

**PORTUGAL'S PARTICIPATION IN THE MECHANISM FOR THE REVIEW OF THE
IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST
CORRUPTION**

1. Actions taken or considered in order to comply with the observations contained in the executive summary and in the evaluation report

Firstly, as concerns criminalization (Chapter III of the Convention) it should be highlighted that, as was referred to at the time of the review, there is already in the Public Administration, including in the public business sector, the obligation to create and maintain “Plans for the Prevention of Risks of Corruption”. More than one thousand of such plans were sent to the Council for the Prevention of Corruption.

With the reform of the judicial map, which became operational at the beginning of September 2014, the organizational model of the courts now encompasses specialized jurisdictions, with specialized judges and public prosecutors as well as support offices designed to provide counselling and technical advice, as may be necessary, for more complex cases.

It should also be mentioned the ongoing discussion, at the Assembly of the Portuguese Republic, on legislative proposals submitted by several political parties on the criminalization of illicit enrichment; this shows the consensus that has been reached, at political level and in the Portuguese society regarding the fight against corruption and related crimes.

The project on legislative amendments approved by unanimity at the Assembly of the Portuguese Republic, on 20 February 2015, is in line with most of the observations contained in Portugal's review report. It has included the undue use of real property (articles 375 and 376 of the Criminal Code), the criminal liability of legal persons for misappropriation (article 11 of the Criminal Code), the criminalization of the attempt regarding all the crimes provided for in the Convention against Corruption, the increase of the statute of limitations period for the crime of trading in influence (article 11 of the Criminal Code), and the increase of severity of the

penalties applicable to this crime (article 335 of the Criminal Code). As to the latter, the passive trading in influence and the criminalization of the attempt were also included.

As regards the passive criminalization of foreign public officials, it must be recalled that, besides being optional, this conduct is already provided for and punished through several provisions of the Criminal Code, when the acts take place in Portugal.

The possibility to guarantee immunity to the persons that collaborate with the criminal investigation and/or prosecution of the crimes set out in the Convention is already provided for in the Portuguese legal-criminal system, under similar mechanisms, such as the exemption or special mitigation of the sentence or the provisional suspension of the case.

It is also worthwhile to recall that, conspiracy for money laundering crimes, while a figure pertaining to Anglo-Saxon systems, is unknown to continental law systems, being the same effect obtained through collusion or criminal association provided for and punished in the Criminal Code.

As to the possibility of altering the beginning of the limitation period to the moment the crime is discovered (in contrast to the moment the crime is committed, as set forth in the Portuguese Criminal Code (article 119)) it was not considered, given that the same effect can be achieved through the suspension and interruption of such limitation periods, as set out in articles 120 and 121 of this Code.

As regards international cooperation (Chapter IV), the criminal penalty applicable to the passive trading in influence for the purpose of obtaining a favourable decision (article 335(1/b), of the Criminal Code) was enhanced. Therefore, it is now a crime that allows extradition.

Moreover, in the bilateral plan, Portugal is still committed to deepen the bilateral cooperation in criminal matters, being under negotiation extradition and mutual legal assistance agreements with several States, like Peru, Paraguay, Uruguay, Kazakhstan, Saudi Arabia and United Arab Emirates.

2. National experience on the mechanism for the review of the implementation of the Convention against Corruption

The national experience resulting from the participation in the mechanism for the review of the implementation of the Convention against Corruption, deemed particularly positive, may be viewed in the double perspective of the evaluated and evaluator States.

The participation, while an evaluated State, has allowed, at the outset, to involve in this exercise a wide range of entities and national bodies, mainly the Judges and the Public Prosecutors, the Council for Prevention of Corruption and the academia, as well as representatives of the civil society and non-governmental organizations that operate in the field of corruption prevention.

Moreover, it enabled the identification of some insufficiencies leading to the submission of legislative proposals in the areas where such was deemed relevant and necessary, in accordance with the Portuguese constitutional and legal-criminal tradition. At this junction, as above mentioned, it is being discussed the criminalization of the illicit enrichment (versus the criminalization of unjustified enrichment). This discussion follows the previous submission of a legislative project on the criminalization of illicit enrichment which, although approved by the Assembly of the Republic, was afterwards declared unconstitutional by the Constitutional Court on the ground of the inadmissibility of the reversal of the burden of proof.

Portugal, as an evaluator State, has had the opportunity to acquire knowledge and experiences on the legal systems of two evaluated States (United Arab Emirates and Bosnia and Herzegovina), where it has identified and shared good practices.

In this context, Portugal has also had the opportunity to cooperate with UNODC and with a Portuguese-Speaking Country (São Tomé e Príncipe) as regards the support given to the translation into English of the responses to the questionnaire that was on the basis of the evaluation.

The overall experience has been very fruitful.