



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

**List of issues in relation to the report submitted by Portugal
under article 29 (1) of the Convention**

Addendum

Replies of Portugal to the list of issues*

[Date received: 8 October 2018]

* The present document is being issued without formal editing.



I. General information

Paragraph 1: In the light of paragraph 27 of the State party's report, please provide further information about the status of the Convention in national law and clarify whether the provisions of the Convention can be directly invoked before and applied by courts or other relevant authorities.

1. The Constitution of the Portuguese Republic (hereinafter, CPR or the Constitution) establishes the regime of reception of the rules enshrined in international conventions (Article 8 (2)). The reception of these rules is automatic, which means that they are binding on the Portuguese State, becoming integral part of domestic law, without need of being transcribed or formally transformed into national law. As the International Convention for the Protection of all Persons from Enforced Disappearance (hereinafter the Convention) has been duly ratified and published in the official journal, it is in force in the Portuguese legal order.
2. The provisions of international conventions are hierarchically subordinated to CPR. Particularly articles 277 et seq. of CPR establish the possibility for constitutional review of international conventions' provisions.
3. CPR does not expressly indicate what the legal value of international conventions in relation to ordinary legislation is. However, the understanding that international conventions prevail over ordinary legislation remains generally uncontested.
4. As an integral part of the domestic law, the provisions of the Convention apply on the same terms as internal rules and may therefore be directly invoked before, and applied by courts or other relevant authorities.
5. The only specificity of the Portuguese law relates to the provisions which are not self-executing, such as criminal provisions. However, this does not mean that these provisions are not binding on the State but only that they are not directly applicable by the courts or other relevant authorities insofar as they are not per se feasible and need to be further specified through ordinary legislation.

Paragraph 2: Please provide information on the participation of the Portuguese Ombudsman in the preparation of the State party's report and on any other activities carried out by the Ombudsman in relation to the implementation of the Convention. Please also inform the Committee on the measures taken by the State party for the Ombudsman to be in full compliance with the Paris Principles.

6. The Ombudsman is the National Human Rights Institution (NHRI), fully complying with the Paris Principles and accredited with "A" status since 1999. Its Statute fully guarantees its autonomy and independence.
7. Following an Ombudsman recommendation to the Parliament, Law 17/2013 (third amendment to the Statute) strengthened the institution's competences. The Ombudsman may act as an independent institution for monitoring the application of treaties and international conventions in terms of human rights (Article 1, no. 2 of the amended Statute).
8. The Ombudsman has been presenting some shadow or alternative reports to the UN monitoring bodies. It acts as National Preventive Mechanism in the context of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OpCAT). Following the ratification of the Convention on the Rights of Persons with Disabilities, a National Mechanism was also created and includes a representative of the Ombudsman.
9. The Statute explicitly reaffirms and guarantees the complete independence of the Ombudsman in the performance of his/her duties. The Ombudsman, with full respect of its independence, cooperates with the National Human Rights Committee as an observer and monitors the compliance of Portugal's national, European and international commitments related to human rights. The NHRI may also resort to a wide set of powers and competences that include the possibility to address administrative or legislative

recommendations, to request the intervention of the Constitutional Court and to issue opinions at the request of the Parliament on any matter related to its activity. The Ombudsman is inherently a member of the Council of State, which is a political body that advises the President of the Republic. This enables the Ombudsman to give voice, at the highest level of the State, to the interests and rights that he/she is mandated to protect and promote.

II. Definition and criminalization of enforced disappearance (arts. 1–7)

Paragraph 3: In the light of paragraph 48 of the State party’s report, please explain whether any legislation and/or practices concerning terrorism, national security or other grounds that the State party may have adopted foresees any possibility of derogating from any of the rights and/or procedural safeguards provided for in domestic legislation or international human rights instruments to which Portugal is a party (art. 1).

10. Portugal fully complies with Article 1 (2) of the Convention as no exceptional circumstances, including a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearances. No legislation or practices concerning terrorism, national security or other grounds have been adopted that allow for the derogation from this obligation. Enforced disappearance is, under all circumstances, prohibited.

11. As stated in the State party’s Report (hereinafter the Report), Portugal is a democratic State based on the dignity of the human person, on the rule of law and on the respect for the guarantee of the effective implementation of the fundamental rights and freedoms (articles 1 and 2 of CPR). Although legislation concerning terrorism and national security may foresee some restrictions to the procedural safeguards of suspects of such offenses, the applicable regimes fully comply with national and international human rights obligations.

12. With respect to crimes of terrorism or particularly violent or highly organized criminality, legislation foresees some specificities regarding the investigation of these crimes due to the seriousness of these offences, such as: the possibility to extend the maximum deadlines applicable to the inquiry stage and pre-trial detention; the possibility to intercept and record conversations or phone calls with the authorization of a judge other than the examining judge, who shall, nevertheless, be informed of this authorization in the following 72 hours and perform the subsequent acts; and the possibility to undertake house searches between 9 p.m. and 7 a.m. (which is, as a rule prohibited by law).

13. However, the Portuguese Code of Criminal Procedure (hereinafter CCP) establishes specific rules and safeguards to ensure the legality of such measures, the most important being the competence of the examining judge, responsible for ensuring the legality and the respect for the defendant’s rights during the inquiry and instruction phases.

14. “Internal security” (Law 53/2008) is defined as the activity carried out by the State to guarantee public order, security and tranquillity, to protect people and property, to prevent and repress crime and to contribute to the normal functioning of democratic institutions, the regular exercise of fundamental rights, freedoms and guarantees of citizens and the respect for democratic legality.

15. Internal security activities shall be carried out in accordance with the CPR and the law, in particular criminal law and criminal procedure law, the framework law on criminal policy, criminal policy laws and organic laws of law enforcement authorities.

16. The measures provided for in this law are particularly intended to protect life and integrity of persons, public peace and democratic order, namely against terrorism, violent or highly organized crime, sabotage and espionage, and to prevent and respond to major accidents or disasters, to protect the environment and to preserve public health. Internal security activities must observe the principles of democratic rule of law, rights, freedoms and guarantees and police general rules.

17. Law 53/2008 defines a set of measures which may be undertaken by the police in this context. The application of these measures must observe strict necessity, as well as adequacy and proportionality requirements and, in some cases, must be previously authorized or validated by an examining judge.

18. Law 44/86 regulates the regime of the state of siege and the state of emergency (Report's paragraphs 42 to 47). Pursuant article 2 of this regime, even if a state of siege or a state of emergency is declared, the principles set out in CPR shall be fully respected. This provision reaffirms that the declaration of a state of siege or of a state of emergency cannot affect, in any case, the rights to life, personal integrity, personal identity, civil capacity and citizenship, non-retroactivity of criminal law, the defendants' right to defense, and freedom of conscience and religion. In cases where it may occur, the suspension of the exercise of (other) rights, freedoms and guarantees enshrined in CPR shall always respect the principles of equality and non-discrimination and shall comply with the limitations established in the said law.

Paragraph 4: Please indicate whether there are any initiatives to define enforced disappearance as an autonomous crime in domestic legislation. Please clarify whether the State party's interpretation of article 9 (i) is that placing a person outside the protection of the law is a consequence of the offence of enforced disappearances, not a constitutive element of the offence (art. 2 and 4).

19. The offence of enforced disappearance (Report's paragraph 51) is foreseen as an autonomous offence in Article 9 (i) of Law 31/2004, adapting the criminal law to the Statute of the International Criminal Court (ICC), by typifying the conducts that constitute a violation of international humanitarian law.

20. No initiative seems to be needed to define this offence as an autonomous offence in the Portuguese legislation.

21. "Placing a person outside the protection of the law" should be understood as a consequence of the offence and not a constitutive element of such offence. Placing the victims of forced disappearance outside the protection of the law does not constitute an intentional element of this offence, as is the case with the concept of enforced disappearance in the Rome Statute of ICC, but rather a consequence of the combination between deprivation of liberty and denial of such deprivation or refusal to provide information on the fate of the person deprived of liberty.

22. The objective element of the offence is the intention to make someone disappear in a forced manner, by way of arrest, abduction, detention or any other form of deprivation of liberty, which should be committed with *dolus*, as the subjective element.

Paragraph 5: In relation to paragraphs 67 and 68 of the State party's report, please explain how the superior responsibility is ensured in full accordance with article 6 of the Convention. Please provide, if available, examples of instances in which such provisions have been invoked and/or applied (art. 6).

23. All military personnel must comply with the law and cannot help — actively or by omission — or support any criminal activity (Article 4 of the Military Disciplinary Code). Military officers are obliged to obey lawful orders only (Article 87 of the Code of Military Justice).

24. Military personnel must obey and comply with all national and international laws. The only exception to this rule applies during wartime when international conventions on armed conflict and war crimes apply.

25. Article 6 of Law 31/2004 establishes the criminal responsibility of the military commander or any other hierarchical superior in relation to the subordinates under his/her effective authority and control in what regards the crime of enforced disappearance. The constitutive elements of the offence (Report's paragraph 67) correspond largely to those foreseen in Article 6 (1) (b) of the Convention.

26. So far, there are no examples in the Portuguese case law of instances in which such provisions have been invoked or applied.

Paragraph 6: Please provide information on legal provisions that ensure in all instances the prohibition of invoking superior orders, including orders from military authorities, as a justification of enforced disappearance. In relation to paragraph 36 of the State party's report, please (a) clarify whether subordinates are allowed to invoke a superior order as a justification of their acts if they have demanded that the order be transmitted in writing and have indicated that they consider the order illegal, and (b) elaborate on the "doctrine" which advocates disobeying acts that are null. With reference to paragraph 37, please explain what situations are considered detrimental to the public interest so that subordinates are required to fulfil an illegal order from a superior. Additionally, please describe legal recourses available to subordinates against any potential disciplinary measures resulting from their refusal to carry out a criminal conduct ordered by a superior (art. 6).

27. Public sector staff and agents are bound by a general duty of obedience regarding orders or instructions of their legitimate hierarchical superiors as regards the performance of their duties and the required legal form (Articles 73 (2) (f) and (8) of Law 35/2014, which establishes the general legal regime governing the work of public servants). The official who does not comply with or does not execute those superior orders may be subject to disciplinary sanctions.

28. However, the CPR foresees (Article 271) that staff and agents of the State and of other public entities are civilly and criminally liable and subject to disciplinary proceedings for actions and omissions carried out in the exercise of their functions, which leads to a breach of citizens' rights or interests protected by law. No action or proceedings regarding these liabilities shall depend on an authorisation by a higher authority. The principle of legality prevails over hierarchy and that public staff or agents should not blindly accept and execute illegal orders.

29. Without prejudice to the above, CPR foresees the possibility to exclude the liability of public staff or agents. Concerning civil and disciplinary liability, the responsibility of a public official or agent who acts in compliance with orders or instructions issued by a legitimate hierarchical superior and in the performance of his/her duties is excluded, if he/she previously protested against those orders or instructions or required them to be transmitted to him/her or confirmed in writing. When the official considers that the order received is illegal, the aforementioned protest must include that reference (Article 271 (2) of CPR, further regulated by Article 177 (1) and (2) of Law 35/2014).

30. Paragraph 37 of the Report refers to the procedure foreseen in article 177 (3) of Law 35/2014 that applies in situations where the decision of the hierarchical superior on the protest or on the request for confirmation of the order in writing is not issued within a period in which the execution of the order can still be delayed — when the execution still has an *effet utile*. This procedure applies when the order or instruction can still be executed without detriment to the public interest underlying that same order or instruction, which corresponds to the specific interest that justifies the administrative act resulting therefrom.

31. In order to exclude his/her liability, the subordinate shall (i) immediately communicate, in writing, the exact terms of the order or instruction received and of the protest or request concerned, as well as the absence of decision to his/her immediate hierarchical superior, and only then (ii) execute the order.

32. In case the order or instruction is issued with a reference to its immediate execution, the subordinate shall first execute the said order or instruction and only afterwards present the aforementioned communication.

In order to exclude civil and disciplinary liability, the subordinate official must follow the procedures provided by law and described above.

33. As far as criminal liability is concerned, CPR expressly establishes that the duty of obedience ceases to apply whenever compliance with orders or instructions would imply the commission of a crime (article 271 (3)). This is also established in ordinary law (Article 36 (2) of the Criminal Code (hereinafter CC) and Article 177 (5) of Law 35/2014). If the order or instruction entails the commission of the crime of enforced disappearance or any

other criminal act, the subordinated official is not bound to execute it and, consequently, the execution of such an order may result in criminal liability.

34. However, the non-applicability of the duty of obedience in cases where the execution of the order would imply the commission of a crime does not necessarily lead to the criminal liability of the public official who executes the order. Criminal liability presupposes that the public official knows that such an action will result in the commission of a crime. A public official who executes such an order unknowing that it would result in the commission of a crime, and provided that it was not evident in face of the circumstances, is deemed to have acted without fault (Article 37 of CC — “exonerating undue obedience”).

35. In conclusion, subordinates are not allowed to invoke a superior order as a justification of their acts when these constitute a crime, as in the case of an enforced disappearance situation, even if the subordinate officials have requested that the order be transmitted in writing with the indication that he/she considers it illegal. Liability shall only be excluded in case the official was not aware, and when it was not clear that the action would result in the commission of a crime.

36. The doctrine that advocates disobeying acts that are null lays on the conception that orders and instructions are legal acts to which the general regime of invalidity of administrative acts applies. Article 161 of the Code of Administrative Procedure presents an illustrative catalogue of administrative acts that are null, namely acts that infringe the essential content of a fundamental right. Acts which are null are void of legal effect, regardless of the declaration of its nullity. Given that these orders or instructions are acts void of legal effect, a significant part of the doctrine sustains that they do not bind the subordinate official.

37. Regarding legal recourses available to subordinates against any potential disciplinary measures resulting from their refusal to carry out a criminal conduct ordered by a superior, subordinates are not bound to execute orders that entail the commission of a crime. Concerning illicit orders, subordinates may also exclude their liability, provided that the above-mentioned applicable legal procedures are followed through.

38. Notwithstanding, if a disciplinary measure is applied as a result of that refusal, the measure in question can be challenged hierarchically, in the general terms of the Code of Administrative Procedure or before a court.

III. Judicial procedure and cooperation in criminal matters (arts. 8–15)

Paragraph 7: Please clarify how a statute of limitations for criminal procedures and sanctions would be applied to a potential isolated case of enforced disappearance considering the continuous nature of the crime (art. 8).

39. The crime of enforced disappearance is not subject to any statute of limitation period (Article 7 of Law 31/2004 — Report’s paragraph 72).

40. Articles 118 to 121 of the Criminal Code establish the statute of limitation of the various types of offences, in accordance with the penalties applicable in abstract. They also foresee the rules regarding the beginning of the term, the interruption and suspension of the statute of limitation.

41. With regards to continuing offences, the statute of limitation begins on the day when the last act of the offence is committed (Article 119 (2) (b) of CC). It may be suspended or interrupted; in the latter case, the limitation period starts running again after each interruption.

Paragraph 8: With reference to paragraphs 87 and 88 of the State party's report, please indicate measures adopted to ensure in practice that persons deprived of their liberty for the purpose of identification are immediately afforded fundamental safeguards, including the right to access a lawyer and to contact their families or any person of their choice as well as consular representatives in case a detainee is a foreign national (arts. 10 and 17).

42. The detention of persons for the purpose of identification is exceptional.

43. Pursuant Article 250 of the Code of Criminal Procedure, law enforcement authorities may request the identification of any person found in a public place — open to the public or under police surveillance — whenever there are serious suspicions that: that person has committed an offence; extradition or expulsion procedures are pending against him /her; that person has entered or is staying irregularly in the national territory; an arrest warrant has been issued in regard to that person.

44. In exceptional circumstances, law enforcement authorities may request a person his/her identification, even if he/she is not a suspect of any offence.

45. Prior to requesting someone's identification, the law enforcement officer must identify himself/herself as such, inform the person of the circumstances that justify the obligation of identification and indicate the means pursuant to which he/she may identify himself/herself.

46. In the event it is not possible to show any document (ID or passport in the case of a Portuguese citizen; residence title, ID, passport or document replacing it, in the case of a foreign citizen), the person may identify himself/herself by presenting an original document, or a certified copy, which contains his/her full name, signature and photo.

47. If the person does not hold any identification document, he/she may identify himself/herself by one of the following means: (a) communication with a person who submits his/her identification documents; (b) travelling, along with the law enforcement authority, to the place where his/her identification documents are; (c) recognition of his/her identity by a person identified with a valid document, who can assure the truth of the personal data indicated by the person to be identified.

48. Only when immediate identification on the spot is impossible through any of the procedures identified in the previous paragraphs, may law enforcement authorities take the person to the nearest police station and oblige him/her to remain there for the time strictly necessary to identify him/her, which cannot, in any case, exceed six hours. The person concerned is always given the possibility to contact a person of his/her trust.

49. In case of detention of a suspect of an offence (Report's paragraphs 83 to 87), the person concerned is granted all the rights foreseen in CCP, namely the right to contact a person of his/her trust, to contact a lawyer and, in the case of a foreigner, the consular authorities of the State of origin. If the detained person is given the status of defendant by the law enforcement authority — which he/she may voluntarily request — he/she will enjoy the rights granted by Article 61 and others of CCP, namely the right to legal counsel or, in the case of a foreigner who does not understand Portuguese, the right to be assisted by a suitable interpreter in any act of the procedure.

50. In practice, anyone held in detention in the facilities of the Criminal Police (*Polícia Judiciária*, hereinafter PJ) or in places of detention in the courts or services of the Public Prosecution receives a leaflet containing information on his/her rights, including the right to choose and appoint a defense counsel and the right to communicate with a family member, a trusted person, Embassy or Consulate. The leaflet distributed by the PJ is available in several languages, as Spanish, English and French (Report's paragraphs 89 *et seq.*).

51. The communication of the aforementioned information is registered in the individual record of the person taken into custody, including the time he/she was informed about his/her rights, and the contacts made with a lawyer, family member or a person of trust, Embassy or Consulate.

Paragraph 9: Please indicate whether military authorities are competent under domestic law to investigate and/or prosecute persons accused of enforced disappearance, and if so, please provide information about applicable legislation (art. 11).

52. Military authorities, namely the Military Judiciary Police (*Polícia Judiciária Militar* — PJM) are not competent to investigate or prosecute persons accused of enforced disappearance.

53. PJM has specific competence to investigate crimes of a strictly military nature, i.e. an offense to the military interests of national defence or other interests entrusted to the Armed Forces by the CPR and as such qualified by law (Article 4 of Law 97-A/2009 and article 118 of the Code of Military Justice). PJM has also reserved jurisdiction to investigate offences committed inside military units, premises and organs, without prejudice to the possibility of applying to the case the procedure set forth in Article 8 (3) of Law 49/2008.

54. The competent authority to prosecute crimes of strictly military nature is the Public Prosecutor with the assistance of Armed Forces officials and the National Guard (Article 127 of Code of Military Justice).

55. Ordinary courts are competent to try crimes of a strictly military nature. However, in such cases, the composition of the court (of any instance) shall include one or more military judges (Article 211 (3) of CPR).

56. CPR only allows for the constitution of military courts (courts martial) during periods of state of war. The competence of these courts shall be restricted to try crimes of a strictly military nature (Article 213 of CPR).

Paragraph 10: In relation to paragraph 105 of the State party's report, please provide information on measures adopted to ensure in practice that a prompt and impartial investigation is conducted into allegations of enforced disappearances. Please also clarify whether a case of enforced disappearance as an isolated crime would also be investigated ex-officio (art. 12).

57. Criminal law in Portugal is guided by the principle of legality (CPR and article 1 of CC).

58. According to the principle of legality, upon receiving a notice of the commission of an offence or of an alleged offence, the Public Prosecution Service — as holder of the criminal action — shall promptly initiate an investigation in order to confirm the commission of the reported offence and to prosecute the offenders. The Public Prosecutor is assisted by law enforcement authorities, namely PJ.

59. All bodies, officials and agents are subject to the Constitution and the law and must act with respect to the principles of equality, proportionality, justice, impartiality and good faith when performing their duty (Article 266 (2) of CPR). The Public Prosecution Service, as well as PJ, should respect these principles when carrying out a criminal investigation.

60. Where there are reasonable grounds to believe that a person has been subjected to enforced disappearance, the Public Prosecution Service and/or PJ shall undertake an investigation *ex officio*, even if there has been no formal complaint. They only need to know, to be informed or to strongly suspect that the offence was committed.

61. The other unlawful conducts punishable under CC and with which the crime of enforced disappearance has some connecting elements (Report's paragraph 53), are also classified as *public crimes* and, as such, can be investigated *ex-officio* by the authorities identified in the previous paragraphs.

Paragraph 11: Please indicate (a) whether domestic law provides for immediate suspension from duties during an investigation into a reported enforced disappearance when the alleged offender is a State agent, and (b) whether there are any procedural mechanisms to exclude any civil or military law enforcement or security force from the investigation of an allegation of enforced disappearance in the event that one or more of its members are suspected of having committed the crime. If so, please include information on the implementation of the relevant provisions (art. 12).

62. Military personnel can immediately be suspended from duties if the competent authority decides so, not only during an investigation but also when a military officer is found guilty of criminal activity (Code of Military Justice).

63. Regarding the National Republican Guard (*Guarda Nacional Republicana* — GNR), its Discipline Regulations also provides for the possibility of immediate suspension from duties during an investigation into a reported enforced disappearance when the alleged offender is a State agent. In addition, CCP provides for procedural mechanisms to exclude a military officer from an investigation if this person is suspected of committing a crime.

64. The premises and conditions listed throughout the four paragraphs of article 12 of the Convention are guaranteed by the legal system, at the constitutional and infra-constitutional levels and, as such, are scrupulously observed by GNR.

Paragraph 12: Please indicate whether the nature of the facts in the crime of enforced disappearance would, in principle, lead to cooperation even in the absence of a bilateral agreement or reciprocal cooperation. Please indicate whether any limitations or conditions set out in domestic laws could be applied in relation to requests for judicial assistance or cooperation in the terms set out in articles 14 and 15 of the Convention (arts. 14 and 15).

65. Regarding international judicial cooperation in criminal matters (Report's paragraphs 120 to 125), the following should be noted:

66. Letters rogatory, extradition proceedings, delegation of criminal proceedings, effects of foreign criminal sentences and other relations with foreign authorities and international judicial entities regarding criminal justice administration are governed by international treaties and conventions (Article 229 of CCP — prevalence of international agreements and conventions). In the absence or insufficiency of the latter, they are governed by special law and also by the provisions of Articles 230 to 240 of the Code.

67. Law 144/99 approved the legal regime for international judicial cooperation in criminal matters, and applies to: extradition; transfer of proceedings in criminal matters; enforcement of criminal judgments; transfer of persons sentenced to any punishment or measure that involves deprivation of liberty; supervision of conditionally sentenced or conditionally released persons; and mutual legal assistance in criminal matters.

68. The forms of cooperation identified above shall be carried out in accordance with the provisions of the international treaties, conventions and agreements that legally bind the State. Where such provisions are non-existent or not sufficient, they shall be carried out in accordance with the provisions of the aforementioned law (Article 3). International judicial cooperation shall also be rendered in accordance with the principle of reciprocity. The absence of reciprocity shall not prevent compliance with a request for co-operation where such co-operation: (i) proves advisable on account of the nature of the facts or the need to combat certain forms of serious crime; (ii) may contribute to improve the situation of the accused or his/her social reintegration; (iii) and may be used to clarify the facts attributed to a Portuguese citizen.

69. Portugal can render the widest international judicial cooperation in criminal matters even in the absence of bilateral agreements or reciprocal cooperation in cases where an enforced disappearance offence is the subject matter of a request, since the nature of the facts of this offence do not determine the impossibility of rendering international cooperation.

70. Regarding limitations or conditions for the rendering of international cooperation, Article 6 of Law 144/99 provides for mandatory grounds for refusing a request where:

(a) Proceedings do not meet the requirements laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms, or other relevant international instruments in this matter, ratified by Portugal;

(b) There are reasonable grounds to believe that co-operation is requested for the purpose of prosecuting or punishing a person on account of his/her race, religion, sex, nationality, language, of his/her political or ideological beliefs or his/her belonging to a given social group;

(c) The risk that the procedural situation of the person might be impaired on account of any of the factors indicated in (b);

(d) The requested cooperation might lead to a trial by a court of exceptional jurisdiction or where it concerns the enforcement of a sentence rendered by such court;

(e) Any of the facts in question are punishable with death penalty or another sentence that may result in an irreversible damage to the integrity of the person;

(f) Any of the offences in question are punishable with a lifelong sentence or with an indefinite duration of the imprisonment or safety measure.

71. Article 7 of Law 144/99 further states that a request for co-operation shall also be refused where the proceedings concern:

(a) Any facts that, according to the concepts of Portuguese law, constitute a political offence or an offence connected with a political offence;

(b) Any facts that constitute a military offence and do not constitute an offence under ordinary criminal law.

72. The following crimes shall not be regarded as political offences: *(i)* genocide, crimes against humanity, war crimes and serious offences under the 1949 Geneva Conventions; *(ii)* offences mentioned in Article 1 of the European Convention on the Suppression of Terrorism; *(iii)* acts mentioned in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; *(iv)* any other crimes to which the political nature has been withdrawn by treaty, convention or international agreement to which Portugal is a party.

73. Cooperation could also be refused when the penalty is already served by the person or the criminal procedure has come to an end in another State (Article 9).

74. Concerning extradition, in addition to the cases provided for in Articles 6 and 8, cooperation shall be refused where: *(i)* offence was committed in the Portuguese territory; *(ii)* or the claimed person is a Portuguese national (Article 32).

75. However, extradition of Portuguese nationals shall not be excluded where: *(i)* the extradition of nationals is provided for in a treaty, convention or agreement to which Portugal is a Party; *(ii)* is wanted for offences of terrorism or international organized crime; *(iii)* and the legal system of the requesting State embodies guarantees of a fair and impartial trial.

76. In the situations in *(i)* to *(iii)*, extradition may only take place for the purpose of undergoing the criminal proceedings and provided that the requesting State assures that the extradited person will return to Portugal in order to serve the sanction or measure eventually imposed to him/her in Portugal, once the sentenced is reviewed and confirmed in accordance with the law, unless the extradited person expressly refuses to be returned.

Paragraph 13: Please provide information on investigations carried out and their results in respect to the use of Portuguese airspace and airports in the “extraordinary renditions programme”, also involving the transfer of detainees, and the cooperation granted to other States with regard to investigations related to this matter (arts. 12 and 14).

77. Portugal denies any involvement in the designated “extraordinary renditions programme” and reiterates that it has never authorized the use of its territory or of its airspace for that purpose.

78. Portugal has never received any request for the use of its territory or airspace for the transportation of detainees in the framework of renditions flight programme. The US has given its assurances that in this matter their authorities did not violate Portuguese sovereignty, existent bilateral agreements or applicable international law. Should such a request have been made, Portugal would have refused granting permission.

79. Due to the critical importance it attributes to this matter, Portugal conducted thorough internal investigations and cooperated fully with inquiries undertaken in several international *fora* and at national level, in an entirely cooperative spirit and transparent manner.

80. In 2006, Portugal provided information requested in the framework of the two inquiries conducted by both the Secretary-General of the Council of Europe and the European Parliament. The Portuguese Government has also provided information to the Portuguese National Parliament.

81. In 2007, the Portuguese Government asked the General Attorney’s Office, an independent judicial body, to conduct its own investigation on this matter. In 2009, this investigation concluded that there was no evidence of the involvement of the Portuguese Government in these activities.

82. In October 2013, Portugal replied to the joint letter from Vice-President of the European Commission Viviane Reding and European Commissioner for Home Affairs Cecilia Malmström on the recommendations included in the European Parliament’s resolution on the alleged transportation and illegal detention of prisoners in European countries by the CIA, adopted in September 2012.

83. It should be underscored that, following this reply, the European Parliament’s 10 October 2013 resolution did not mention Portugal.

84. In December 2013, following the discussion on the 5th and 6th periodic reports on the implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Portugal provided the Committee against Torture with additional extensive information on this issue.

85. Portugal has also cooperated and replied to information requests from civil society, in full respect of national law on access to administrative documents. For instance, in October 2012, Portugal granted the NGO Access Info Europe access to the documentation requested in 2012 on this matter.

86. In June 2015, the Portuguese Government responded to a joint communication from Special Procedures of the Human Rights Council concerning the alleged transfer of Mr. Abou Elkassim Britel, an Italian citizen of Moroccan origin, from Pakistan to Morocco. In its response, Portugal provided information on Mr. Britel’s case and denied any involvement in his alleged transfer.

IV. Measures to prevent enforced disappearances (arts. 16–23)

Paragraph 14: Please provide information about mechanisms and criteria applied in the context of procedures of expulsion, return, surrender or extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance. Please specify whether any decision on expulsion, return, surrender or extradition can be appealed, before which authorities it can be brought and what the applicable procedures are. Please also clarify whether the decision from such an appeal is final or any other authority can refuse to implement the decision. Please describe any other measures in place to ensure strict compliance with the principle of non-refoulement under article 16 (1) of the Convention. Furthermore, please indicate whether the State party accepts diplomatic assurances when there is a reason to believe that there is a risk that the person may be subjected to enforced disappearance (art. 16).

87. In what regards extradition (Report's paragraphs 126 to 129), the following should be noted:

88. Extradition may be granted only for the purpose of undergoing criminal proceedings or executing a sanction or a measure involving deprivation of liberty, regarding an offence under the jurisdiction of the courts of the requesting State (Article 31 of Law 144/99 — purpose of and grounds for extradition). For any such purpose, surrender of a person shall be possible only regarding offences, including attempted offences that are punishable under both the Portuguese law and the law of the requesting State with a sanction or a measure that implies a deprivation of liberty for a maximum one-year period.

89. Enforced disappearance is classified as a crime against humanity and therefore constitutes a serious violation of human rights (Law 31/2004).

90. Before granting the extradition, and in addition to the verification of the compliance with the requirements of the request (article 23 of Law 144/99), the judicial authority shall also ascertain whether the extradition request is not intended for any of the situations envisaged, in particular, in the paragraphs (a), (b) and (e) of Article 6 of that law, which may lead, in abstract, to the enforced disappearance of a person. While examining the request, all grounds are taken into account, including the knowledge that there is a consistent pattern of gross, flagrant or mass violation of human rights or serious violations of international humanitarian law. Extradition is mandatorily refused if there are sufficient reasons to believe that the person could be subject to an enforced disappearance.

91. Both the Public Prosecution Service and the person concerned have the right of appeal within ten days of the extradition decision. The appeal shall have a suspensory effect on the extradition decision and shall be submitted to the Supreme Court of Justice (Article 49 of Law 144/99). The procedures applicable to the appeal are set forth in Articles 58 and 59 of the same law.

92. Courts' decisions (which are final) are binding on all public and private entities and prevail over the decisions of any other authorities (Article 205 (2) of CPR). Therefore, other authorities cannot in general terms, refuse to implement court decisions.

93. "Expulsion cannot be made to a country where the foreign citizen may be subject to persecution for the reasons that, in accordance to the law, substantiate the granting of the right to asylum or where the foreign citizen may suffer from torture, inhuman or degrading treatment in the sense of Article 3 of the European Convention on Human Rights" (Article 143 of Law 23/2007, that regulates the entry, sojourn, exit and expulsion of foreign nationals in Portugal).

94. Regarding diplomatic assurances, understood as a State assurance, they are only accepted under the conditions foreseen in Article 6 (2) of Law 144/99.

95. According to this provision, when the request (including extradition) involves the situation of offenses punishable by the death penalty or by a sentence resulting in any irreversible injury of the person's integrity (Article 6 (1) (e)) or any of the offences in question punishable by imprisonment or a security measure for life or of indefinite duration (Article 6 (1) (f)), co-operation could be rendered if the following conditions are met:

(a) The requesting State by way of an irreversible decision that binds its courts or any other authority with powers to execute the sentence, has previously either commuted the death penalty or another sentence that may result in any irreversible damage to the integrity of the person or has withdrawn the lifelong nature of the sentence or security measure;

(b) As regards extradition for offences that, in accordance with the law of the requesting State, carry a life-long or an indefinite sentence or safety measure involving deprivation of or restrictions to liberty, the requesting State offers guarantees that such a sentence or safety measure shall not be applied or enforced;

(c) Requesting State accepts the conversion of the sentence or detention order by a Portuguese court and according to the Portuguese legal provisions applicable to the crime for which the person was sentenced;

(d) Request relates to the assistance provided for in Article 1 (1) (f), on grounds that it will presumably be relevant for the purpose of non-application of such sentences or measures.

96. For assessing the sufficiency of the guarantees referred to above, the possibility of the non-application of the penalty shall be taken into account, in accordance with the law and practice of the requesting State, a review of the situation of the sought person and the granting of conditional release/parole, as well as the possibility of pardon, commutation of the sentence or similar measure provided for in the law of the requesting State.

Paragraph 15: Please indicate what the procedures of expulsion, return, surrender or extradition of persons are, how often these procedures are reviewed, and whether, before proceeding to the expulsion, return, surrender or extradition of a person, a thorough individual assessment is made of whether the person concerned is in danger of being subjected to enforced disappearance (art. 16).

97. The following should be noted (Report's paragraphs 126 to 129):

98. Extradition procedures are established in Articles 44 to 78 of Law 144/99. The extradition procedure is an urgent procedure and includes an administrative and a judicial stage.

99. The administrative stage aims at an assessment of the extradition request by the Minister of Justice for the purpose of deciding on the basis of political reasons, opportunity or convenience, taking into account the safeguards applicable, whether the request is admissible or not.

100. The judicial stage is within the exclusive jurisdiction of the second instance court (Court of Appeal) which, after the hearing of the concerned person, shall undertake a legal assessment of the form and substance of the facts regarding legal requirements, for the purpose of deciding whether extradition shall be granted or not. No evidence regarding the facts that have been committed by the person to be extradited is admitted.

101. Any foreign State, that so requests, may participate in the judicial stage of the extradition procedure through a representative appointed for that purpose. The principle of reciprocity is applicable.

102. Law 144/99 also provides for a simplified extradition procedure, which requires the written consent of the person to be extradited.

103. There is no specific rule that determines the periodic review of these procedures.

104. Regarding the second part of the question, please refer to the answer provided in paragraph 14 above.

Paragraph 16: With reference to paragraph 145 of the report, please confirm whether all persons deprived of their liberty have access to legal counsel, including free legal aid, from the very outset of deprivation of liberty and whether in practice they are immediately informed of such right (art. 17).

105. CPR establishes that everyone has the right to legal information and consultation, to legal aid and to be accompanied by a lawyer before any authority. In criminal proceedings, such a guarantee is especially strengthened: any defendant has the right to choose his/her lawyer and to be assisted by him/her in all procedural acts. If the defendant cannot afford or does not choose a lawyer to represent him/her, one will be appointed to him/her by the Portuguese State.

106. All persons subjected to criminal proceedings must always be informed about their rights, including the right to be assisted by a lawyer or to request that one be appointed to him/her, from the moment they are detained and given the status of defendant. The defendant may decide to appoint a lawyer at any stage of the proceedings.

107. All persons deprived of their liberty may be assisted by a lawyer in all procedural acts from the very outset of deprivation of liberty and have the right to communicate in private with his/her designated lawyer when under arrest (Article 61 (1) (f) of CCP — Report's paragraph 145). Notwithstanding, as described in paragraph 146, the assistance by a defense counsel is compulsory in a set of situations, such as the interrogation of an arrested or detained defendant.

108. Persons deprived of liberty are ensured the right to information, consultation and legal counselling by a lawyer, and the right to contact him/her. Persons deprived of liberty have the right to receive visits from their lawyers (Report's paragraph 148).

109. Recently, the General Directorate of Prison Services and Social Rehabilitation (*Direção-Geral de Reinserção e Serviços Prisionais*, hereinafter DGRSP) and the President of the Portuguese Lawyers' Bar have made an agreement in order to set up legal consultation offices inside prison facilities where lawyers can provide, free of charge, information and advice to the inmates on a wide range of legal affairs. Namely, lawyers may provide advice on how to submit complaints and claims about possible mistreatment, as well as how to challenge decisions concerning them. Only logistical problems are left to solve and it is expected that these offices will be operational soon.

110. Concerning access to free legal aid, Law 34/2004 establishes the regime of legal protection that includes legal aid.

111. The objective of this system is to ensure that everyone, regardless of his/her social, cultural or economic status, knows and is able to exercise and defend his/her rights (Article 1 of the said law). The State implements measures and mechanisms to provide legal information and legal protection, which involves both legal consultation and legal aid.

112. Portuguese and European Union citizens, as well as foreign nationals and stateless persons with a valid residence permit in a Member State of the European Union, may request and receive legal protection when they are in a situation of financial hardship (assessed under the terms established by law). Legal aid may include the appointment of a defence lawyer and the payment of his/her fees (Article 7 of the said law).

113. Article 39 of this law describes the procedures applicable to the appointment of a defence lawyer to a defendant. The defendant is informed of his/her right to appoint a chosen lawyer. In case the defendant does not appoint a lawyer, he/she shall present the necessary financial information in order to request legal aid. The secretariat of the court shall determine whether the defendant is in a situation of financial hardship, considering the applicable criteria established by law. In case of an affirmative decision, a defence lawyer is appointed to him/her; otherwise, the defendant is warned that he/she should appoint a lawyer. This procedure does not dispense the request for legal aid before the competent authority (the social security services) and is contingent on a positive outcome of that request.

Paragraph 17: With reference to paragraphs 134 and 150, please indicate whether the Portuguese Ombudsman possesses sufficient financial, human and technical resources to enable it to carry out its functions, in particular that as the National Preventive Mechanism, effectively and independently. Please also provide information on existing guarantees to ensure that the Ombudsman has immediate and unrestricted access to all places of deprivation of liberty (art. 17).

114. The Ombudsman was designated as National Preventive Mechanism (NPM) by Council of Ministers Resolution and its functioning is in fully compliance with the OpCAT. The functional independence of the Ombudsman and of its personnel is fully respected.

115. Although the legal system provides guarantees of independence and effectiveness, the Ombudsman does not possess sufficient financial, human and technical resources to enable it to carry out effectively its functions as national Preventive Mechanism.

116. The Ombudsman has immediate and unrestricted access to all places of deprivation of liberty, according to Article 20 of the OpCAT, and is also free to choose the places to visit and the persons to interview. Article 21 of the Ombudsman Statute sets forth the power to conduct, with or without notice, inspection visits to any detention center and to request information and documents.

117. In accordance with Article 18 of the Statute, the Ombudsman and its personnel are considered public authorities. They may also require support from other authorities — including law enforcement authorities — for carrying out their inspections. All public entities have the duty to cooperate with the Ombudsman (Article 29). As referred to in paragraph 2, any political officeholder who impedes or constraints the free performance of the Ombudsman's duties commits a crime punished with one to five years of imprisonment.

Paragraph 18: In the light of paragraph 159 of the State party's report, please indicate measures adopted to ensure in practice that the official register kept in all places of deprivation of liberty, regardless of their nature, contain all the information listed in article 17 (3) of the Convention (art. 17).

118. Article 16 (7) of the Code for the Enforcement of Sentences and Measures Involving Deprivation of Liberty establishes that the entry of the detainee in a prison facility to serve a sentence is registered. The General Regulation on Prison Facilities further regulates the entry procedures and the information to be registered.

119. Any visible previous injuries or complaints of previous assaults are registered and, if the inmate consents to it, the injuries are photographed (Article 17 (3) (f) of the Convention). In this case, a medical exam is also performed and the respective report drawn up. If necessary, medical assistance is also provided. Moreover, the director of the facility shall send a copy of this information, including the medical report, if the inmate consents to it, to the General Director of DGRSP.

120. If the person concerned was held in police custody or if there was any kind of police intervention prior to the entry into the prison facility, DGRSP must immediately transmit all the information received to the General Inspectorate for Internal Affairs and to the General Inspectorate for Justice Services (order of the Minister of Home Affairs and the Minister of Justice 11838/2016).

121. The official register, kept in all places of detention of GNR, contain all the information listed in Article 17 (3) of the Convention.

Paragraph 19: Please indicate any steps made to amend article 143 (4) of the Code of Criminal Procedure with a view to affording the right to communicate with other persons to all persons deprived of liberty, including those detained for terrorism (art. 17).

122. In cases of terrorism, violent criminality or highly organized criminality, the Public Prosecution may determine that the arrested person does not communicate with anyone, with the exception of his/her lawyer, before the first judicial examination (Article 143 (4) of CCP).

123. This provision does not necessarily conflict with the defendant's right to communicate with other persons. If nothing is determined by the Public Prosecution, the defendant can communicate with other persons than his/her lawyer.

124. This decision depends on the circumstances of each specific case. This rule aims to ensure that the detention of the concerned person is not disclosed for security reasons or in the interest of the ongoing criminal investigation.

125. If the Public Prosecution does not release the defendant after a brief examination, he/she must be brought before the examining judge (Articles 141, 142 and 143 (3) of CCP). In cases where the defendant is not immediately put on trial, the first judicial examination must take place within a maximum term of 48 hours following the arrest.

Paragraph 20: With reference to paragraph 168 of the State party's report, please explain what criteria are used in determining whether a person, who is not a legal representative of a disappeared person, has demonstrated a legitimate interest and thus has access to a record. Please elaborate on a record being under investigation secrecy which restricts access to information by a person with a legitimate interest (art. 18).

126. Any person who demonstrates a legitimate interest may request to be allowed to consult a record which is not under investigation secrecy and to be provided, at his own expenses, with a copy or extract or certificate of record or part thereof (Article 90 of CCP — consultation of record and obtaining a certificate by other persons). This request is not automatic; it must be decided by the judicial authority who presides the stage in which the proceedings are (a Public Prosecutor or a Judge).

127. For example, regarding the access to journalist's records, it results from the jurisprudence of the Appeal Court of Lisbon of 9 September 2014 that:

(a) It follows from the provisions under Article 90 (1) of CCP that the only criterion for assessing the request of third parties to consult a record that is not under investigation secrecy or to obtain a copy, extract or certificate of record or part thereof, is the existence of a legitimate interest on the part of the applicant, who must allege and prove it;

(b) Among those who are not procedural subjects, journalists may have a legitimate interest in having access to the records;

(c) Journalists benefit from a special regime under the provisions of Article 8 (2) and (3) of the Journalists' Statute, established by Law 1/99, being a legitimate interest the invocation by the journalist of the interest in accessing sources of information;

(d) The interest of the applicant, who appealed to the aforementioned court, in consulting the records or obtaining a copy of the prosecution from the Public Prosecution Service should be regarded as legitimate, with the purpose of carrying out journalistic work, in the light of the provisions of Article 90 (1) of CCP.

Paragraph 21: Please indicate whether the State party provides or envisages providing specific training on the provisions of the Convention to civil or military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges and prosecutors. In this regard, please indicate the nature and frequency of the training provided as well as the authorities in charge of facilitating such training (art. 23).

128. Portugal provides training on human rights issues to the personnel of relevant professions, namely on ratified international conventions. The training delivered is adjusted to the functions and competences of each of the relevant entities, whether medical, judicial, police, or prison authorities and personnel.

129. The School of Criminal Police provides training on human rights standards in the context of criminal investigations both in its initial and lifelong training courses (Report's paragraph 197).

130. Regarding the training of judges and prosecutors, the Centre for Judicial Studies (hereinafter CEJ) provides training on various topics of fundamental rights and constitutional law, in the form of courses, workshops or seminars. Although CEJ does not provide specific training related only to the Convention, it does provide training covering this topic.

131. DGRSP and the National Institute for Legal Medicine and Forensic Sciences made an agreement under which the latter shall provide training to medical staff working in prison facilities, focusing in particular on the procedures to follow in case of allegations of ill-treatment and abuse.

V. Measures for reparation and protection of children against enforced disappearance (arts. 24 and 25)

Paragraph 22: In the light of paragraph 201 of the State party's report and article 67 of the Statute of the Victim, please explain what steps have been taken to bring the definition of victim in domestic legislation into line with article 24 (1) of the Convention (art. 24).

132. The Statute of the Victim, annex to Law 130/2015, does not include any definition of victim.

133. The definition is foreseen in Article 67-A of CCP which states that a "victim" is a natural person who has suffered damage, including an attack on his/her physical or mental integrity, an emotional or moral damage, or property damage, directly caused by an act or omission, in connection with the commission of an offence.

134. This definition also encompasses the relatives of a person whose death was directly caused by a crime and who have suffered damage as a result of that death. Victims of violent crime and especially violent crime are always considered particularly vulnerable victims for the purposes of Article 67 (1) (b).

135. Considering Article 24 (1) of the Convention, there are no substantial differences between the definition of victim provided by the applicable national legislation and the Convention.

Paragraph 23: In relation to paragraph 209 of the State party's report, please indicate whether, besides compensation, domestic law provides for other forms of reparation, such as guarantee of non-repetition, in accordance with article 24 (5) of the Convention. In the absence of an autonomous crime, please explain how a victim of enforced disappearance that is committed as an isolated crime and thus would fall under several criminal offences can be guaranteed the right to reparation and compensation. Please indicate whether there is a time limit for victims of enforced disappearance to access reparation (art. 24).

136. Portuguese law does not provide for the guarantee of non-repetition, in accordance with Article 24 (5) (d) of the Convention.

137. However, this form of reparation of the victim is not absolute and, as results from the wording of that provision, should be ensured *where appropriate*, that is to say, in accordance with the specific circumstances of each particular case.

138. Portuguese law criminalizes and punishes the offence of enforced disappearance as an autonomous offence (Report's paragraph 51), as well as other crimes with which it has relevant connecting elements. Victims of enforced disappearance committed as an isolated offence (for instance, abduction) are also ensured the right to reparation and compensation in accordance with the Statute of the Victim.

139. This Statute makes no distinction between offences that give rise to compensation or reparation and does not foresee a catalogue of crimes to which it applies. Article 1 is clear in stating that the above Statute contains a set of measures aimed at ensuring the protection and promotion of the rights of victims of crime, transposing into national law Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, laying

down rules on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA 15 March 2001.

140. The Statute of the Victim does not foresee any time limit for victims to access reparation.

141. As general rule, compensation must be claimed in connection with the criminal proceedings. The victim must inform the law enforcement authority or the Public Prosecutor, by the end of the investigation phase that he/she wants to file a claim for damages, for example, when he/she is going to make statements. When charges are brought against the defendant, the victim is notified and is given 20 days to file the claim.

142. In the case of violent crimes — which is the case of enforced disappearance — the claim for compensation may be submitted up to 1 year from the date of the offence or, if there are criminal proceedings, up to 1 year after the final decision of the latter. The victim who at the time of the offence was a minor may submit the request up to 1 year after reaching the age of majority or being emancipated.

143. Information about crime victims is available online in Portuguese and English: <http://infovitimas.pt> and <https://cpvc.mj.pt> (*Commission for the Protection of Victims of Crime*).

Paragraph 24: With reference to paragraph 223 of the State party’s report, please provide information on relevant criminal provisions that would apply if the conducts encompassed in article 25 (1) of the Convention occur. Please also indicate whether any steps have been taken to bring national legislation into line with article 25 (1) of the Convention. Please describe the existing procedures to guarantee the right of disappeared children to have their true identity re-established. Please also indicate whether there is any restriction in place when a concerned child accesses information concerning his or her origin (art. 25).

144. The relevant criminal provisions that would apply if the conducts encompassed in Article 25 (1) (a) of the Convention would occur are Article 158 (abduction) and Article 161 (kidnapping) of CC.

145. Article 256 (forgery or counterfeiting of document), Article 255 (a) (definition of document for criminal purposes) and Article 259 (damage on or subtraction of documents) of the same Code would apply to the conducts referred to in Article 25 (1) (b).

146. Regarding the existing procedures to guarantee the right of disappeared children to have their true identity re-established and to access information concerning his or her origin:

- Article 26 (1) of CPR enshrines the right to personal identity;
- Article 1 of Decree-Law 131/95 (Civil Registry Code) establishes the facts subject to mandatory registration in the civil registry. These include birth, parenthood and adoption;
- All births occurred in the Portuguese territory shall be verbally communicated, within a period of 20 days, in any Civil Registry office (Article 96 of the Civil Registry Code). The Code also foresees the possibility to communicate the birth in the health unit where the baby is born immediately after the birth (while the parturient is still hospitalized). The project *Nascercidadão* (“born a citizen”) has implemented offices in most hospitals of the country where new-borns can be registered before a Civil Registry officer, thereby dispensing the registration in a Civil Registry office;
- If a birth is not communicated within the established legal time-frame, the administrative authorities or the police shall report this fact to the Registrar or to the Public Prosecutor in order to suppress that omission (Article 98 of the Civil Registry Code). Articles 105 *et seq.* establish the registration procedure of abandoned children;
- Birth certificates contains the following elements: first and last name(s); sex; date of birth, including the exact time of birth; parish and municipality where the baby was

born; complete name, age, status, place of birth and habitual residence of the parents; complete name of the grandparents;

- At the request of the person concerned or his/her legal representatives, the establishment of parenthood and full adoption may be integrated in the original birth certificate, in which case a new birth certificate is issued. However, in the case of full adoption, the original birth certificate cannot be cancelled (Article 123 of the Civil Registry Code);
- Everyone has the right to request the issuance of a certificate regarding the facts registered in the Civil Registry database. However, relevant limitations apply when the information concerns people who have been adopted. In these cases, the person requesting the information shall have to prove his/her identity and legitimacy to access it (Article 214 of the Civil Registry Code);
- The Civil Code and the legal regime of the process of adoption expressly consecrate the right of adoptees to know their origins (Article 1190 A of the Civil Code and Article 6 of Law 143/2015). Although the Civil Code foresees the possibility of the birth parents of an adopted child to request that their identity remains secret, this applies only to the adoptive parents. The adopted person has always the right to access information regarding his/her biological origin;
- 16 years old adoptees or over may request information, advice, and technical support regarding access to his/her origin to social security entities, which they are bound to provide. For adoptees between 16 and 18 (that is, before reaching full legal capacity), an authorization from the adoptive parents or a legal representative is required. In such cases, the aforementioned technical support is mandatory;
- Adoptees have the right to access their original birth certificate in the Civil Registry, as well as information regarding their adoption. The only limitation applicable concerns the necessary legal representation of minors.

147. In conclusion, children in the situations covered by article 25 (1) (a) of the Convention are ensured the right to access information concerning his or her origin, their birth certificates or any other information contained in the Registry.
