulated that the presiding judge was competent to determine eligibility for the benefit, while the Bar Association was tasked with appointing attorneys and managing the respective payments funded by the Ministry of Justice.

In December 2000, substantial reform took place in the Portuguese legal aid system. A new statute was enacted to "dejudicialize" the process, assigning the responsibility of assessing benefit petitions to the Social Security service. The 2000 legislative reform mandated that only licensed attorneys could be appointed for representation

and ex officio defense in criminal cases, thereby improving the quality and effectiveness of defenses. It also substantially increased the financial compensation awarded to legal practitioners. The responsibility for naming the lawyer remained with the Portuguese Bar Association, notwithstanding Law 30-E/2000 allowing the beneficiary to freely choose his/her lawyer. In 2004, new legislation was introduced that banished the option for free choice of the attorney, assigning lawyer appointments to the Portuguese Bar Association and establishing more impersonal and objective mechanisms for such appointments, which should happen among lawyers who have agreed to voluntarily enroll to provide the service.

The law changes made in 2004 were meant to bring Directive 2003/8 from the Council of Europe, which deals with legal aid in cross-border disputes, into Portuguese law, and to create a clearer and more specific definition of the financial and economic limits for deciding who qualifies for legal aid. This formulation led to a more restrictive interpretation of eligibility criteria. The severity of these limits prompted a constitutional challenge, resulting in a ruling by the Constitutional Court¹⁰ that demanded further adjustments, implemented through new legislation approved in 2007.

It is also worth noting, with regard to the legislation that was approved in 2004, that it also explicitly mandated the creation of "Legal Consultation Offices" to be spread out across the country, aimed at delivering first-line legal aid, guidance, and advice in an accessible manner, without a condition of previously and formally obtaining a legal aid certificate through an administrative process with the Social Security Service. However, after over two decades since then, it is evident that these Offices have not been successfully established; rather, there has been a reduction in the number of those that had been created.

Therefore, in practical terms, the right to legal advice in the Portuguese system almost always requires that the citizen have previously obtained a certificate granting legal aid. Only in this case can he or she have a lawyer appointed, and the consultation session will be conducted in a private law office rather than a public legal consultation office. Because of this situation, citizens cannot easily access legal consultation

¹⁰ Ruling No. 127/2008, of the Constitutional Court of Portugal.

services to ask questions and get help with small legal problems, even though the system was originally designed to allow this, and the law expressly mandates the creation of this net of “open-door” legal consultation offices, which, as demonstrated by our observations and interviews, has not been effectively created.

The possibility to easily access “open-door” consultation services only exists in some specific legal domains, such as family law issues concerning minors’ interests or questions involving the labor rights of employees, for which the Portuguese Public Prosecutor’s Office retains the authority to act and advocate for these vulnerable citizens. For this reason, its service offices normally provide guidance and advice on these matters¹¹. Further on, we will broaden the discussion about this range of institutional attributions of the Portuguese Public Prosecutor’s Office in the field of access to rights and justice. In continental European nations, with a civil law tradition, this expansive role is common beside the traditional criminal prosecution duty, as reflected in the institution’s designation, typically referred to as the “Public Prosecution” (*Ministério Público*).

To conclude this topic on the historical overview of the development of the Portuguese legal aid system, it is appropriate to briefly discuss the debate that has periodically arisen in Portugal regarding the potential convenience and opportunity (and constitutional legality) of a profound reconfiguration of the system, adopting the model of salaried lawyers, and the establishment of an organization similar to the Brazilian Public Defender’s Office, having in mind the comparative perspective adopted in this study. In the field of legal and juridical studies, the robust historical and cultural connections and interchanges between the two nations are even more significant. In this sense, it is noteworthy that the Brazilian Constitution of 1988 was substantially influenced by the Portuguese Constitution of 1976, particularly due to the fact that both countries were in the process of transitioning from a dictatorial to a democratic regime

¹¹ Regarding this role of the Portuguese Public Prosecutor’s Office (*Ministério Público*), considered as a “gateway” to the system of access to justice, we recommend the works of Professor João Paulo Dias, a researcher at CES-UC, who has been studying the peculiarities of this institution of the justice system since his doctoral thesis. In the specific case regarding PPO’s role of interface with the citizen, through direct “face-to-face” service to the public, we recommend the article “Citizenship and justice: public prosecutors in social contexts in Portugal” published in the International Journal of the Legal Profession (Vol. 20, N. 1, 2013), available at <https://estudogeral.sib.uc.pt/bitstream/10316/33096/1/Citizenship%20and%20justice%20public%20prosecutors%20in%20social%20contexts%20in%20Portugal.pdf>

at that time. These exchanges also indicate a reciprocal influence on the configuration of legal norms and institutions. The peculiar Brazilian model of legal assistance services provided by the Public Defender's Office has garnered significant attention and interest worldwide, prompting social scientists, jurists, and politicians to consider its potential merits and possible adoption in Portugal. There are documented proposals and discussions in both the political arena and, particularly in academic-legal circles, regarding the establishment of a potential state entity and corresponding legal career for public defenders¹².

One of the main enthusiasts of the idea among academics was Boaventura de Sousa Santos¹³. João Paulo Dias also contemplated this notion, not only replicating Santos' proposal but explicitly considering this alternative as a possible subject for discussion in Portugal, specifically referencing the successful experiences of Latin American nations (Brazil and Argentina)¹⁴. In the doctoral thesis in Sociology of State, Law and

¹² This topic has been a frequent subject of studies and research in postgraduate programs, particularly master's degrees, in Portuguese law schools, many of which are pursued by Brazilian postgraduate students studying in Portugal. For instance, we can cite the subsequent works: BUGS, Diego Carvalho. *Defensoria Pública do Brasil: um paradigma de acesso à justiça às pessoas com insuficiência de recursos econômicos em Portugal*. Rio de Janeiro: Lumen Juris, 2025 (originally a Master's Dissertation presented to the Faculty of Law of the University of Lisbon); AZAMBUJA, Rodrigo. *Para uma defesa criminal efetiva: A assistência jurídica gratuita em Portugal e no Brasil*, 2015 (Master's Dissertation presented to the Faculty of Law of the University of Coimbra); BARROS JÚNIOR, José Maria de. *O acesso à justiça em Portugal e no Brasil – reflexões em torno dos modelos de proteção jurídica às pessoas em situação de insuficiência econômica*. Rio de Janeiro: Lumen Juris, 2021 (originally also a Master's Dissertation presented to the Faculty of Law of the University of Coimbra); BOTELHO, Marta. "Defensoria Pública em Portugal: uma solução possível e desejável? Análise comparada entre os modelos português e brasileiro". In: ANTUNES, Maria João; SANTOS, Claudia Cruz; AMARAL, Cláudio do Prado (Org.). *Os Novos Atores da Justiça Penal*. 1ed. Coimbra: Almedina, 2016, v. 1; SOUZA, Carlos Eduardo Freitas de. *Defensoria Pública em Portugal: uma realidade possível?*. In: *Revista do CEJ (Centro de Estudos Judiciários, de Portugal)*, Lisboa, No. 2, 2019.

¹³ For instance, consider this explicit quotation (translated) from Boaventura Sousa Santos in one of his works: "In Brazil, what I proposed in Portugal is being implemented, but it was unfeasible to implement primarily due to the resistance of the Bar Association: the establishment of a public defender's office." Empirical evidence indicates that giving control of legal aid to the Bar Association results in inefficacy. The rationale is straightforward: the Bar Association aims to safeguard its market by reserving high-quality professional services for well-compensated attorneys. The principles of market logic preclude the allocation of competent lawyers to deliver legal aid. It would constitute a contradiction. Consequently, an alternative system must exist. In Portugal, when I suggested establishing a public defender with independence and autonomy, meaning one not beholden to the State, there was an immediate response deeming it only another instance of state bureaucracy. I proposed the establishment of a public institute, distinct from a mere state department. (SANTOS, Boaventura de Souza. *Para uma revolução democrática da justiça*. 3rd. ed. São Paulo: Cortez, 2014. p. 50).

¹⁴ In the concluding part of the book on the Public Prosecutor's Office, pointing out measures that should be adopted by the Ministry of Justice, with a view to building "an integrated model of access to law and justice that guarantees the promotion and guarantee of citizens' rights", João Paulo Dias proposes, textually, the following: "promotion of public discussion, supported by duly validated and consensualized information, on the different options and alternatives so that, with the existing means, it can improve the overall functioning of the judicial system and guarantee easy and informed access of citizens to law and

Administration, presented by João Pedroso to the Faculty of Economics of the University of Coimbra, the debates that occurred between 2003 and 2004 within the legal professions are reported¹⁵. These debates were conducted in the context of the first Justice Conference, during which class representatives of judges expressed their support for the establishment of a body of public defenders to provide legal aid services. From 1999 to 2002, the concept was incorporated into the political programs of the "Bloco da Esquerda" (Left Bloc) and the "PCP" (Portuguese Communist Party), as also noted by João Pedroso in the context of political party proposals¹⁶. In January 2011, the concept was once again the subject of explicit debate during a parliamentary session that was intended to debate constitutional review. However, the Bar Association remains strongly opposed to the so-called "functionalization" of the legal profession, arguing that it would be hazardous, as it could potentially undermine the independence and autonomy of legal professionals in their mission to protect the interests of citizens in Court.

In the present environment in Portugal, based on our assessment resulting from interviews with different stakeholders in the legal sector, there seems to be a lack of interest or of feasibility for such a change; however, it is generally accepted that there would be no constitutional barrier to a complete overhaul of the current model¹⁷ with

justice, among them, for example, the possibility of creating a model of autonomous public defender, similar to what happens in Brazil (Sadek, 2001), or a model of two-headed Public Prosecutor's Office that articulates the current competencies with those of the public defender, as in Argentina (Arduino et al., 2008), with access to the public defender career, in the first years, being possible through the prior performance of functions in this area". (See: DIAS, João Paulo. *O Ministério Público no Acesso ao Direito e à Justiça* - "porta de entrada" para a cidadania. Coimbra: Almedina, 2013, p. 258).

¹⁵ See: PEDROSO, João. *Acesso ao Direito e à Justiça: um direito fundamental em (des)construção: O caso do acesso ao direito e à justiça da família e das crianças* [online]. Dissertação de Doutoramento em Sociologia do Estado, do Direito e da Administração, Faculdade de Economia, Universidade de Coimbra, 2013, pp. 254-255. Available at: <https://estudogeral.uc.pt/handle/10316/22583>

¹⁶ There is also a record of this debate, within the scope of proposals forming part of the Program of the XVIII Constitutional Government (2009-2013), as reported by Marta Madalena Botelho. See: BOTELHO, Marta. "Defensoria Pública em Portugal: uma solução possível e desejável? Análise comparada entre os modelos português e brasileiro". In: ANTUNES, Maria João; SANTOS, Claudia Cruz; AMARAL, Cláudio do Prado (Org.). *Os Novos Atores da Justiça Penal*. 1ed. Coimbra: Almedina, 2016, v. 1, pp. 351-352

¹⁷ In this regard, see the study done in 2015 by the Directorate-General for Justice Policy (DGPJ), a department that is part of the structure of the Portuguese Ministry of Justice. The study was conducted by consultants Pedro Correia and Vasco Pinto da Rocha and by civil servants Mónica Gomes and Bruna Costa, under the technical coordination of Deputy Director-General Renato Gonçalves and supervision by the Director-General for Justice Policy, Susana Antas Videira, with the collaboration of the Higher Institute of Social and Political Sciences of the University of Lisbon (ISCSP). Available at: [https://dgpj.justica.gov.pt/Portals/31/Estudos%20AIN%20DGPJ/Estudo acesso ao direito maio 2015.pdf](https://dgpj.justica.gov.pt/Portals/31/Estudos%20AIN%20DGPJ/Estudo%20acesso%20ao%20direito%20maio%202015.pdf)

the potential establishment of a Public Defender's Office in Portugal, adopting the salaried model in the country.

4. Current configuration of the Portuguese Legal Aid Model: the role of the Social Security Institute and the Bar Association

The legal aid service structure that is presently in operation in Portugal is designed by the national Constitution's provisions, international law and EU regulations, and domestic infra-constitutional law (Law 34/2004 and its subsequent amendments¹⁸). The system is three-dimensional and encompasses the responsibilities of the Institute of Social Security, the Ministry of Justice, and the Bar Association. There is no provision that includes the client community's participation in the governance of or the setting of priorities for legal aid. In turn, the historical trajectory of the Portuguese legal aid system's configuration is overwhelmingly characterized by the strength and influence of legal professionals, specifically lawyers.

In the configuration in force since 2000, the Social Security service is in charge of receiving requests for legal aid, such as requests to appoint a lawyer to initiate a lawsuit or to provide defense in Court to be paid with public funds, as well as requests for exemption from payment of legal proceedings or even to cover legal consultation expenses. The citizen (or the legal person) must make the application for legal aid by completing an online form found on the "*Segurança Social Direta*" Service's website (<https://www.seg-social.pt/protecao-juridica>). The printed form can also be completed and submitted by email or filed at one of the Social Security offices that are spread throughout the country. Attached must be documentation attesting to the state of financial and economic insufficiency.

In the case of individuals, the criteria for granting the benefit are based primarily on the monthly income of the applicant and his/her family, also taking into account his/her assets and amounts of money in bank accounts. Benefit eligibility is determined by a

¹⁸ To access the full text of the law, in the version updated by amendments subsequent to 2004, see: <https://diariodarepublica.pt/dr/legislacao-consolidada/lei/2004-34520575>

strict mathematical formula that has been established in the regulations¹⁹. If the limit established to correspond with the circumstance of financial insufficiency is surpassed, there is also a second income level at which legal aid can be obtained by paying the related legal expenses to the State in installments (phased payment).

The applicable legislation also provides for the possibility that, even if the applicant does not meet the strict financial limits, when the refusal of legal aid may result in denial of access to law and justice, exceptionally, legal aid can be granted by the discretionary decision of the Director of the Social Security Service if he/she considers that this is the case.

The local Social Security Service department has a 30-day period to process and assess the application. If there is any pending measure in a legal proceeding already initiated that needs to be taken by the applicant, the period for taking such a measure in Court will be suspended until the application for legal aid is decided. In the event that the analysis requires additional documentation, the applicant will be notified to provide it, and the 30-day processing period will be suspended while the interested party responds. Prior notification of the applicant is also required to allow him/her to respond before the application may be denied. The law stipulates that the application for legal aid will be implicitly granted if it has not been assessed after the 30-day period. The denial decision may be challenged, but there is no provision for administrative appeal: eventual impugnation by the applicant will be directly submitted to a Court for assessment.

Once the application has been approved, the Social Security service ceases its participation in the system, sending notifications to the applicant informing him/her about the outcome of the request (and to the Court when it is only a request for exemption from lawsuit expenses). If there has been a request for the appointment of a legal professional, it also has to send a notice to the Portuguese Bar Association. At this point, the role of the Bar Association in the scheme stands out.

¹⁹ The Social Security Service provides a link on its website that allows citizens to freely access and simulate the calculations needed to determine their eligibility for legal aid based on this mathematical formula. See: <https://www.seg-social.pt/2025-1-semester>

The Bar Association's primary role in this process comprises not only the formal procedures associated with professional designation but also the oversight and management of the registry of voluntary participants, along with the monitoring and supervision of their activities, mediating any conflicts and grievances that emerge between the professional and the recipient of legal aid. It is also tasked with providing its own electronic information system, which interacts with the Ministry of Justice system in controlling and handling financial compensation for services provided. Payment processes will be explained further below.

Still regarding the role of the Bar Association, as previously emphasized, there is no provision for the applicant's free choice of the private legal professional who will provide the service. The appointment will be made by the Bar using an electronic system that is specifically designed for this purpose. The system will randomly select professionals who have previously registered, and it will send a notice to the designated lawyer informing him/her of the appointment.

When it comes to criminal cases, if a person is arrested on charges of a crime or in cases where urgent investigative measures are required before the Police or the Public Prosecutor's Office, the defendant must be informed of his/her right to freely appoint counsel. However, if this does not happen or if the defendant reports that he/she lacks the financial means to retain a private attorney, when technical defense by a lawyer is mandatory, a lawyer must be appointed *ex officio* to provide assistance. To this end, the Portuguese law provides that the Bar Association be responsible for coordinating a daily shift schedule of attorneys who have been previously registered and are available to respond to calls. They must appear at the police or Court unit within 1 (one) hour to provide the appropriate legal assistance. To prevent conflicting defenses, a separate lawyer is assigned for each defendant who has not appointed legal counsel at his/her own expense when multiple individuals are facing criminal charges in the same case.

The lawyer who has been appointed to represent the defendant in this initial phase will continue to represent the defendant in Court if a lawsuit is filed by the public prosecutor. The lawyer will remain in defense until the final decision, including any potential filing of appropriate appeals. The services provided will be paid for according

to the same standards and procedures applicable to the legal aid system. If the defendant is a poor person, a request for legal aid must be submitted at the same time; this request will be processed in accordance with the aforementioned procedure. If the accused person is ineligible for legal aid and fails to appoint a lawyer for his/her defense voluntarily, upon conviction, he/she will be liable not only for the costs incurred but will also be mandated to pay an amount equivalent to three times the fee owed to the court-appointed lawyer as compensation for services rendered according to the legal aid scale. However, if you are acquitted, or the case against you is closed without charges, you will not have to bear any costs.

Taking all of this into account, it appears that the model adopted in Portugal can be classified as a typical "judicare" system, wherein legal services are provided by private practitioners compensated through public funds. Under the Portuguese legal system, there are two basic subdivisions of the legal profession: lawyers/attorneys, solicitors, the latter possessing a more restricted capacity for Court representation. It is possible to grant legal aid to cover expenses for both lawyers and solicitors (and also, if needed, for law enforcement officers), as the case may be.

We have made every effort to obtain updated quantitative data on the lawyers who are actually registered with the Portuguese Bar Association to provide legal aid services in order to provide a more comprehensive understanding of the current reality, in the context of the research we are conducting on the Portuguese system of access to rights and justice. We have sent several emails to the *Instituto do Acesso ao Direito*, a department affiliated with the General Council of the Portuguese Bar Association, in Lisbon, requesting the scheduling of a visit and interview, as well as the provision of reports and data. However, we have not received a response to date. We have searched the internet for reports and other current data, but to no avail. We have only found one news item from 2011²⁰, which stated that 9,800 lawyers voluntarily registered to provide legal aid services in that year. This number represented one-third of the total number of legal professionals in the country, which reached 27,869 at that time. In 2016²¹, this number had risen to 12,707 and represented 42.42% of all lawyers

²⁰ See: <https://cnnportugal.iol.pt/sociedade/justica/modelo-de-apoio-judiciario-e-insustentavel>

²¹ These figures can be found in the national report authored by Judge Carlos Marinho regarding Access to Justice in Portugal, which is part of the "Global Access to Justice" Project available for

registered with the Bar Association, with 4,897 (38.54%) being male lawyers and 7,810 (61.46%) female lawyers. It is not possible to infer that this proportion remains unchanged nearly 10 years later; in fact, it is even reasonable to assume that there has been a rise in it. In our research, the objective was also to undertake a more comprehensive analysis of the profile of these professionals, including their gender, age, length of professional practice, academic background, and any other demographic data that may be available in the respective recordings. Such an analysis would enable a more accurate identification of the lawyers who are actually providing legal aid in Portugal. Regrettably, this has not yet been feasible.

A peculiarity that should be noted in the Portuguese legal system refers to the role played by members of the Public Prosecutor's Office (*Ministério Público*) in ensuring access to law and justice, as we had already mentioned above. Among the duties of these legal professionals, in addition to their traditional roles in criminal prosecution and safeguarding public and state interests in judicial processes, the prosecutors (*procuradores da república*) are authorized by law to file lawsuits before the Courts on behalf of vulnerable individuals, such as employed workers, minors, and persons with civil incapacity²².

Although the public prosecutor is not technically an attorney or representative in Court for these vulnerable individuals, in a way, they end up acting as such. Based on this possibility, in fact, the volume of litigation initiated by Public Prosecution personnel in family courts are considerable²³. For example, they seek the establishment of child

download on the project's website at: <https://globalaccesstojustice.com/global-overview-portugal/?lang=pt-br>

²² This is what is stated on the official website of the Public Prosecutor's Office in Portugal: "The Constitution of the Portuguese Republic and the law confer on public prosecutors many functions, such as institute and take over the conduct of criminal proceedings, conduct criminal investigations, participate in the implementation of the criminal policy, represent the State, defend the democratic lawfulness, **protect the rights and interests of children and young people, secure legal representation for employees** and their families in cases involving **the protection of their social rights, defend collective and diffuse interests**, defend the courts' independence and make sure that the judicial function is discharged in accordance with the Constitution and the laws." (See: <https://ministerio-publico.pt/o-que-e/?lang=en>).

²³ João Pedroso's doctoral thesis, previously mentioned, made a detailed analysis of this role of the Public Prosecutor's Office in Family and Children's Justice, in topic number 5, Chapter IV (pp. 442-457). Available at: <https://estudogeral.uc.pt/handle/10316/22583>. This subject was also covered in the doctoral thesis of João Paulo Dias, which was published as a book: DIAS, João Paulo. O Ministério Público no Acesso ao Direito e à Justiça - "porta de entrada" para a cidadania. Coimbra: Almedina, 2013.

support or the regulation of parental responsibilities regarding children and adolescents in instances of parental separation. These are cases that typically occur in other countries where one parent, frequently the mother, must apply for legal aid to have an attorney to advocate for their children's interests in Court, owing to financial difficulties. In Portugal, it is usual for parents to consult the Public Prosecutor's Office for legal advice in such matters. If an amicable resolution is unattainable, the public prosecutor will initiate the lawsuit, pushing for the child's rights without requiring the participation of a legal aid lawyer. Workers also frequently consult the Public Prosecutor's Office for information and help regarding their rights. In such instances, when infringed rights require legal action, if the worker has the financial resources to afford an attorney, they are advised to seek legal aid following the usual procedure (by applying to the Social Security Service), or, alternatively, they can have their rights claimed through representation by a public prosecutor at no cost. In these circumstances, it is noted that prosecutors function akin to salaried attorneys, offering legal assistance, thus fulfilling a role comparable to that of public defenders in nations that implement this model, such as Brazil. Therefore, in some way, it may be suggested that, in the specific domains of family and labor law, a hybrid system exists, wherein public attorneys, specifically the public prosecutors, fulfill the need for legal assistance.

In Portugal, it is also important to mention that *pro bono* legal advice and representation can be provided by a variety of entities, including law firms and civil society institutions. Regarding alternative sources of legal aid services, In the labor field, unions typically provide legal advice and appoint legal professionals to represent their members when filing lawsuits to claim rights related to their employment relationships. Additionally, there are nongovernmental organizations (NGOs) and a variety of associations, such as those that advocate for consumer rights and victims' rights, which offer legal assistance to their members. Portugal does not appear to have a tradition of insuring legal expenses. There were no reports of legal clinics at universities or law schools providing legal aid.

5. Budget, Spend and Payment: the role of the Ministry of Justice

As pointed out above, the Portuguese model of public legal aid services is structured in a triangular manner, comprising the Social Security Institute, the Portuguese Bar Association, and the Ministry of Justice. We have already had the opportunity to detail the role played by the first two. The Ministry of Justice's function will now be considered. It is important to recognize that the Ministry of Justice is inherently responsible for overseeing public policy regarding the overall operation of the justice system. In this context, concerning legal aid, the Ministry of Justice has the duty to oversee the proper functioning of the program, issuing necessary regulations and engaging with the Assembly of the Republic and the Courts to ensure compliance with the legal provisions governing the system. However, in practical terms, particularly in relation to the triangular model of operation of the Portuguese legal aid system, the Ministry of Justice's main job is to fund it. This task includes making sure that payments to the professionals involved are managed properly (a job done together with the Bar Association, as mentioned before) and keeping track of the budget.

In a report²⁴ concerning access to justice in Portugal, specifically prepared for the “Global Access to Justice Project”²⁵, Judge Carlos Marinho explains that the software known as the “Information System of the Bar Association” (SinOA—Sistema de Informação da Ordem dos Advogados) oversees the management of payments owed to lawyers who provide services. This system constantly connects with the e-justice systems, particularly the CITIUS and SITAF platforms used in Portuguese courts for handling legal cases online, as well as the financial digital systems of the Justice Ministry that manage the Legal Aid fund. The attorneys can track the status of their payment requests at every stage, including application receipt, confirmation or denial, and, ultimately, processing and payment via these tools. The Legal Aid Payment System (SPAJ), managed by the Ministry of Justice, permanently performs the following responsibilities, described in such report:

- (1) Receives the applications for payment of services submitted by the lawyers (through SinOA);
- (2) Communicates with the procedural management systems of the courts (CITIUS

²⁴ MARINHO, Carlos. *Access to Justice in Portugal*. In: Global Access to Justice Project. Available for download on the project's website at: <https://globalaccesstojustice.com/global-overview-portugal/?lang=pt-br>

²⁵ For more details about the Global Access to Justice Project, see the website at: <https://globalaccesstojustice.com>.

and SITAF) in order to get the necessary confirmations – especially to locate the cases and their names and numbers;

(3) Communicates with the court fees system with a view to confirm the performance, before the Courts, of the claimed services;

(4) Permanently updates the processing state of the applications according to the confirmations of the services;

(5) Transmits to the SAP accounting system (of the IGFEJ – MoJ) the information needed so that the accounting records are made automatically;

(6) Automatically communicates with the lawyers, through email, informing them of the payments made.

Therefore, it is a well-functioning mechanism that relies on the effective and harmonious interaction and integration of the Portuguese Bar Association and the Ministry of Justice. Specifically, regarding the Ministry of Justice's role in funding the system, it is important to remember that the Portuguese legal aid scheme uses the *judicare* model, where private lawyers voluntarily sign up with the Bar Association and agree to take on cases for a fixed fee set by a decree from the Minister of Justice. For each kind of procedure, according to its complexity, a quantity of reference units (URs) is set, which corresponds to a specific monetary value in euros, subject to periodic evaluation and adjustment. Consistent with the *judicare* concept, payments are made "*a posteriori*," meaning that they occur solely after the service has been delivered. Consequently, the provision of the benefit does not require previous confirmation of budgetary and financial resources. The legal aid budget may be characterized as demand-driven and uncapped; yet, when financial resources are insufficient in a particular fiscal year, payments are deferred to the subsequent fiscal year, which results in many complaints from legal professionals.

Our findings indicate that there is no distinct allocation for legal aid within the annual court system budget. The central government primarily covers the expenses for these programs. A few local authorities operate legal consultation offices, which are funded from their own resources. However, there are very few offices, not effectively significant in terms of the national landscape. The Ministry of Justice is responsible for determining the national budget for legal aid. In the aforementioned report that Judge Carlos Marinho prepared for the "Global Access to Justice Project", he additionally

highlighted an intriguing aspect: the financial resources used to cover expenses with the Portuguese national legal aid system would not be sourced from the General State Budget, but rather from the specific system for collecting court fees.

Ultimately, as previously noted concerning the challenges in getting data for our research connected to the Bar Association, we faced similar obstacles in collecting quantitative data and information from the Ministry of Justice concerning budget statistics. Such data, if obtained, would be key to understanding the present state of the system. We went through the ministry's website and the associated departments of the legal aid system, but no current reports or statistics were accessible for review. We dispatched several emails soliciting this information, yet received no reply. The only objective data, although very superficial, to which we had access, consists of those existing in the CEPEJ Reports²⁶. A survey indicated that in 2016, the actual amount allocated for legal aid expenditures in Portugal was strictly € 60,335,899. This sum equated to a rate of € 5.85 per capita in that year. This coefficient, while very similar to the general average of European nations and slightly exceeding that of France (5.06) and Spain (5.64), was significantly lower than that of countries with more advanced legal aid systems, such as Finland (16.24), the Netherlands (27.42), Scotland (29.26), and England/Wales (31.00)²⁷.

The most recent data we had access to, as shown in the 2024 Report (referencing 2022 statistics), reveals a substantial rise in those Portuguese numbers and percentage rates. In 2022, the allocated budget for legal aid in the country was €133,191,222, amounting to € 12.7 per capita, approximately five times the Council of Europe median. Although it was well above the European average, it was still significantly lower than that of countries with more advanced legal aid systems, such as Finland (17.01) and Scotland (27.08). No figures were reported in the 2024 Report for the legal aid budget in the Netherlands and England/Wales, although it is mentioned that they are among the European countries with the highest per capita rates for this service.

²⁶ European Commission for the Efficiency of Justice. See: <https://rm.coe.int/cepej-evaluation-report-2024-country-profiles/1680b1e7d0>.

²⁷ However, it is crucial to consider the possible discrepancies in the average incomes (salaries) of each of these countries and, more importantly, the existing financial criteria (eligibility or means test) in relation to the national average salary in each country when doing this comparison.

The 2024 report referenced above, published by CEPEJ, did not contain data related to the overall budget for the Portuguese court system, making it unfeasible to determine the current expenditure ratio between the judiciary's budget and the present allocations for legal aid. Consequently, we shall utilize the report published in 2018 as our basis. Portugal allotted 5.5% of the total judiciary budget to legal aid spending in that year. This percentage was markedly lower than in countries like Scotland (34%), England/Wales (39%), Norway (38%), the Netherlands (22%), and Finland (21%).

6. Scope, Eligibility and Quality Assurance

Legal aid is provided in Portugal for both civil and criminal cases. This aid includes legal advice, legal representation (which covers the appointment and payment of a lawyer's fee), exemption from court fees, and other charges associated with processes in national courts and foreign courts of European Union countries (referred to as "cross-border disputes" as defined in Directive 2003/8/EC), along with the provision of legal information. The system covers the appointment of a lawyer to handle cases in court and to appear before alternative dispute resolution bodies, such as consumer arbitration courts and mediation. It also includes legal aid to cover the costs of lawyers performing notarial acts in civil registry offices to carry out divorces, inventories and other extrajudicial voluntary jurisdiction procedures, that is, cases in which the law waives the obligation to proceed in Court. However, there is no legal provision for the benefit of initiating cases in international courts, as is the case with the European Court of Human Rights and the European Court of Justice²⁸.

In general non-criminal cases (like civil, administrative, labor, and juvenile matters), while the underlying assumption is that the system has no intention of providing legal aid for frivolous litigation or evidently unreasonable cases, the law does not have a way to filter these out; there is no specific "merit test". In the past, when the Court was responsible for determining whether to grant the benefit, according to what was informed in interviews conducted during our research by former judges, they

²⁸ COSTA, Salvador da. O Apoio Judiciário. Coimbra: Almedina, 11^a ed, 2024, p. 8.

effectively screened cases and denied aid for frivolous ones. In the existing framework, in borderline scenarios, if the legal professional assigned to the case determines that the claim pursued by the legal aid beneficiary is entirely inadmissible, he/she may decline to initiate the lawsuit, following ethical standards akin to those applicable to paying private clients. The decision must be submitted to the Portuguese Bar Association to ascertain whether the rejection conforms to the specified standards.

Nevertheless, in criminal cases, the right to defense is a constitutional assurance, irrespective of the criminal charge. In the following circumstances, the assistance of a defender is mandatory²⁹:

- (a) During interrogations of a detained or imprisoned individual accused of a crime;
- (b) During interrogations by a judicial authority;
- (c) Throughout the fact-finding debate and hearing;
- (d) In any procedural act, excluding the indictment, when the accused is blind, deaf, mute, illiterate, unfamiliar with the Portuguese language, under 21 years of age, or when issues of non-imputability or diminished imputability arise;
- (e) Ordinary or extraordinary appeals;
- (f) In instances of collecting declarations for future reference;
- (g) At the trial hearing conducted in the absence of the accused;
- (h) In other circumstances, as prescribed by law.

Besides the aforementioned situations, whenever the circumstances of the case indicate the need or convenience to ensure justice that the accused person be assisted, a counsel may be appointed at the request of the Court or the defendant. A convicted individual is also entitled to legal assistance following the criminal conviction, in order to appeal against such a conviction. Additionally, he or she is eligible for legal aid during the criminal enforcement phase. Legal aid is also possible for victims of crimes, and it is not conditioned upon the applicant's procedural status.

Eligibility for legal aid benefits, whether in civil or criminal cases, comprises nationals, European Union citizens, and foreigners or stateless individuals possessing a valid

²⁹ Article 64 of the Criminal Procedure Code.

residence permit in a Member State of the European Union³⁰, provided they demonstrate an economic situation that justifies such assistance, as defined by law, as already mentioned. The corresponding documentation must, depending on the specific situation, include: a valid document for identification; the most recent IRS declaration and settlement note (or tax certificate in the absence of a declaration); records of income, pensions, subsidies, or welfare benefits received; property certificates or land registry records; and vehicle registration documents and property registration if it is the case. The Social Security Administration may waive some of these documents if it has access to the applicant's tax information.

As previously mentioned, the Institute of Social Security is responsible for assessing applications of means tests to analyze the financial and economic situation that justifies the granting of legal aid. This is accomplished by analyzing the documentation provided or the information that is already present in official government databases. In particular cases, such as when it concerns women who have been victims of domestic violence, the law establishes an automatic (albeit relative/rebuttable) presumption of economic insufficiency³¹. The legal provision of article 7-A (Law 34/2004) is also noteworthy, as it ensures that firefighters are automatically eligible for legal aid in lawsuits in which they are being demanded or are demanding facts related to their job, regardless of the existence of proof of economic insufficiency. Legal entities, including those that are for profit³² and those that are philanthropic or charitable, are entitled to legal aid as long as they can prove their financial insufficiency. Nevertheless, in this instance, the benefit is limited to the dismissal of legal fees owed to the Courts and the appointment of a lawyer for free representation. Consequently, they are not eligible for legal consultation.

The beneficiaries of legal aid do not have to repay any funds to the legal aid provider or any other entity, unless there is a change in financial circumstances or a partial provision of legal aid.

³⁰ Foreigners lacking a valid residence permit in a European Union member state are granted the right to legal representation, conditioned on reciprocal provisions accorded to Portuguese nationals by the legislation of the respective states.

³¹ In these cases of domestic violence, the law also establishes that requests must be guaranteed with priority and urgency, with immediate access to legal advice, which, however, as Salvador da Costa highlights, "due to the very nature of things" such a procedure is unlikely to be concluded in less than the 30 days provided for. (COSTA, Salvador. *O Apoio Judiciário*. Coimbra: Almedina, 11^a ed, 2024, p. 41)

³² Although a 2007 amendment to the law excluded for-profit legal entities from the benefit of legal aid, this rule was declared unconstitutional by the Constitutional Court in 2018 (Ruling No. 242/2018).

Despite the explicit provision in article 6, item 3, of Law 34/2004 that a specific law should be enacted to regulate the granting of the legal aid benefit to protect transindividual rights, which are those of a collective or diffuse extent, this law has not been enacted by Parliament 21 years later. In interviews with a range of legal stakeholders, including lawyers, judges, public prosecutor members, and professors, we have come to the conclusion that this is not recognized as a top priority by the legal community. In our view, this perception is a result of the prevailing understanding of a more individualistic approach to rights claims and the roles and responsibilities/mission that are assigned to the Courts. Judicial officers are expected to keep a more restrained stance and refrain from interfering in matters that are deemed to be within the discretion of the political authorities of the Executive and Parliament. In other words, there seems to be an understanding that safeguarding and upholding collective rights should primarily be the responsibility of government administrative bodies rather than the judiciary. This comprehension is particularly applicable to collective and diffuse rights, the enforcement of which does not fall under the responsibility of private entities, as would be the case of social rights, welfare benefits, and issues concerning the rights of immigrants or asylum seekers, which are within the purview of governmental agencies and departments.

Unfortunately, we were unable to provide information about the total number of legal aid applications and the corresponding grants from the Social Security Institute in recent years due to the challenges we faced in obtaining quantitative data for this study. We only managed to find data from 2016, which were incorporated in the report authored by Judge Carlos Marinho for the "Global Access to Justice Project," as previously noted. So, according to this report, in the year 2016, there were a total of 232,671 grants for the appointment of lawyers to provide legal services under the legal aid regime. Although we lack data on the precise distribution of these grants among the different legal fields, it is reasonable to assume - based on past academic studies - that the highest number refers to civil cases (estimated at around 30%), followed by criminal cases (about 25%), and family and children/minors' cases (around 23%), the last two being approximately equal in proportion. The percentage of labor cases should range from approximately 15%, with the remaining percentage (almost 7%) representing other less common areas (administrative, tax, commercial, etc.).

It is worth noting, however, as previously explained, that the Public Prosecutor's Office has a substantial role to play in family law cases that comprise the protection of minors' rights, such as child support and the regulation of parental authority. This is due to the fact that they have the authority to initiate lawsuits aimed at ensuring access to rights and justice for children and adolescents, dismissing their legal guardians (typically the mother in poorer families) of the burden of applying for legal aid to obtain the appointment of a lawyer to claim these rights in Court. The same situation, as previously remarked, is present in the context of the labor rights claim of impoverished employees. Rather than applying for legal aid and the appointment of a counsel to represent them in court, they may seek assistance from the Public Prosecutor's Office and have their rights asserted in Court through a public prosecutor. Therefore, it is plausible that if the Public Prosecutor's Office lacked the authority to handle such matters, the number of legal aid applications in labor cases and family/child/minors' cases would be considerably higher. To put it another way, it is unequivocal that the Public Prosecutor's Office plays a vital role in providing a range of services³³ that private lawyers working under the legal aid framework could otherwise be expected to provide.

The matter of establishing systems for monitoring service quality must also be addressed in this section of the article. Portugal lacks a specifically established mechanism to assess the quality of services provided by lawyers within the legal aid system. Since this is a typical *judicare* model, where the Bar Association has a key role in the system in charge of registering and appointing professionals to provide the service, it is understood that failure to fulfill their responsibilities adequately will result in their subjection to the standard mechanisms for disciplinary oversight applicable to lawyers serving private clients.

³³ In this sense, we refer again to the studies of João Paulo Dias, especially topics 3 and 4 of Chapter 2, of his previously mentioned book on the Public Prosecutor's Office in Portugal: DIAS, João Paulo. *O Ministério Público no Acesso ao Direito e à Justiça - "porta de entrada" para a cidadania*. Coimbra: Almedina, 2013. Also, within the scope of the research carried out by the team of researchers from the Permanent Observatory for Justice of the CES - Centre for Social Studies of the University of Coimbra, the following study should be mentioned: Ferreira, António Casimiro; Dias, João Paulo; Pedroso, João; Lima, Teresa Maneca; Branco, Eliana Patrícia. *The action of the Public Prosecutor's Office in the access of citizens to law and justice in family and work conflicts: a case study in the Courts of Coimbra*. Coimbra: Centre for Social Studies, 2007.

Previously, when the model that provided financial recompense for lawyers was originally implemented in Portugal, trainee lawyers (interns) who were in the process of obtaining a full license to practice their profession were permitted to provide legal aid services. At that time, according to our findings, considering the modest amounts that were then paid, it appears that most legal aid services were actually provided by these apprentices, leading to numerous complaints about inadequacies and service failures. Nevertheless, in light of this situation, the legislation has been modified to prohibit the provision of services by trainees (intern lawyers), as this model was deemed inconsistent and insufficient to satisfy the minimum quality standards that should be comparable to those of services provided to paying clients. This legislation, which prohibited the provision of services by interns, aiming at enhancing the quality of the services, also determined that the lawyers, when registering for the legal aid appointment system, can indicate the areas of law in their specialty in which they have interest and expertise. However, despite our inability to get objective data that outlines the frequency and percentage of this occurrence, it appears that the majority of lawyers do not opt to limit themselves to a particular field when they register. Regularly, they are willing to welcome cases in any legal field.

We consider fundamentally flawed such a premise that no specific quality control mechanism is needed for public legal aid services, and that it suffices just to apply the same standards as those for client-paid services. In reality, it should be considered that the "market" dynamics and the clients' independence in choosing a lawyer in the private practice of law already create a specificity in quality control that is not aligned with the public regime that is a part of the legal aid program. Since public money is used to compensate legal aid attorneys, it would be reasonable - and even desirable - for the public entity that provides the funding to establish a system for evaluating the quality of the services delivered. This mechanism must consider the best interests of both the direct beneficiaries of the service and the entire taxpayer community.

7. Final Remarks

This study, which is currently being written in the first half of May 2025, does not yet permit the presentation of definitive conclusions, as it is based on partial analyses of the research that we are still conducting throughout the semester. We intend to have some pending information available by the end of June, when the ILAG conference will take place, allowing for more assertive reflections on the research subject. Even so, some notes can already be pointed out. It is clear that the Portuguese legal aid system has experienced substantial development and improvement as a result of the "Europeanization" process that the country has undergone. In reality, although the fundamental right to access justice was formally affirmed in the 1976 national Constitution, it is symptomatic that legislation to establish a system in which the State began to fund legal aid services was not enacted until 1987, approximately one year after the country joined the European Union.

Upon analyzing the system, particularly through empirical observation of its daily operations, including attendance at judicial courts, appellate courts, peace courts, Public Prosecutor's offices, consumer arbitration tribunals, and law offices, as well as conducting interviews with over a dozen stakeholders from diverse legal spheres and performing a comprehensive bibliographic survey of relevant published works, alongside reviewing various legal documents governing the legal aid system in Portugal, it became evident that the system possesses numerous strengths but also presents some gaps and fragilities.

We highlight, for example, the effective mechanism designed to provide prompt legal assistance (within one hour) to individuals who have been detained preventively (accused of committing a crime) or presented to police or public prosecutor authorities as crime suspects. According to our observations, we could witness that the system functions efficiently, thereby ensuring the fundamental right to defense for individuals unable to afford legal representation independently. Another positive example would be the rule that establishes that, after the 30-day period following the submission of the legal aid application, if it is not expressly granted, it is considered to have been implicitly granted.

Another intriguing aspect that should be mentioned, according to what we could see, is the prudence and concern that are demonstrated by the appointment of individual

solicitors for each defendant in a case that involves multiple defendants. We thought this measure was unnecessary in the case we observed, as there was no conflict or collision of interest between some defendants. Given the cost-benefit correlation from the public purse's perspective, this obligation to assign multiple counsel to work on the same case may appear inconsistent and unduly expensive in this particular instance. However, the system is praiseworthy for its efforts to ensure that the legitimacy of the right to public defense is perceived as equitable and that greater transparency is guaranteed. This is a desirable outcome, as it should be comparable to the situation in which defendants can afford a private attorney.

The rigidity and restrictiveness of the "means test" assessment mechanism are some of the aspects that are open to criticism and that we believe are weaknesses that could potentially undermine the achievement of the underlying objective of ensuring effective equality in access to justice for all³⁴. In this regard, having in mind our experience in the Public Defender's Office in Brazil, where the law does not establish closed and rigid income limits to support the provision of legal aid, we believe that the Portuguese system is more susceptible to injustices as a result of the denial of legal aid benefits to individuals who may not have their rights enforced due to their actual inability to pay the expenses of hiring a lawyer.

Another inconsistency that must be taken into account is the setback observed regarding the legal consultation offices, which were established in articles 14 and 15 of Law 34-2004 and were ratified by the reform made by Law 47-2007. As previously mentioned in this article, these laws mandate the expansion of these offices to ensure comprehensive coverage of the national territory. This was considered one of the main advances in the system of access to rights and justice at that time, as it expanded the experiences that had been adopted and were then considered highly successful, which is why they should be replicated. However, the current absence of a Legal Consultation Office in most Portuguese municipalities is a significant setback, as no effective public policy has been identified to comply with the legal mandate, even after

³⁴ In his previously mentioned book, Diogo Carvalho Bugs very effectively develops this argument. See: BUGS, Diogo Carvalho. *Defensoria Pública do Brasil: um paradigma de acesso à justiça às pessoas com insuficiência de recursos econômicos em Portugal*. Rio de Janeiro: Lumen Juris, 2025, pp. 194-203.

20 years since the law was enacted. For example, one of the most important and active Legal Consultation Offices, operating in Lisbon since the 1990s, in the building of the District Council of the Bar Association, was completely discontinued. We concluded that the dismantling of these offices was mainly due to a lack of interest and, in some cases, even to the opposition of the professional representatives of lawyers, who did not truly support their expansion, as we were able to ascertain in some interviews conducted.

On the other hand, concerning the "merits test", we found that the Portuguese model presents considerable flexibility and, precisely for that reason, has faced internal criticism for potentially permitting abuses due to insufficient scrutiny of the plausibility of claims brought by beneficiaries of legal aid. We think this characteristic is to be a positive feature of the system, similar to the Brazilian system, where if there is possible doubt about how likely a lawsuit is to succeed, the benefit is usually granted, leaving the merits of the case to be addressed to scrutiny of the competent judicial authority. Only in a manifestly frivolous case can it be denied, adopting the same criteria that a private attorney would apply to a paying client, in conformity with professional ethical standards.

Lastly, we think that a major weakness of the Portuguese legal aid system, which comes from how any judicare system works, is its focus on individual cases and a "privatizing" way of organizing services. Due to the unique and peculiar nature of legal issues that predominantly impact impoverished individuals in our modern mass societies, the "atomized" model of legal services faces multiple limitations in its ability to fulfill its objectives. This model's dispersion among a vast number of private legal professionals makes it impossible to optimize service provision. It is also unattainable to establish an articulation among the professionals that deliver the legal services, which would be essential for strategic action, including through mechanisms for collective protection of rights that are becoming increasingly essential in the contemporary world in which we live. This circumstance is eloquent, as we have attempted to emphasize in the study, keeping in mind a failure a law that should have established rules for the provision of legal aid specifically for the protection of collective and diffuse rights.