

**1. Do your ombudspersons have the authority to directly address the court with a request to evaluate legality of a normative legal act?**

Firstly, the Portuguese ombudsperson (Provedor de Justiça) is a single-member generalist ombudsperson, with a constitutional and legislative mandate<sup>1</sup>, and his/her jurisdiction covers the entire national territory, comprising Portugal mainland and the Autonomous Regions of Azores and Madeira.

According to the Constitution and to the Statute of the Ombudsman (hereafter «the Statute») the ombudsperson has authority to directly address the Constitutional Court with a request to evaluate legality of a normative legal act.

The Provedor de Justiça may request the Constitutional Court<sup>2</sup>:

- i) To declare the unconstitutionality or illegality of any legal provisions, with general binding force, in accordance with Article 281 (1) and (2), (d), of the Constitution and Article 20(3) of the Statute;
- ii) To consider and verify whether there is a failure to comply with the Constitution due to the omission of legislative measures needed to make constitutional norms enforceable, in accordance with Article 283 (1), of the Constitution and Article 20(4) of the Statute.

The ombudsperson has also legitimacy to judicially contest the legality of the acts and regulations of professional public associations (Article 46 (2), (d), of the Legal Framework for the Creation, Organization and Functioning of Professional Public Associations - Law 2/2013, of 10 January 2013).

In the course of the investigation of complaints, if sufficient evidence of criminal offences arises, the ombudsperson and his/her staff shall inform the Public Prosecution Service of such facts (Article 35 of the Statute).

**2. In case the ombudsperson finds a violation of human rights, is his acknowledgment authoritative in terms of res judicata doctrine in court?**

**If not, what evidentiary force does it hold?**

The ombudsperson cannot intervene with regard to courts in order to influence the way in which cases submitted to the judicial power are solved. This applies to violation of human rights or any other issue.

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<sup>1</sup>The English version of the Constitution is available at <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf> and to the Statute of the Portuguese Ombudsman and the Statute of the Ombudsman in [http://www.provedor-jus.pt/site/public/archive/doc/Ombudsman\\_s\\_Statute.pdf](http://www.provedor-jus.pt/site/public/archive/doc/Ombudsman_s_Statute.pdf).

<sup>2</sup>The recommendations to the Constitutional Court issued by the Ombudsman are available in the English version of the Annual Reports to the Parliament at the Ombudsman's website (<http://www.provedor-jus.pt>).

According to the principle of independence of the courts and to the principle of the prevalence of their decisions over those of any other authorities (Articles 203 and 205 (2) of the Constitution), a court decision can only be modified by another court decision, to the extent of the means of appeal that the law specifically provides to that effect.

The Ombudsman intervention in the judiciary can only be exercised with regard to the administrative aspects of the court's activity – especially on cases of judicial delays – and cannot cover the content or merits of judicial decisions and sentences.

The complaints relating to the judiciary are dealt through the High Council of the Judiciary, High Council of Administrative and Tax Courts and the High Council of the Public Prosecution Service.

The (non-binding) recommendations of the Ombudsman, as well as requests to the Constitutional Court, may be quoted in jurisprudence<sup>3</sup> and invoked by litigating parties in court cases<sup>4</sup>.

In any case, the Portuguese ombudsperson is a National Human Rights Institution accredited by the GANHRI, with A status, since 1999, and has responsibilities in relation to any situation of violation of human rights that comes to his/her knowledge, which are carried out through the exercise of competences and powers granted by the Constitution and the Law, such as:

- i) To open own-initiative cases and *ex-officio* investigations;
- ii) To make, with or without prior notice, inspection visits to hear the bodies and officials and to request information and documents;
- iii) To issue administrative or legislative recommendations;
- iv) Address critical remark to the body or the services involved;
- v) To produce thematic reports.

The above mentioned competences and powers result on a broad and solid mandate that enables the ombudsperson to remain vigilant to any human rights situation that needs attention.

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<sup>3</sup><http://www.dgsi.pt/jtca.nsf/170589492546a7fb802575c3004c6d7d/3e06d04b1a3e2f6e802581c2002aa5c2?OpenDocument> (Portuguese version);

<http://www.dgsi.pt/jsta.nsf/35fbbbf22e1bb1e680256f8e003ea931/083ef2d91bca368580257cb500530a3a?OpenDocument&ExpandSection=1> (Portuguese version).

<sup>4</sup><http://www.gde.mj.pt/jsta.nsf/35fbbbf22e1bb1e680256f8e003ea931/dfa0830119ab50ff80257cb70037fcac?OpenDocument&ExpandSection=1> (Portuguese version).

**3. Do ombudspersons in practice participate in judicial procedures with regard to human rights violations (for example as amicus curiae or in any other role)? If yes, what is their status in the judicial procedure? Please give the latest example of participation.**

As above mentioned, the ombudsperson doesn't participate in judicial proceedings as litigating party.

Whenever evidences of criminal offences are found, such facts shall be reported to the Public Prosecution Service (Article 35 of the Statute).

The ombudsperson is also competent:

- i) To request the President of the Supreme Court of Justice to declare the extinction of organizations affiliated with fascist ideology (Article 6 (2) of Law 64/78, of 6 October, that bans fascist organizations);
- ii) To refer the Public Prosecution Service to file a lawsuit in order to obtain a condemnation in abstention of use or recommendation of standard terms and conditions (Article 26 (1) (c) Decree law 446/85 of 25 October.

Moreover, the ombudsperson refers to the Public Prosecution Service any fact likely to affect the validity of acts committed by public entities. For instance, Article 69 (1) of the Legal Framework for Construction and Land Development establishes that any facts which may cause the invalidity of licences or permits must be reported to the Public Prosecution Service by those who become aware of them. The ombudsperson has already invoked this provision before the Public Prosecution Service at the end of investigations about cases related to construction and to land development.