

# Assessment and recommendations

## Long-term justice strategy

The Justiça + Próxima programme (along with other programmes such as Simplex + and Capitalizar) aims to develop a justice that is swift, transparent, human and closer to the citizen, through simplification and dematerialisation of procedures, use of interoperable technologies, enhancing clarity, transparency and quality of information on laws and procedures and promoting justice innovation and modernisation. The current process for identifying modernisation measures represents an innovative and bottom-up effort, with input from a wide range of stakeholders. This process allowed to identify immediate gaps and develop measures to achieve quick successes in the improvement of the justice system from the perspective of users.

At the same time, some of these measures remain relatively ad hoc, with their implementation mainly linked to the electoral cycle and current government programme. There is also scope to deepen a reflection process on the broader judicial and justice reform needs (including internal human resources, financial and court management in the judiciary, balance of powers, co-ordination across justice actors, etc). In addition, there is currently an uneven understanding of the diversity of legal needs of citizens and business and the ability of the current justice services (e.g. courts, ADR mechanisms, legal assistance) to effectively respond to them.

Building on current efforts, a full transformation of the justice sector in Portugal will require a holistic and long-term approach to justice reforms. Such an approach should combine both institutional and policy transformation – across branches of power and the full chain of justice and legal institutions (courts, ADR mechanisms, the prosecution service, the legal profession, legal aid, enforcement agents, etc). It should also be based on the robust evidence related to legal needs, including those groups of individuals who may currently be left outside of the justice system and may not have access to courts or benefit from legal assistance.

### **Key recommendations**

- Develop a longer-term inclusive and comprehensive justice strategy, which brings together different branches of power and goes beyond the electoral cycle to respond to the legal needs of people, businesses and other users across the country, including vulnerable groups.
- Strengthen the use of evidence-based and quantitative research methodologies as a basis for legal reform, including through better mapping of legal needs using legal needs surveys and administrative data.

## User-centred services

Under the Justiça + Próxima programme, Portugal has also adopted a number of important initiatives to promote user-centricity of justice services, including through the increasing use of technology (e.g. establishing an online integrated case management system, promoting a range of alternative

mechanisms to resolve disputes). The Portuguese authorities are also currently reviewing the legal aid framework with a view to enhancing its effectiveness. At the same time, legal assistance, legal aid and various mechanisms for resolving disputes (e.g. courts, mediation) appear to be disconnected from the understanding of the needs of users and have a limited connection to each other and to other service delivery portals for citizens and businesses.

Building on the current reforms, Portugal can maximise the impact of its current efforts to provide user-centred services by promoting further service integration and accessibility and by further mobilising technological capabilities, including through emerging technologies (such as artificial intelligence and blockchain) to build a seamless, people-centred legal and justice ecosystem. In line with good practices increasingly found in OECD countries, such an ecosystem could integrate both judicial and alternative mechanisms to resolve disputes, support effective triage of cases and enable multichannel dispute resolution avenues. This would call for common platforms for both case management and delivering of the full spectrum of legal and justice services.

In addition, there is scope for Portugal to link various legal advice and dispute resolution mechanisms to the existing citizens' service portal to facilitate early identification of problems and to provide a unique interface for citizens. Interoperability of data and big data could also help in this regard. The single digital Citizen Card and recently introduced Digital Mobile Key in Portugal could be extended to legal assistance and dispute resolution services to enable greater accessibility of such services and shift their focus on the preventive and restorative sides. Similarly, there is also scope to link dispute resolution mechanisms for businesses (e.g. commercial, investment, administrative, tax, labour) to the online portal of business-related services, in order to facilitate efficient resolution of disputes by businesses.

### ***Key recommendations***

- Strengthen a user-centred and integrated approach to the provision of legal assistance, legal aid, and dispute resolution services, including legal assistance, lawyers, referrals, ADR and online dispute resolution (ODR) as part of a continuum of dispute resolution services, in line with the OECD criteria for people-centred legal and justice services. This may include but is not limited to:
  - Developing an evidence-based service continuum by considering how different services fit together from the perspective of a user and by developing user-centred triage mechanisms, by taking into account a user pathway in moving from one dispute resolution mechanism to another and the required legal support at every stage of the process.
  - Establishing common platforms for court, ADR and legal aid/assistance services, which could provide a single portal for citizens and businesses and integrated case management systems for different types of dispute resolution mechanisms. This would serve as a strong basis for developing an integrated triage system for resolving disputes. This portal could be linked with both: i) the citizens' service portal, single digital Citizen's Card and Digital Mobile Key in Portugal; and ii) the business services portal.
  - Enhancing interoperability of information, through dematerialisation of data support and introduction of e-channels between courts, other justice institutions and other entities as the social security, health, education and security sectors.

- Assess the implementation and impact of the current setup of legal infrastructure (e.g. legal assistance, legal aid, court fees), along with the continuum of dispute resolution mechanisms to ensure – in an evidence-based manner – that it responds to the needs of those citizens and businesses.

## Use of technology

Portugal recognises the need for strengthening the use of technology both for the improvement of case management, functioning of front and back offices in courts and service delivery to different clients. To this end, the *Justiça + Próxima* programme includes a range of measures to strengthen the current digital platforms for case management in ordinary (*Citius +*) and administrative/fiscal (*SITAF*) courts. In addition, the programme has introduced a Strategic Multi-Year 2018-28 Plan for improvement and modernisation of courts, which – among others – includes measures to strengthen the use of technology in courts. While currently there is no integrated case management system for courts and different types of ADRs, efforts are underway to create a common platform.

Looking ahead, technology must continue to be used as part of the daily functioning of the courts and the broader justice system if all the investment is to pay off. The ongoing efforts as part of the *Justiça + Próxima* programme provide a basis for establishing online systems that could support the resolution of disputes (i.e. provide actual services for obtaining legal advice and resolve disputes online). These systems could help diagnose legal problems of citizens and businesses, and inform them about their rights and options in order to help protect them and resolving their disputes.

In addition, continued efforts for the modernisation and simplification of procedures – across the entire justice sector, including ADRs and legal assistance/aid – will be essential in developing a justice ecosystem, which puts the needs of people at the centre. The forthcoming case management platform *ADR +* could provide an excellent basis for the development of such an ecosystem in Portugal. Portugal is also encouraged to continue its efforts to maximise the use of technology to promote accessibility of legal information, advice and resolution of disputes.

### **Key recommendations**

- Continue improving design and functioning of justice information systems (e.g. enabling judges or public prosecutors to open a case and perform procedural acts in *Citius* without the prior intervention of a clerk; advancing the development of *SITAF* within the administrative and fiscal jurisdiction, combined with the process of rethinking and streamlining of procedures, also as part of *Simplex +*).
- Pursue the development of a common case management platform for ADR mechanisms and courts. Consider evolving this platform into a single legal and dispute resolution service delivery window for businesses and people.

## Data strategy for the justice sector

While successive judicial reforms have increased the reliability and granularity of court-level data in Portugal, they have also introduced some discontinuities in the data that make the analysis of recent trends more challenging. Further changes are currently being introduced, although the granularity of court-level data remains limited. In addition, there are limited data collection efforts for private ADR mechanisms, in particular mediation, although there are ongoing efforts to improve the quality and availability of data in this area (including through *ADR +* platform).

Building on the current data collection efforts, there is scope to develop a holistic data strategy, which would include more granular longitudinal data (e.g. broken down according to the complexity of cases, the cost of litigation) to fully assess the impacts of different changes introduced as part of the recent reforms and have a better understanding of the efficiency of Portugal's courts.

To bridge separate public and private systems for arbitration and mediation and to strengthen the availability of data, it would be important to develop common data management protocols for the different ADR mechanisms.

### ***Key recommendations***

- Develop a holistic data strategy for the justice sector (encompassing the entire legal and justice chain, maximising the use of data needed from other sectors, including open data).
- Continue efforts to strengthen the granularity and usage of the available data across the justice sector.
- Develop common data management protocols and strengthen the availability of data in different public and private systems for arbitration and mediation.

## **Procedural simplification**

While businesses greatly welcomed recent justice transformation efforts, they underlined the importance of addressing the complexity of laws, regulations and processes, as well as frequent changes in the legislation. Indeed, a series of successive procedural changes and reforms may require a holistic approach to reviewing the current stock of procedural legislation and regulations to remove any inconsistencies, complexities and overlaps.

Portugal may consider addressing the complexity of procedural legislation and judicial processes, capacity building of all justice stakeholders and undertaking a system-thinking approach to address the complex institutional and technological choices. Further alignment of procedural codes (civil, criminal and administrative) with a simpler, more efficient and people-centred justice as an objective could be beneficial, in view of their alterations as a result of various waves of reforms.

### ***Key recommendations***

- Consider establishing inter-institutional working groups to review existing procedural laws, to ensure their full alignment, including with the growing importance of ADR mechanisms and people-centric approaches. They could, in addition, evaluate non-legislative measures, such as resource allocation and technological improvements.

## **Monitoring and evaluation**

Portugal is currently putting in place a common framework to monitor progress and evaluate the implementation of all measures included in Justiça + Próxima, including Tribunal +. Yet the assessment of effects of most measures in the Justiça + Próxima plan mainly focuses on direct savings of operational costs (e.g. savings on the cost of post stamps) and human resources.

For Tribunal +, the current indicators cover the main categories of benefits identified as a result of the implementation of the project. For the effective rollout of the project and for monitoring its performance, it would be important to explicitly integrate aspects that are beyond the organisational boundaries of the courts, such as user satisfaction, trust in justice institutions and citizens' broader access to justice.

In this regard, Portugal may consider elaborating a general analytical approach for ensuring that the evaluation and monitoring of both the programme *Justiça +Próxima* and *Tribunal +* are both consistent and comprehensive. This approach should be based on a detailed logical framework (or theory of change) that would spell out the causal linkages between its key measures and their direct and indirect outcomes and ultimate impact. Such a framework could be used to identify and assess external factors that could potentially influence outcomes, locate possible bottlenecks for efficiency gains, and orient methodological and data collection choices in future monitoring and evaluation activities. It could be accompanied by enhanced data collection and measurement of impacts, both on user practices and satisfaction.

### **Key recommendations**

- Design a robust analytical framework for the monitoring and evaluation of *Justiça +Próxima* and *Tribunal +*, which would be based on a detailed theory of change and enhanced data collection processes.

### **Enhancing the sustainability of *Tribunal +* reforms**

Overall, an important achievement of the *Tribunal +* project is to be appreciated by the judiciary staff, by lawyers and by court users. Yet, while the *judges* positively evaluated the reforms associated with *Tribunal +*, they stressed the importance of training, continued improvement of the new information system, and greater reflection on the current structure of human resources (such as the support staff to judges).

For the lawyers, while the assessment of reforms is positive both on behalf of their clients and on their own, they identified a number of process-related areas for improvement (e.g. need to accept different legal means of identification (including driver's licences, or residence permits for foreigners), which were no longer considered valid to access the courts), which could facilitate the accessibility and responsiveness of courts.

Businesses, in turn, welcomed the introduction of online services for dealing with some aspects of dispute resolution, although they emphasised the importance of greater communication of these reforms to enable better familiarity with the introduced changes.

More broadly, the *Tribunal +* project so far focused on sectors under the direct responsibility of the Ministry of Justice and have not directly addressed the work of judges, which may undermine the efficiency gains of the reforms. In addition, to support the scaling-up process, it would be important to increase the institutionalisation of the reform approach, strengthen the capacity of the resource team and enhance ownership by various institutional stakeholders in order to ensure sustainability and lasting impacts of reforms.

Fragmentation and complexity of interactions among different agencies were noted among the risks, which could affect the effectiveness of the ongoing reforms. Another key challenge is the need to adapt to different capacities, resources and infrastructure of courts across the country, which may slow down the rollout phase.

To address the remaining challenges and to maximise the impacts of the reforms, there is scope to enhance a user perspective in the design of the reforms through greater engagement of lawyers, businesses and regular citizens, in order to identify elements considered important from the user perspective. To fully reap the benefits of the *Tribunal +* project, there is also scope for greater involvement of judges in new ways of working and strengthening innovation and digital skills, which could also strengthen the levels of take-up by all staff.

Moreover, ensuring the sustainability of *Tribunal +* reforms requires attention to their institutionalisation in policies, internal regulations, budgets and other dimensions of the justice system. To this end, Portugal is encouraged to continue its current efforts to set up a management structure that would allow working

across different institutions (e.g. the judiciary, Ministry of Justice [Administration of the Ministry of Justice, DGAJ], the Institute for Financial Management and Justice Equipment [IGFEJ], Office of the State Secretary, etc.) towards shared outcomes.

Another important measure to implement would be to strengthen co-operation and streamline interactions across agencies including judiciaries, prosecutors and others such as public and judicial ADR, through a shared vision of justice transformation, potentially accompanied by shared resources (e.g. human, material and financial resources), in order to help avoid unnecessary costs and inefficiencies.

Finally, in rolling out the components of Tribunal + throughout the country, it would be important to take proper account of the specific conditions and constraints of each local court, ensuring appropriate capacity of the resource team to support scaling up, integrating lessons learned for improvement from the implementation and evaluation of the Sintra project and enhancing communication of these reforms.

### ***Key recommendations***

- Strengthen the involvement of court users in the design and assessment of the ongoing rollout of the Tribunal + project. These efforts should be accompanied by greater communication of reforms to enhance understanding and familiarity of the introduced changes.
- Consider the extension of the project to cover the work of judges (in collaboration with the High Councils), including training, further adaptation of information systems, new methods of work with the clerical staff, and the development of a new category of support staff.
- Strengthen the institutionalisation of the reforms in policies, internal regulations, budgets and other dimensions of the justice system by engaging with appropriate institutions (i.e. DGAJ, IGFEJ).
- Enhance co-operation and streamline interactions across agencies in the justice chain, including judiciaries, prosecutors and others such as public and judicial ADR mechanisms.
- Roll out Tribunal + project across the country, with the due attention to be court capacities and capabilities.

## **Judicial capacity and performance**

Judges in Portugal (except in the Supreme Court) tend to be responsible for both adjudication and auxiliary tasks (such as case preparation and management, research, and drafting of administrative documents), which is likely to generate procedural delays in the case management. In addition, performance appraisals of judges have been traditionally focused on qualitative criteria, although a number of quantitative indicators (e.g., productivity) were also in use (and were formalised in 2016 by the High Council of the Judiciary).

To this end, there is potential scope to speed up judicial decision-making if judges are supported by legal assistants/clerks. In this light, Portugal could benefit from continuous development of the judicial human resources model, e.g. by creating a new category of personnel to support judges in their substantive tasks.

In addition, Portugal may consider introducing transparent and negotiated case weighting criteria and more or less automated distribution of cases, within the limits of the principle of “natural judge”. There is also room to continue reflecting on the balance between qualitative and quantitative performance indicators for judicial evaluation, in line with international good practices.

### ***Key recommendations***

- Strengthen human resources in court support functions (e.g. paralegals, assistant judges) which can assist magistrates on substantive matters (such as verifying the jurisprudence) and by liaising with the clerks.

- Consider strengthening transparent and negotiated case-weighting criteria, within the limits of the principle of “natural judge”.
- Continue ongoing review of judicial performance evaluation criteria to ensure that they reflect the right balance between qualitative and quantitative criteria.

## Judicial processes and decision-making

While Portugal has recently introduced a new model of court management, which aims to improve the efficiency of court management, the autonomy of court presidents to make decisions on resource allocation (e.g. human, financial, case flow management) within courts appears to be limited. In order to maximise court performance and in line with international practices, Portugal may consider reviewing levels of autonomy of court presidents, including financial autonomy and budget management.

### **Key recommendations**

- Review decision-making scope and resource allocation autonomy of court presidents to ensure sound court management and performance.

## Judicial specialisation

While specialisation in Portuguese judiciary was in many instances achieved through specialised “local sections or branches” (e.g. commercial, labour), in view of the increasing complexity of cases, judges could benefit from greater specialised training and capacity building in specific areas of law. In this context, Portugal could consider strengthening judicial specialisation, for example, in commercial and investment law, which could make the judicial system of Portugal more effective in these areas.

### **Key recommendations**

- Develop a comprehensive strategy towards specialisation including updating the training needs of judges and staff.
- Strengthen specialisation, especially in commercial and economic matters, including international investment law.

## Judicial map and court capacities

The structure of the judicial map has undergone multiple reforms over the last years in Portugal, including the 2013 reform, which consolidated the country’s 231 judicial courts of first instance into 23 district clusters. The Justiça + Próxima programme envisages a series of measures to further optimise the judicial map, which aim to alleviate some concerns about the growing concentration and centralisation of courts, in view of shortening the distance between the courts and parts of the population living in remote areas.

In addition, courts across Portugal are reported to have varying capacities to deal with the workload and provide access to justice (e.g. infrastructure, information technology [IT], human and financial). To this end, a Strategic Multi-Year 2018-28 Plan for Improvement and Modernisation of Courts includes measures to strengthen various court capacities to be rolled out over a ten-year period.

Looking ahead and to build on current efforts, authorities are encouraged to continue re-evaluating the judicial map and strengthening court capacities for video conferencing and other equipment and identifying ways to improve human and financial resources.



### **Key recommendations**

- Continue reviewing the judicial map, taking into account both access to justice by the most vulnerable citizens, including those dwelling in rural areas, and managerial efficiency.
- Continue efforts to strengthen court capacities (financial, human, infrastructure, IT, etc).

### **Enforcement cases**

The number of completed enforcement cases has consistently exceeded cases entering the system (whose number has been declining since the crisis years) along with the processing times. Yet, enforcement cases still account for much of the backlog in the Portuguese court system.

In this regard, it would be important for Portugal to continue its efforts to improve the resolution of enforcement cases, as they are essential for businesses.

### **Key recommendations**

- Continue efforts to improve the resolution of enforcement and insolvency cases, including contract enforcement by controlling indicators such as the length of the proceedings.

### **Alternative dispute resolution mechanisms**

In Portugal, alternative dispute resolution (ADR) mechanisms, i.e. arbitration, mediation and justices of peace, are becoming increasingly popular and are part and parcel of the latest modernisation efforts. Yet there is scope to deepen the coherence, integration and responsiveness of different ADR mechanisms to client needs, which could help parties bring their dispute to the right forum.

In addition, while the public mediation system is becoming widely popular in Portugal, service satisfaction remains the lowest among all ADRs. The capacities and take-up across a wide range of areas also remain low. Finally, while the availability of justices of the peace is increasing in Portugal, they remain limited in use. Stakeholders also raised concerns regarding the meritocracy of their decisions and potential jurisdictional overlap. Developing a people-centred justice service ecosystem requires countries to find ways to integrate ADR along with other resolution processes in a coherent and holistic justice sector vision while maintaining their empowerment. There is strong potential to facilitate the development of such an ecosystem in Portugal with ADR +, the forthcoming case management platform. This initiative will aim to provide a common stage for justices of the peace in consumer dispute arbitration centres and public mediation systems. There is also scope to integrate other mechanisms, such as Ombud schemes and conciliation.

Portugal may also benefit from enhancing the level of resources and facilities in order to increase the speed of mediation. Further efforts to increase the take-up of mediation – possibly through strengthening incentives and communication (e.g. through greater court intervention) and expand to other areas (e.g. commercial mediation) would be beneficial in order to reach its full potential. Collecting data from private mediation systems would also allow mapping the extent of the popularity of this mechanism.

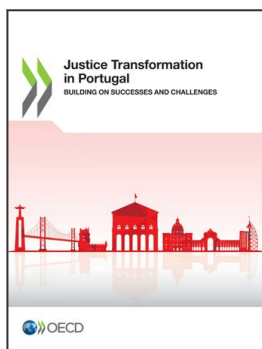
Finally, there is scope to strengthen the mechanism of justices of the peace by ensuring that there is no overlap with other jurisdictions, greater efficiency and merit-based decision-making.

### **Key recommendations**

- Develop an integrated strategy for alternative dispute resolution (ADR), through mediation, conciliation, justices of the peace, Ombud schemes, arbitration and other mechanisms.



- Expand mediation to other areas (e.g. commercial mediation), while strengthening the capacity of service providers and raising awareness among different stakeholders.
- Strengthen the efficiency of peace courts through greater clarity of jurisdiction and meritocracy of decision-making.



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