

**João Arriscado Nunes, Marisa Matias e Susana Costa**

Centro de Estudos Sociais da Faculdade de Economia da Universidade de Coimbra

**Jorge Correia Jesuino e Sandra Carvalho**

INDEG, Instituto Superior de Ciências do Trabalho e da Empresa

**Carmen Diego**

Instituto de Ciências Sociais, Universidade do Minho

## **«Public Accountability»: The Portuguese ‘Landscape’<sup>1</sup>**

### **Summary**

1. Portuguese society displays an intermediate level of development and fulfils a role of intermediation, within the European regional context, between the core countries and the peripheral and semiperipheral countries of Africa and Latin America. Whereas a superficial analysis of the institutional framework of the democratic regime would underline its similarities with other countries within the European Union, the historical path towards the building of this framework displays a number of specificities, providing a window to the heterogeneous dynamics of Portuguese society and, in particular, to State-society relations.
2. During 48 years, Portuguese society lived under a dictatorship (1926-1974) – the “Estado Novo”. Under the leadership of Salazar, the dictatorship suppressed basic political rights. A convergence of foci of tension and conflict brought the regime to a collapse, in the form of a military coup on April 25, 1974, followed by a period of active popular mobilization and social and political change. In November 1975, an alliance of moderate and conservative sectors in the armed forces took control, and Portuguese society entered a period of “normalization”, characterised by a strong instability. Portugal

---

<sup>1</sup> This is a version of the National Profile of Portugal elaborated for the Project “Analysing Public Accountability Procedures in Contemporary European Contexts” (HPSE-CT2001-00076), funded by the European Commission. The project includes seven countries: Portugal, Germany, Denmark, United Kingdom, France, Czech Republic and Latvia.

was finally admitted to the Community in 1985, and joined it formally in 1986, starting the process of “Europeanization” of the democratic regime. Political culture in contemporary Portugal should be conceived as building upon a pervasive feature of the State and of State-society relations in the post-1976 period: a gap between legal frameworks and social practices. This gap cuts across both “stable” periods and periods of social and political change.

3. There is no literal translation into Portuguese of the word “accountability”. It is possible, however, to identify a range of words and expressions that, through their interrelations, define a set of semantic fields corresponding to the English “accountability”. In the Portuguese case, any discussion of the meanings and the uses of these terms and expressions should be put into perspective by placing them within specific historical contexts: the lack of accountability in the several dimensions of Portuguese society during the dictatorship; the central role of being accountable to “the people” and to popular assemblies during the revolutionary period; the almost total absence of debate about accountability during the “normalization” of parliamentary democracy; and, the emergence of concerns with public accountability after Portugal joined the EC, in 1986.
4. Within the Portuguese political and administrative system we can identify several bodies in charge of its internal evaluation. The same is true of the interfaces between the political and administrative system and the private sector and civil society. The judicial system has its own procedures to guarantee the chain of accountability. The existence of these organs does not necessarily translate into transparency, responsibility or shared authority, however. In fact, we will find many instances of a wide gap between legal frameworks and practices.
5. The cases presented and discussed have brought issues of public accountability across a range of fields – environment, health, justice, education, public administration – to public debate and point towards some of the consequences of the intersection of the gap between legal frameworks and administrative, political and social practices with the “partial and uneven Europeanization” of Portuguese society for the demand for information, responsibility and transparency in public policy-making.

## **1. Introduction**

In the wake of joining the European Community in 1986, the idea that government, parliament, local government, public services, health services, the judiciary, businesses, research institutions or non-profit organizations should be made accountable for their activity, performance and financial situation has slowly made its way into Portuguese society and political culture. Whereas the idea of “being accountable” cuts across different areas of social life and of public service and public administration, it is still not clear who exactly should be accountable to whom in each context, and through which procedures it should be enacted. That there is no translation of “accountability” in Portuguese capturing the range of meanings associated with the word in English is not just a linguistic feature shared with other languages. It may well be taken as a signpost of a specific historical trajectory towards democracy and citizenship. If the word is unknown, it is true that a number of the meanings associated with it in English are part of public discourse in Portuguese society: responsibility, transparency, right to information, disclosure, access to administrative documents, auditing, evaluation, public consultation, public discussion and participation are all part of a semantic field which covers the same ground of “public accountability”. In the pages that follow, we shall deal in more detail with the vocabulary of accountability in Portuguese society, with the historical background to the emergence of the vocabulary and of the social and political dynamics associated with it, with the current framework of political culture and with the range of issues which have arisen in public debate which, in different ways, have made public accountability a politically and socially relevant topic in Portuguese society. This topic is closely connected to a more general problem, which has been central to debates involving social scientists, policy makers and different political and social forces – namely, that of how to conceptualise Portuguese society within the context of the European Union.

Over the last two decades, studies of Portuguese society have struggled to identify both the features shared with, and the features that distinguish it from, so-called "advanced" or "developed" countries, on the one hand, and from so-called "developing" countries on the other. The most promising path towards the accomplishment of this task is associated with a version of Immanuel Wallerstein's world-system analysis and, in particular, with the concept of semiperiphery (Wallerstein, 1974).<sup>2</sup> As a semiperipheral society, Portuguese society displays an intermediate level of development (as measured by per capita GDP) and fulfils a role of intermediation, within the European regional context, between the core countries of

---

<sup>2</sup> For a detailed characterization of Portugal as a semiperipheral society, see Santos (1993a).

Europe and the peripheral and semiperipheral countries of Africa and Latin America. As the former head of a colonial empire, and a subordinate country within Europe, Portugal is in a position to take advantage of its historical links to regions of the Southern hemisphere in order to negotiate a specific role of intermediation within the European Union (Santos, 1990, 1994). This specificity of Portugal as a former semiperipheral head of empire may well open up opportunities for a balanced relationship with its former colonies than was the case of core imperial powers like France or Britain. The question is still open whether the country will actually be able to fulfil this role, and whether this will work towards a consolidation of its semiperipheral condition or towards a "promotion" to a position closer to the core, as happened with Spain or as seems to be happening with Ireland.

Describing Portugal as semiperipheral requires not only looking at its position and role within a transnational economic and political space. It also means that Portuguese society displays a number of features concerning its economic structure, social relations, the organization and functioning of the State, the dynamics of State/society relations and its political culture.

Any discussion of the issues related to public accountability have to take into account these specificities and, in particular, the peculiarities of the recent paths of State-society relations in the wake of the process of democratisation started by the military coup and revolutionary movements in 1974/75.

Whereas a superficial analysis of the institutional framework of the democratic regime would underline its similarities with other countries within the European Union, the historical path towards the building of this framework displays a number of specificities, which have lead to a situation characterized by features such as the absence of a strong, organized civil society based on social movements and citizen organizations and associations; a weak and incomplete welfare State, coupled with a strong welfare society, based on primary solidarities (family, kinship, neighbourhood); a discrepancy between levels of production in the formal economic sector and levels of consumption; a discrepancy between the formal definition of citizens' rights and the actual access to these rights; a discrepancy between advanced legislation and conservative social practices. Official discourse on democracy, citizenship, rights, material progress and well-being draws on imported or mimetic material and symbolic resources, on shaping an image of Portugal as a core country in-the-making, on the imagination of the core (Santos, 1993b). From a different perspective, some authors have recently argued that Portugal is indeed a modern society like other societies in the European

Union, although still displaying some backwardness as far as development in specific areas is concerned (Cabral, 1997; Mozzicafredo, 1997).

Regardless of theoretical preferences, however, the historical path towards the situation of contemporary Portugal, as will be described in detail in the next section, provides a window to the heterogeneous dynamics of Portuguese society and, in particular, to State-society relations. Public accountability is undoubtedly on its way to becoming a central feature in characterizations of these dynamics.

### ***Methodology***

We have relied on four main sources of information and on qualitative research procedures to carry out a preliminary identification and assessment of the issues related to public accountability in Portugal.

We started with a bibliographical survey of definitions and uses of a cluster of words and expressions associated with the notion of public accountability, as well as of general characterizations of the national profile of the society, the State and political culture in Portugal.

The second source of information was the Constitution of the Portuguese Republic, its successive revisions since 1976 and a range of legal and policy documents related to the definition of the rights of citizens to information and to access to administrative acts, as well as to the duties of public institutions and holders of public office.

Next, we set up an observatory of the media, and of the daily press in particular. We have searched for and identified references or developments pertaining to the main debates on responsibility, transparency and accounting featured in the press, including news, editorials, letters to the editor, interviews and opinion articles. These debates covered a wide range of fields.

Finally, we conducted both semistructured interviews and conversations with key informants in the fields of public administration, health, justice and transportation policies.

## **2. Historical Background and Political Culture**

### **2.1. The Dictatorship<sup>3</sup>**

In 1926, a military coup against the Republican government brought to power a coalition of conservative forces which evolved towards a fascist-inspired dictatorship. This was to become the longest-lasting dictatorship (48 years) in the history of Western Europe. Under the leadership of Salazar, the dictatorship suppressed basic political rights, such as the right to free speech and the right of association, banned political parties – namely the Communist Party – and autonomous trade-unions, established censorship of the media and of cultural creation and organized a political police which actively chased, imprisoned, forced to exile or physically suppressed political opponents. A very basic form of accountability associated with modern citizenship – accountability of government and police forces to law and the judiciary – was thus systematically ignored or violated and replaced by a general definition of loyalty towards “God, Homeland and Family”, a triad embodied in the alliance of State, the hierarchy of the Catholic Church, the upper strata of the military and the ruling classes of large landowners and industrialists. The institutional architecture of the regime, the so-called “Estado Novo”, was defined in a range of documents drafted in the 1930s, namely the 1933 Constitution. The new political and social order rested upon a ruralist and conservative view of society, drawing on Catholic values and on a corporatist form of social organization, outlawing any form of institutionalised, class-based conflict. Most of the population lived in rural areas, living from agriculture, either as small farmers or leaseholders – mostly in Northern and Central Portugal – or as agricultural labourers employed for very low wages by the large landowners of Alentejo, in the South. Most of industry was based on small units – although large companies did exist, particularly in the Lisbon/Setúbal region –, and transatlantic migration, to Brazil mostly, was one of the few viable alternatives to poverty. The regime sought its historical legitimation in defining itself as the heir to the multicontinental empire built over five centuries, in the wake of the voyages of discovery in the 15<sup>th</sup> and 16<sup>th</sup> centuries, and covering a territory ranging from West Africa to Mozambique, India, East Timor and Macao.

The sympathies of the regime in the 1930s and during the Second World War clearly went towards the Nazi regime in Germany, fascist Italy and Franco’s Spain. This, however, was balanced with an alliance with Britain, going back to the 14<sup>th</sup> century, which prevented an open alignment with the Axis powers, and allowed Portugal to remain neutral during the

---

<sup>3</sup> For a detailed historical account of this period, see Rosas (1992).

Second World War. Whereas the country was thus able to escape the devastating effects of the war that were felt throughout the rest of Europe, it also led to it remaining out of the plans of aid to economic reconstruction.

It is true that the victory of the Allied Forces in 1945 forced the regime to display some gestures towards a more open political order. This included calling elections for the Presidency and for the National Assembly and allowing oppositional candidates to run. This was to become a regular part of the political rituals of the regime, until its demise in 1974. Elections, however, were far from being free. The regime held a tight control over what were to be the legitimate themes for political debate – opposition to colonialism, for instance, was strictly out of bounds –, and intimidation, repression and censorship were pervasive. This was combined with massive manipulation and fraud to ensure that the candidates of the regime would always prevail. Nonetheless, electoral periods created some room for more open political intervention, and were of some significance in building up pressure for social and political change and resistance to the regime.

During the 1960s, Portuguese society entered a period of social change, which had been initiated, even if in a limited and shy way, in the late 1950s. Among these changes were economic growth associated with industrialisation, the emergence of large economic and financial groups protected by the State, the growth of urban areas, particularly around Lisbon and Oporto, the increase in migration to European countries like France and Germany and significant migratory flows to several other European countries.

**Table 1: Portuguese Emigration to Selected Countries (1950-1974)**

Year	France	Germany	Other European countries	Total	% of total Portuguese emigration
1950-1959	21753	30	1639	23422	6.7
1960-1969	468065	59971	15741	543777	68.2
1970-1974	416848	123930	14380	555158	83.1

Source: Adapted from Baganha and Góis, 1998/99

From 1961 another force emerged which proved crucial to social and political change in Portugal: the start of the armed struggle of the Liberation Movements of the African colonies of Angola, Mozambique and Guinea-Bissau. The Portuguese army was drawn into a

long and difficult war on three different fronts which, as it came out, was impossible to win and ran counter to the historical process of decolonisation after World War II.

In 1969, the resignation (due to an accident with fatal consequences) of Prime Minister Salazar led to the nomination of Marcello Caetano as the new prime minister. Caetano's "Estado Social", the successor of "Estado Novo", relied upon the high profile of a generation of technocrats committed to an authoritarian version of development and modernization, and made some gestures towards a political opening. It soon became clear, however, that the crucial issue which blocked any attempt at an even limited political transition and divided the coalition of right-wing sectors and technocrats in power, on the one hand, and the opposition, on the other, was the colonial question and the need for a political settlement which would put an end to an increasingly unpopular war. Any settlement would have to openly acknowledge the liberation movements as legitimate partners for negotiation and accept the principle of self-determination of the colonial territories. This was unacceptable to the far right-wing sectors of the regime, and would compromise the regime itself. Under the circumstances, hints at some political opening soon turned into intensified repression during the early seventies. Inflationary tensions, largely due to the budgetary strains associated with the war, the growing discontent of young officers who were drafted into the armed forces, labour conflicts, student movements and the first oil crisis soon converged with the aforementioned foci of tension and conflict to bring the regime to a collapse. This took the form of a military coup on April 25, 1974, followed by a period of active popular mobilization and social and political change.

## **2.2. The Revolutionary Period (1974-76).**

The officers who overthrew the regime had organized themselves, over the previous year, within the Armed Forces Movement (MFA), a politically and ideologically heterogeneous movement with different currents and sensibilities, ranging from conservative reformers to those close to the Communist Party and to other left-wing organizations and currents. Over the following two years, Portuguese society went through wide-ranging, rapid transformations. Civic and political rights were restored, and a free press emerged again; political parties were legalized; social movements mushroomed, linked to issues like housing and urban living conditions, agrarian reform – with the occupation, by rural labourers, of the latifundia in the Southern part of the country and the organization of collective units of production and of cooperatives –, small farmers' movements, occupation of industrial plants



and organization of cooperative or self-management initiatives, cultural movements, soldiers' and sailors' organizations, cultural and students' movements. Trade unions flourished under the new conditions of political freedom, and an unprecedented wave of workers' struggles for higher wages, improved working conditions, welfare arrangements and participation in the management of companies brought to light the contradictions and tensions repressed by 48 years of dictatorship. Key sectors of the economy (banking, finance, insurance, energy, transportation, heavy industry) were nationalized, and interventions of the State in companies to prevent economic sabotage or closing were common. During this period, the lack of capacity of the State to "normalize" democratic order according to the prevailing European models of parliamentary and representative democracy co-existed with a variety of experiences in participatory democracy and citizens' initiatives, with the active support of some of the currents within the MFA. The MFA acted as a sort of "overseer" of the transition to democracy, a role formalized in a pact made with the parties (April 1975, revised in February 1976), but that did not prevent the emergence of fractures and conflicts within the MFA itself. This was a period of intense political and social struggle, but also of definition of the outlines of the democratic order expected to emerge from the overthrow of the dictatorship. In 1975, elections were held for the Assembly which was to draft the new Constitution. The Socialist Party, supported by most of the Western European countries and the United States, won by a relative majority. In November 1975, an alliance of moderate and conservative sectors in the armed forces took control, and Portuguese society entered a period of "normalization", culminating in the final voting of the new Constitution in April 1976 and the first Presidential, Parliamentary and local elections. The Constitution was a document concentrating the tensions and contradictions of the revolutionary period. Its content was extremely advanced, namely in areas concerning social and economic rights and the recognition of forms of participatory democracy. Successive revisions (five in all) of the Constitution over the following two decades deleted from the document some of the features most directly related to the Revolution (such as the reference to socialism as a target), and reduced the weight and importance of some of the most innovative features associated with participatory democracy and popular organization. Many of the most advanced features of the Constitution, however, were retained and, in some cases, improved, particularly those related to the various generations of citizens' rights (civic and political, economic and social, cultural and ecological, for instance). Among these, the right to information and to access to administrative documents are prominent.

### **2.3. The "Normalization" and "Europeanization" of the Democratic Regime**

Besides the successive revisions of the Constitution, which brought the constitutional order in Portugal more into line with that of Western European Countries, the period of "normalization" included a range of initiatives aimed at the creation of a welfare state, of conditions for the development of a private sector and a market economy in all areas of economic activity and the dismantling of some of the measures and initiatives taken during the revolutionary period. Privatisation of industries, banking and insurance was to proceed over the next decades, ultimately leading to the recomposition of powerful private economic groups. The agrarian reform in Southern Portugal was brought to an end, with land being given back to their former owners and leading to a substantial decrease in cultivated areas and to an increase in unemployment. An aged and sparse population, large areas of land left to waste and a general situation of economic marginality in the Southern regions of Alentejo are the most visible consequences of these "normalizing" measures.

The late 1970s to mid 1980s witnessed a succession of weak minority governments, the first two based on parliamentary support, the following three named by the President. Instability is the keyword for that period. It was also during this decade that negotiations for joining the then EEC were carried out. Portugal was finally admitted to the Community in 1985, and joined it formally in 1986. The then president (and first elected prime minister and leader of the Socialist Party) Mário Soares was a key figure in the negotiations. In 1985, the first majority government was formed by PSD, the liberal party, and this initiated a cycle of ten years of that party in power. In 1995, the Socialist Party (PS) won the elections on a platform including support from centre-left, left-wing and centre-right sectors. The platform opposed a style based on dialogue and negotiation to the authoritarian style of the previous governments of Prime Minister Cavaco Silva, the leader of PSD. The major achievements of the socialist government were in the area of social and welfare policies, and in setting up a system of scientific and technological research, funding a network of institutions, research projects in all areas of the natural and social sciences and humanities, and grants for graduate training of young researchers, largely through a flow of funds from EU programs. It is worth noticing, in the context of this project, that during this period scientific research institutions and projects were if not the first, at least one of the first areas in Portuguese society to be subject to systematic evaluation by international panels and norms of public accountability. This was often mentioned as an example to be followed by other types of institutions. In other

areas, however, the performance of the government was below expectations. In spite of lacking a majority in Parliament, PS has been able to survive its first period in government (1995-99) through an effective, though inconsistent strategy of situational alliances. In 1999, a new parliament was elected, with representatives from six different parties (the Socialist Party, the Social-Democratic Party, the Communist Party, the Popular Party (right-wing), the Green Party and the Left Block) and a draw in numbers of PS members of Parliament and of the total sum of members of opposition parties (right and left). The government emerging from the election, however, lost much of its stamina and credibility, and the prime minister resigned in January 2002, following a defeat in local elections. As expected, the general election held in March 2002 brought PSD to power again. The Social Democrats won a narrow victory over the Socialists (40.1 and 37.8%, respectively). PSD and the Popular Party formed a coalition to obtain a majority in Parliament supporting a conservative government.

#### **2.4. The Portuguese Political and Administrative System**

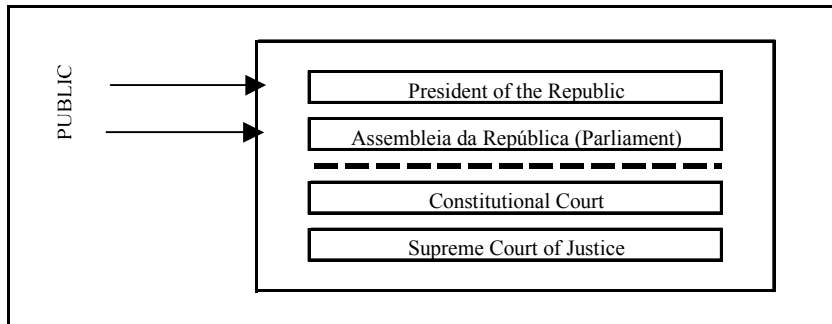
In the wake of the restoration of democracy, the 1976 Constitution of the Portuguese Republic defined Portugal as a “Democratic State, based upon popular sovereignty, the respect for and guarantee of fundamental rights and liberties and the pluralism of democratic expression and political organization, with the aim of granting the transition to socialism through the creation of the conditions for the democratic exercise of power by the labouring classes” (Constitution of the Portuguese Republic, § 2, 1976). This definition of the democratic State based upon the rule of law was changed in the first revision of the Constitution, with the replacement of transition to socialism with the aim of "accomplishing economic, social and cultural democracy", as well as “deepening participatory democracy” (Constitution of the Portuguese Republic, 1982). The 1997 revision added the separation of powers as one of the pillars of the democratic State based on the rule of law. In short, the Portuguese political system is defined in the Constitution as democratic, parliamentary and pluralistic.

Following from this definition, all citizens are granted basic liberties and have the right to participate in political life under conditions of equality of opportunities. Representation is achieved through the direct and universal right to vote for all Portuguese citizens aged 18 or older.

The organs of sovereignty in the Portuguese political system include the *President of the Republic*, the *Assembly of the Republic* (single chamber Parliament), the *Constitutional Court* and the *Supreme Court of Justice*. The *President of the Republic* is elected through the direct vote of the citizens every five years. Presidential functions include the sanctioning or vetoing of laws, the submission of laws to scrutiny by the Constitutional Court, the submission of issues of relevant national interest to referendum, the nomination and revoking of the members of the central Government and of the governments of the Autonomous Regions of Madeira and Azores, of the Council of State, of the Chairpersons of the Court of Auditors, of the Attorney General and of the Chief and Vice-chief of Staff of the Armed Forces; chairing the meetings of the Council of State; defining the dates for elections; summoning, dissolving and sending messages to Parliament.

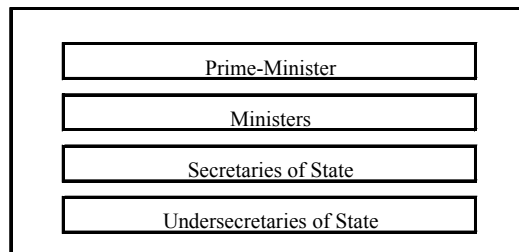
Elections for parliament take place every four years. Representation is proportional, based on the Hondt method for converting votes into seats in Parliament. The party with the largest number of registered votes is invited by the President to form the new Government. Parliament includes 230 members representing a range of political parties, organized in Parliamentary groups. Although members of Parliament are elected by the voters of bounded territorial units, they are, above all, representatives of the nation, not of the constituencies that elected them. The *Assembly of the Republic* is responsible for voting changes in the Constitution and guaranteeing that it is enacted, for drafting and voting laws, discussing and voting the program of the Government, discussing and voting the budget submitted by the Government and controlling public accounting. The activity of Parliament is public and open to scrutiny by citizens. The other organs of sovereignty – *Constitutional Court* and *Supreme Court of Justice* – are not elected, and are independent from political parties, being accountable only to law. The organs of sovereignty embody the separation of powers – executive, legislative and judicial – defined in the Constitution as a pillar of the democratic regime.

**Table 2: Organs With Supreme Authority**



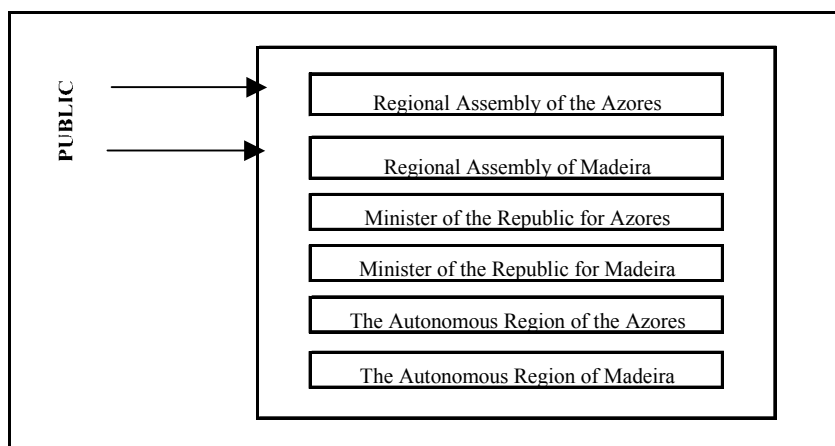
The *Government* is composed of a Prime Minister, Ministers, Secretaries of State and Undersecretaries of State. Only the Prime Minister and the Minister have autonomous power of decision – within the limits established by the constitutional order. Sub-secretaries of State are accountable to the respective Secretaries of State and the latter to the respective Ministers. Ministers, in turn, are accountable to the Prime Minister for carrying out the policies defined by the Council of Ministers. The Government as a whole is accountable to Parliament. Parliamentary groups may require the presence of Government in Parliament whenever it is regarded as necessary.

**Table 3: Government**



Citizens also elect the *Regional Assemblies* of the Autonomous Regions of Madeira and Azores, *Municipal Governments* and *Assemblies* and local (parish) governments and assemblies (*Juntas de Freguesia* and *Assembleias de Freguesia*). Some of the powers exercised by the *Assembly of the Republic* and by the Central Government have been devolved to the Regional Assemblies and Governments of Madeira and Azores. The articulation between the Regional Governments and the Central Government and the Presidency of the Republic is ensured by a Ministry of the Republic, nominated by the President for each of the Autonomous Regions.

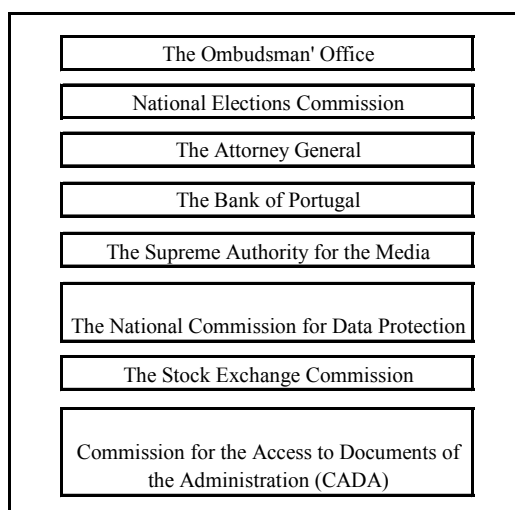
**Table 4: Regional Organs**



The organs of local government – municipal governments (*Câmaras Municipais*) and parish governments (*Juntas de Freguesia*) – have their own budgets and jurisdictions. They are elected every four years.

The political system also includes Organs of Supervision and Organs of the Central Administration. The Organs of Supervision are independent of elected bodies and their purpose is to guarantee the respect for the rule of law in all areas of Portuguese society.

**Table 5: Supervision Organs**



The Organs of Supervision include:

a) *The Ombudsman's Office*: created by the 1976 Constitution, the Ombudsman – often described as the “defender of the people”, “protector of citizens” or “mediator of the Republic” – is a personal office, its action independent of that of other bodies, with no injunctive powers as far as its decisions are concerned, and exercising the control of the activity of public administration, recommending courses of action to political decision-makers and ensuring the observance of proper and legitimate procedure in situations of constitutional conflict.

b) *National Elections Commission*: this organ is in charge of organizing all actions related to the registration of voters and to elections. Its duties include the pedagogy of democratic electoral practice and the education and information of voters in matters related to elections.

c) *The Attorney General (Public Prosecutor's Office)*: this is an autonomous organ guaranteeing the fulfilment of the competences of public prosecutors, including the representation of the State, of the Autonomous Regions, of local communities, of the disabled and of those absent in uncertain places; the participation in the enactment of policies towards crime; the exercise of penal action according to the principle of legality; the unofficial legal support of workers and families for the defence of social rights; the defence of collective and diffuse interests (related to environmental protection, for instance); the defence of the independence of courts of law; the promotion of legitimacy in carrying out the decisions of courts; the supervision of criminal investigation and the prevention of crime; the control of the constitutionality of normative acts; intervention in processes of bankruptcy and insolvency when public interest is at stake; advice to and control of the organs of criminal investigation.

d) *The Bank of Portugal* is a body autonomous from political power. It is part of the European System of Central Banks and its main aims are the stability of prices and of the national finance system, through the supervision of credit institutions and financial societies. Its tasks also include the control, regulation and promotion of the appropriate workings of payments systems, managing external currency, mediate the international monetary dealings of the State, counselling the Government in matters related to the economy and finance, and produce statistics in cooperation with the European Central Bank.

e) *The Supreme Authority for the Media* is an independent organ ensuring the right to information, freedom of the press and the independence of the media from political and economic power.

f) *The National Commission for Data Protection* is an independent administrative body with a link to Parliament. It controls the processing of personal data and cooperates with similar entities, in order to protect the rights, liberties and civil guarantees of citizens.

g) *The Stock Exchange Commission* is a collective entity with public legal status, financially and administratively autonomous and owning assets. It regulates and supervises the stock markets and all entities associated with them, protecting the investors, ensuring the integrity and transparency of those markets and promoting the development of the latter. It cooperates with other national authorities in charge of supervising and regulating the financial system (Bank of Portugal and Portuguese Institute for Insurance) and with authorities from other member States of the EU.

h) *The Commission for the Access to Documents of the Administration (CADA)* is an independent public body linked to Parliament. Its aims are to ensure respect for the law guaranteeing access by citizens to administrative information.

Finally, the Organs of Central Administration may be divided into two groups: the decentralized organs, corresponding to key sectors of the action of the State, which are disseminated throughout the country, and those organs which are composed only of central services.

Within the first group, we find regional delegations/directorates/administrations in areas such as: Culture, Agriculture, Environment and Territorial Planning, Education, Economy and Health. To these one should add the Civil Governments (representatives of the central Government at the District level, 18 in all), the Regional Coordination Committees (in charge of coordinating regional development policies) and the Regional Centres of Alcoholology. These bodies should be instrumental in enacting the constitutional principles of decentralization and proximity of administration to citizens.

As for the centralized organs of the administration, these include:

- a) Environmental and legal audits, internal to each Ministry;
- b) General Inspectorates in areas such as territorial administration, internal affairs, public administration, defence, education, cultural activities, economic activities, public



works, transportation and communications, fisheries, agriculture, finance, health, environment, labour and solidarity and justice.

c) Committees for the protection of labour rights, namely for the eradication of gender discrimination in the workplace.

d) Advisory Committees for immigration, education, life sciences and environment and sustainable development.

e) Observatories of cultural activities, science and technology (now higher education and science), commerce and employment and vocational training.

f) General Directorates in areas such as labour and environment.

g) Offices for auditing and evaluation in the fields of justice and education.

h) Institutes for the promotion of quality in health, labour conditions and management of Citizen's Shops.

i) Other organs related to the enactment of citizens' rights, such as the High Commissioner for Immigration and Ethnic Minorities and the Defender of the Tax Payer.

As public administration is a broad and heterogeneous field, only some of the bodies and organs mentioned above will be taken up again in the following sections in order to expand on the mechanisms and procedures associated with the internal and external accountability of the Portuguese political and administrative system.

## **2.5. Political Culture in Contemporary Portugal**

Any characterization of political culture in contemporary Portugal should build upon a pervasive feature of the state and of state-society relations in the post-1976 period. Following Santos (1990, 1993b), we shall describe this feature as the discrepancy or gap between legal frameworks and social practices. To be sure, this discrepancy can be found, in some degree, in all societies and is indeed at the origin of the opposition, well-known in critical legal studies, between “law in books” and “law in action”. But in the case of Portugal the extent and pervasiveness of this feature over the last 25 years, despite constitutional revisions, changes in government policies and European integration, underline its structural character. It does not emerge only during periods of change, where gaps or problems of adjustment of law and social practice would be expected, but it is a highly visible feature of politically stable

periods. Its most obvious expressions are, for instance, the production of legislation which is not enacted due to lack of a complementary regulatory framework, the partial or selective enactment of the laws (such as laws promoting equal treatment for men and women or laws against tax evasion) or the need for exceptional measures for the enforcement of laws (such as the laws on violation of speed limits), all of which tend to perpetuate or comply with practices which the law itself defines as undesirable or incompatible with the promotion of equality and the rights of citizens.

This situation is linked to the internal heterogeneity of the frameworks of regulation and of the dynamics of emancipation (Santos, 1994). Regulation rests upon the principles of the market, of the state and of the community. The principle of the market has never become as central in Portugal as it is in other countries, namely the core countries of the European Union. The state, in contrast, has always been a sort of tutorial presence over Portuguese society. This, however, should not lead us to describe the Portuguese state as a strong state. On the contrary, its ubiquitousness means that the state is intertwined with many organized interests and corporatist pressure groups. Whereas it is true that over the last two decades there have been attempts to reduce the ubiquitous presence of the state in Portuguese society, this has taken place through the very initiative of the state, namely through the creation or support of entities which Santos (1990) describes as secondary civil society.

This situation is linked to the heterogeneity of the community principle, and, in particular, to the question of the much-debated weakness of civil society. With few exceptions, most of the forms of association, organization and collective mobilization known in advanced industrial countries have been either non-existent, weak or dependent on the recognition and support of the state. Secondary civil society is the outcome of initiatives of top-down creation of civil society, without the underlying dynamics of grassroots movements or initiatives. The case of professional associations (of doctors, lawyers, engineers, architects, pharmacy professionals, more recently of economists and biologists), organized in a corporatist fashion, is a case in point. These professional associations (*Ordens*) exercise control of access to the profession and usually shelter their members from lawsuits, by framing legal issues of liability into disciplinary and deontological problems dealt with internally. This endows professional associations with considerable social power and turns them into powerful pressure groups and indispensable partners in processes of policy-making, whenever these are likely to have consequences for their professional interests. This power is, in fact, a consequence of the delegation by the state of public functions. The consequences of

this situation for the framing and enactment of public accountability procedures are highly relevant, as we shall see.

But this does not mean that one can describe civil society in Portugal as “weak”, without any qualification. The very heterogeneity of social structure, with contradictory class positions and a considerable weight of part-time small farming, though contributing to the decentring of capital/labour relations, also displays a dense web of primary solidarities, anchored in local communities and neighbourhoods, families and extended kinship networks.

Under the circumstances, it will come as no surprise that the Portuguese state is a very complex political entity. Historically, the failure to incorporate the working classes into the political system through strong and autonomous trade unions and political organizations led to partial, weak and vulnerable attempts at political democratisation. The persistence of a 48-year long dictatorship in the wake of the collapse of the democratic order in the 1920s is the most visible historical expression of the consequences of that failure. Even during the post-1974 democratic period, clientelism and corporatism could not be eradicated, and the actual building of a democratic order pointing towards welfare policies of the kind found in other European countries did not materialize. This means that two types of problems are still plaguing the political system and political culture in Portugal: the problems of redistribution and the problems of democratising the political system, of making its institutions and actors accountable to citizens. As a consequence, the state is unable to respond to popular demands for the provision of education, health, welfare or access to justice in an adequate way, on the one hand, and displays a propensity towards an authoritarian way of dealing with citizens, even if this propensity has taken different forms in different periods, on the other. Society has responded to these two kinds of problems in different ways. The problems of redistribution and the shortcomings of the formal welfare, health and judiciary systems are often dealt with through a reliance on what Santos and others have called “welfare society”, a range of social networks and practices resting upon primary solidarities (family, neighbourhood, friendship, mutual help), resolution of disputes outside any formal legal framework, so-called alternative medicines or practices of healing or through some combination of formal and informal resources and practices.

As for the authoritarian culture of the state, the recent emergence of local movements mobilizing citizens against what they see as situations of injustice or violation of their rights or of their well-being stands out as one of the most interesting dynamics of Portuguese society. The cases discussed later in this profile point towards some of the consequences of

these dynamics on the demand for information, responsibility and transparency in public policy-making. Media coverage has contributed in a decisive way to their visibility and has become part of the intended effects of these initiatives. These movements and forms of mobilization are experimenting with alliances with environmental and consumer associations, local government, state institutions, members of Parliament, political parties or actors within the legal and judiciary system. It remains to be seen whether and how these initiatives will be instrumental in promoting new forms of state-society, state-citizen relationships and the democratisation of the political and administrative system through the demand for accountability. Joining the EC in 1986 certainly had important consequences in both the redefinition of legal frameworks or their creation in areas which were previously characterized by legislative voids or piecemeal interventions, such as the environment or consumer protection. The first general legal ordering in the field of environment, for instance, dates from 1987 (*Lei de Bases do Ambiente*), and was drafted in compliance with EC requirements. The other main consequence of this process was the possibility for citizens to invoke European directives or European legislation to oppose government whenever they felt their rights were being violated or threatened. Environmental and consumer organizations made good use of this opening. Still, the discrepancy between legal frameworks and political and administrative practice remained a conspicuous feature of the Portuguese state. This takes three main forms. First, recent environmental conflicts have brought to the surface the practice of the Portuguese government of holding opposite discourses on the environment in international fora and for domestic consumption. This means that the government may sign an international convention or agreement and either fail to enact it or enact laws which contradict the convention or agreement. The case of the Stockholm Convention on hazardous waste management and the elimination of Persistent Organic Pollutants is a case in point, and was publicly denounced by environmentalist and citizen organizations as part of recent public protest against current waste-management policies. The second form consists of not transposing, or delaying the transposing, of European directives into domestic law. This is an old resource of political actors in Portugal to prevent the actual enactment of laws which may generate political or social unrest or opposition, or have a negative effect on powerful interests. Again, many examples can be found in areas like environmental laws or human genetics. Finally, it is also possible simply not to enforce a directive that has been transposed to domestic law. Again, in the environmental field, one could mention the failure to draw an inventory of industrial waste, due to the non-compliance of industrial units, with no consequences or sanctions.

In fact, being a member country of the European Union did not eradicate some of the most conspicuous features of the gap or discrepancy between law and social, political or administrative practice in Portugal. But it had the effect of opening up a space and new instances of legitimation and appeal for citizen action to make the state, the administration and the political system more accountable (Gonçalves, 2001).

### **3. Accountability and its Vocabularies in Changing Contexts**

There is no literal translation into Portuguese of the word “accountability”. It is possible, however, to identify a range of words and expressions which, through their interrelations, define a set of semantic fields corresponding to the English “accountability”. Since issues of public accountability are expressed in the language of rights and duties, of information and participation, many of the themes dealt with in this project have found their way in the text of the Constitution of the Portuguese Republic. This is, in fact, the basic document which opens up the spaces for claiming responsibility, transparency and openness, for invoking the right to information and for demanding conditions for the participation of citizens in the monitoring of public administration and of the performance of public institutions.

A (partial) survey based on the Constitution, legal and administrative documents, media coverage of public debates and interviews – which are dealt with in detail in section 5 – yielded the following selection: *transparência* (transparency); *responsabilidade* (responsibility); *acesso à informação* (access to information); *dever de informação* (duty to inform); *direito a ser informado* (right to be informed, right to know); *disponibilidade de informação* (disclosure or availability of information); *prestação de contas* (accounting for); *avaliação* (evaluation, assessment); *abertura* (openness); *confiança* (trust); *democracia* (democracy); *governança* (governance); *debate público* (public debate); *participação* (participation).

The meanings of these words and expressions vary depending on the semantic fields they constitute and on the specific area or domain of social life they refer to. On the basis of the same sources, these include: Public administration; Government; Parliament; Justice and the judiciary; Environment; Health care and health services; Taxation; Education; Media;

Academic life; Scientific and technological research; Business; Publicly funded cultural activities; Non-profit organizations; Stock markets.

Any discussion of the meanings and uses of these terms and expressions should be put into perspective by placing them within specific historical contexts outlined in the previous section.

During the dictatorship (1926-74), secrecy, opacity and lack of accountability of government, public officials and, more generally, of actors and institutions was the rule. One of the basic guarantees of citizens' rights and of the accountability of the State – the legal system and the judiciary – were actually subject to executive power and thus acted to reinforce violations of the duty to inform and of the right to be informed and to protect the arbitrary exercise of power by the State and by employers. Censorship required that the media and cultural producers in general be accountable not to their publics, but to the State and to the political regime. The dictatorship involved a kind of inversion of what we would now define as public accountability: citizens were made accountable to the State for their opinions, statements and actions. The State, its institutions and officials, in turn, were exempt from any kind of democratic control and of the duty to account publicly for their actions, or to account to the judiciary for violating the rights of citizens and the very laws of the State. Within the State, accountability was strictly hierarchical and internal.

The revolutionary period (1974/76) witnessed a mushrooming of experiences in citizen participation and social movements. Experiments in participatory democracy gave rise to so-called "Organizações Populares de Base" (Popular Grassroots Organizations), such as workers' committees in companies or neighbourhood committees. These drew their legitimacy from workers' or neighbourhood assemblies which elected their representatives to serve in committees. Being accountable to "the people" and to popular assemblies was central to definitions of participatory democracy, and took shape in the open debate of issues, the preponderance of bottom-up deliberations, the direct election or revoking of representatives and the regular accounting of the latter to those who elected them. As would be expected, tensions arose between these experiments and the attempts at building the representative institutions of parliamentary democracy. The 1976 Constitution actually inscribed both types of institutions as part of the political and social order of a society defined as being on a "transition to socialism". The consecutive revisions of the constitutional text in the 1980s and 90s, though keeping the reference to participatory democracy, redefined it in ways compatible with and subordinated to the deliberative processes of representative democracy.

The period corresponding to the "normalization" of parliamentary democracy (1976/85) brought with it a winding down of citizen and social movements. In spite of their formal presence in the constitutional text, experiences of participatory democracy were "pushed" into oblivion, and with them the discussions of accountability they had contributed to raise. Being elected into office and committing oneself to stay within the limits prescribed by the law became sufficient sources of legitimacy for exercising power, with no need to actively promote the duty to inform or to oppose disclosure and openness to secrecy in public administration. During this period, issues related to accountability were hardly brought into public debate. Stress on the effectiveness of governance tended to be associated with an authoritarian style of government and of relating to citizens.

In 1986, Portugal joined the then EEC, and this brought with it some concerns with public accountability, mainly due to the need to transpose European laws and directives into national law and regulatory frameworks. Environmental policy was one of the first areas to formally introduce public accountability procedures, in the form of public information, environmental impact assessments and public consultations. Other areas followed, namely public administration, with laws on information to the public on administrative processes.

Recent conflicts, controversies and scandals have raised the issue of the need for transparent information on issues involving public interest or affecting groups of citizens (like public or private works projects with environmental and social impacts). Although legislation on public information, transparency and responsibility has been issued over the last decade, there is still a significant gap between the passing of legal documents and their actual enactment. The creation of parliamentary inquiry commissions to investigate cases of corruption or damage to public interest or to citizens due to action or inaction by the Government or public administration is usually highly ineffective as a tool of enacting public accountability. The promotion of participatory initiatives involving citizens in issues likely to affect them is non-existent for all practical purposes. Consulting committees, usually including experts and, in many cases, stakeholders, have been frequently used as "surrogates" of participation.

#### 4. Procedures of Accountability

The characterization of political culture and the description of the political and administrative system provide an overview of the range of bodies and services aiming at the promotion and enactment of responsibility and transparency, particularly within public institutions. Most of these “spaces of public accountability” are fairly recent, and their creation is a consequence of Portugal’s entry into the EC, in 1986. As areas such as justice and labour rights demonstrate, however, the emergence of new accountability procedures does not mean that they will be effective in fulfilling their stated aims. A clear example of that can be found in the administration of justice, one of the most thoroughly studied sectors of Portuguese society. For those who get involved with the judicial system, the latter functions, depending on the case, through an oscillation between an excess of guarantees and a deficit or precariousness of guarantees. For those citizens who seek access to justice, precariousness of guarantees increases with obstacles to access; for those who already have access to the system and have the knowledge and means to move within it according to their interests, excess of guarantees is the rule (Santos *et al.*, 1996). Thus, the excess of “internal” guarantees (such as the framework of appeals) often favours the manipulation of the system, allowing the subordination of litigation to aims and interests which do not coincide to those explicitly stated (*Idem*). This kind of situation generates a range of effects which are found throughout the bodies associated with public accountability procedures. The proliferation of these bodies did not translate into improved access of citizens and associations to the frameworks of public decision-making, as far as transparency, accountability and attribution of responsibility to collective actors are concerned, both in the public and in the private sector.

Beyond the initiatives mentioned above, some efforts were made to enact innovative procedures of public accountability in Portugal, but usually in a non-systematic way and with little social visibility. Among these, mention should be made of the contract between the Office for Auditing and Modernization of the Ministry of Justice and a research unit in 2001. Its aim was to carry out the auditing of systems and quality in 25 Public Register Offices. This initiative was based on guidelines inspired by the model of the European Foundation For Quality Management. As Register Offices operate in close contact with citizens, the aim was the observation of irrationalities in the provision of services as a starting point for the improvement of the latter. The results of this initiative have not been published yet, and it is impossible to predict whether and how the suggestions arising from it will be appropriated by the system of public register. The most interesting – and unusual, for a country like Portugal –



feature of the initiative is the enactment of a procedure of assessment of public services carried out by an external and independent entity.

The following sections offer a more detailed description of some examples of accountability procedures within the political and administrative system, the judicial system, the private sector and civil society.

#### **4.1. Accountability Within the Political and Administrative System**

The previous description of the political and administrative system has identified the range of bodies in charge of its internal evaluation. As far as the Government is concerned, each Ministry has its own legal auditing office and, in some cases, an environmental auditing office as well. These offices deal with the activities of the Ministry itself or of bodies and institutions under its jurisdiction. Legal offices provide support, advice, supervision and coordination in matters involving legal issues or litigation. Environmental offices enforce compliance with environmental norms and guarantee that environmental concerns are integrated into ongoing projects.

Beyond these auditing offices, most of the 600-odd bodies of the central administration are expected to evaluate, supervise and control public services as part of their tasks. These tasks are carried out by inspectorate-generals, committees, specialized auditing offices, etc., described in section 2.4. In addition to these, three advisory national councils, which have specific functions, deserve a separate mention: the National Council for the Evaluation of Higher Education, the National Council for Ethics in the Life Sciences and the National Council for Environment and Sustainable Development. The relevance of these councils for public accountability rests largely upon the assessment of public policies in their respective areas and the publicity of their documents. Their influence in shaping or otherwise influencing the political process, however, is variable and, in most cases, limited by the historical weakness of institutionalised scientific and expert advice to policy-making and of public debate and active citizenship.

Finally, mention should be made of two central bodies in the public accountability framework: the Court of Auditors, which controls the accounts of all public institutions on a yearly basis, assesses the implementation of the State budget and controls public bidding for the provision of services; and the Constitutional Court, which, when requested to do it, supervises the constitutionality of the laws drafted by Parliament or the Government.

## **4.2. Accountability Within the Judicial System**

The Portuguese judicial system is organized as a strong hierarchy, with the Supreme Court of Justice as the highest level of judicial decision-making. As independent bodies, courts of law are accountable to law, and no regular assessment of their workings is carried out, not even on an internal basis. Several studies, however, have pointed out that, despite the impossibility of assessing the performance of courts in general, excessive moroseness is one of their outstanding features. One of these studies has analysed in detail how, given the selectivity and the concentration of judicial activity, the performance of courts is unequal, with more effectiveness in handling cases in areas of greater concentration or in suits by collective actors (Santos *et al*, 1996). The same study goes on to notice that, despite formal equality before the law, strong inequalities still exist as far as access to courts of law is concerned. Generally speaking, access to courts is rather limited (*idem*).

The performance of other services within the judicial system is assessed and supervised by several specialized organs, namely the Inspectorate-general of Judicial Services. The latter was created in 2000, with the aim of enacting the principle of an “effective justice in order to guarantee the rights and the security of citizens”, thus fulfilling the “constitutional requirement of reinforcing mechanisms of assessment and responsibility of the judicial system” (Program of the 14<sup>th</sup> Constitutional Government).

As for forms of judicial review, the legal auditing offices of the various Ministries (see above) also perform advisory tasks within the jurisdiction of their respective Ministry. In the last instance, it is the task of the Constitutional Court to assess the constitutionality of all legislation, even if only on an advisory basis. Under certain conditions, specified in the Constitution, it is possible for the Parliament to overcome declarations of unconstitutionality by the Constitutional Court, through changes or amendments to the constitutional text. This, however, is a rather rare event, since it requires the agreement of a majority of two-thirds of the members of Parliament, usually after painstaking negotiations.

## **4.3. Accountability and the Private Sector**

In Portugal, the notion of a culture of accountability is virtually unknown within the private sector, and some initiatives aiming at its promotion have had limited, if any, actual consequences. Some themes, however, have recurrently brought up the need for private

companies and businesses to be more accountable and socially responsible. These themes are usually associated to environmental issues or to safety and hygiene in the workplace.

Pressures for more environmental accountability have surfaced, in particular, in relation to the production and disposal of waste as a by-product of industrial production. Recently, a new legislative framework has made it mandatory for companies to declare the amounts and types of waste generated by their activity, under penalty of sanctions for those who do not comply. Published information, however, shows that the great majority of companies still fail to publicize data on the production and disposal of the waste they generate, with no penalties enforced. In this case, the gap between legal framework and practice is obvious.

Another recurrent issue is that of safety and hygiene in the workplace and observance of workers' rights. Within public administration, three bodies have been active in assessment, circulation of information and drafting of proposals for general frameworks in this area: the Institute for the Development and Inspection of Working Conditions (IDICT) and, depending on the latter, the General Inspectorate for Labour (IGT) and the Economic and Social Council (CES). Their role has been particularly relevant in promoting public debate. The IDICT has as its main task the prevention of hazards in the workplace, the promotion of the development of labour relations on the basis of the respect for safety, hygiene and workers' rights, the prevention of labour conflicts and of socio-economic deregulation and the facilitation of processes of socio-organizational innovation. Among actions taken as a result of these debates, one should be singled out: the tightening of the "legislative belt" around companies over the last years, in order to force them to comply with more demanding safety norms. As the figures for accidents and deaths in the workplace make clear, however, these initiatives are still far from being an unqualified success. Even when inquiries are launched in the workplace in order to allocate responsibilities, rarely do these inquiries get to the companies themselves as being directly responsible for the accidents. As part of the campaigns for improving safety in the workplace, grants for Good Practices are awarded, through a competition, by the IDICT, in partnership with the European Agency for Safety and Health in the Workplace. These grants reward innovative practices in the field of prevention of accidents in the workplace.

Concerning the stock market, its supervision, regulation and cooperation with similar entities is carried out by the Stock Exchange Commission. Among its tasks is included the assistance to the Government and to the Ministry of Finance in matters related to the stock

market. This is a clear example of an institution which arose in the wake of Portugal's accession to the EEC, in 1986. In 1988, the stock market was liberalized, and the need for means of supervision and control compatible with European models lead to the creation of the Stock Exchange Commission.

In spite of its centrality within the space of the EU, social responsibility in the private sector is far from being regarded as an urgent issue in Portugal. Recently, however, information and public debate on the subject has been gaining some momentum. Given the non-existence of Councils for Social Responsibility in Businesses, the IDICT has taken the lead in this area. No innovations or actual outcomes of debates are yet visible, although some good practices in specific companies may be singled out (Casimiro Ferreira, interview).

#### **4.4. Accountability and Civil Society**

The Portuguese Constitution stresses the importance of participatory democracy and of the involvement of citizens in public decision-making. Several devices are available for the access of citizens to both the decisions of Government and to decision-making processes. In this section, a number of these devices will be outlined.

Citizens have a legal right of access to documents produced by the administration, in line with the principles of publicity, transparency, equality, justice and impartiality. The constitutional revision of 1992 (§ 268) established the principle of open administration. In its wake, the Law of Access to Administrative Documents (LADA) was issued in 1993 (Law 65/93, August 26). At about the same time, a Committee (CADA) was created for aid to citizens, namely when they are refused access to documents. In the year 2000, the number of processes dealt with by CADA was six times that of 1995.

Besides LADA, other laws aim at facilitating citizen participation, including:

a) The Law of Popular Action (Law 83/95, August 31), defining the circumstances and the conditions of exercise of the right of popular participation in administrative procedures and the right to popular action in the fields of public health, environment, quality of life, consumer protection, cultural heritage and public domain;

b) The Code of Administrative Procedure (Decree 6/99, January 31), defining, among others, the principle of collaboration of the administration with private citizens, the

principle of participation, the principle of decision, the right to information and the principle of open administration;

c) Actions aimed at administrative modernization (Decree 135/99, April 22), for the simplification of procedures, namely the reception of and service to citizens in general and economic agents in particular;

d) Resolution making available on the Internet information held by public administration (resolution of Council of Ministers 95/99, August 25).

The existence of an Ombudsman (mentioned above) aims at the protection of citizens' rights. It should be noticed that the Ombudsman is not proactive; he acts in response to requests of citizens. In spite of the scope of the Ombudsman's action, his office has no regional or local offices. Some sectors of public administration, such as the Ministry of Agriculture and the telecommunications sector, have their own ombudsmen.

Besides participation in elections and referenda, citizen participation may take place through the following procedures:

a) Right of petition – citizens may address written statements to any organ of sovereignty (except courts of law) or public authorities, focusing on matters related to the defence of rights, of the Constitution, of law or of general interest. Petitions to Parliament, for instance, should be presented in written form, with due identification of the petitioners and sent to the Chairperson of Parliament. Petitions are examined and discussed by the relevant parliamentary committees, according to subject. Any petition subscribed by 2500 citizens or more is obligatorily published in the Parliamentary Journal (*Diário da Assembleia da República*). If subscribed by 4000 citizens or more, it will be discussed in a plenary session in Parliament.

b) Initiatives under public discussion – whenever Parliament discusses labour legislation, the respective parliamentary committee is required to promote the discussion of pending initiatives by workers' committees, trade unions and business associations. Suggestions by these organizations and requests for the audition of their representatives by the committee may be sent to the latter in writing, using one of the legally defined models.

Initiatives under public discussion are published as an annex to the parliamentary journal and advertised in the media. Citizens may send their suggestions and advice in writing to Parliament.

c) Access to plenary sessions of Parliament – all citizens are entitled to attend plenary sessions in Parliament. The public should remain silent, with no active intervention or applause.

d) Access to information on parliamentary work – all citizens are entitled to access to ongoing parliamentary work through several channels (parliamentary services, Internet, etc.).

In the environmental domain, mechanisms are available for the participation of citizens and of civic and environmental organizations in public discussion of environmental impact assessment studies. These discussions are mandatory for all projects (such as public works) requiring an assessment of environmental impacts. There is no fixed formula for participation. The latter may take place through public sessions or in writing, during a specified period of time. A widely recognized problem with these mechanisms is that the actual capacity of citizens to exercise any influence on the projects under discussion is generally very limited, if any at all.

A very recent addition (2002) to these mechanisms was the creation of a “blue phone line” for alerts related to environmental problems (Linha SOS Ambiente). During the first months of existence of the line, over 600 calls were registered. Most of the calls focused on “waste disposal” (154), “contamination of water” (68) and “air pollution” (66). In order to ensure an efficient service, the line is audited every month (Sapage, 2002).

## **5. Exemplary Cases and Problems**

Debates on public accountability are best explored through the identification of a number of cases covering a range of areas of social life and policy-making. These cases were selected on the basis of two criteria: their exemplarity as instances of explicit demands for disclosure of information, transparency of procedures, accountability for administrative or political actions or citizen participation, and their public resonance through media coverage. The time period considered is variable, depending on the cases, but most of them are still in progress at the time of writing. Nine cases, in all, were selected for analysis. They will be surveyed and shortly discussed in the sections that follow.

### **5.1. Management of Health Services**

In late 2001, the government initiated a reform of the management system of hospitals which were part of the National Health Service. Within the previous system, physicians and nurses, as professional bodies, elected those who would be in charge of managing the hospital, and who would be accountable to those who elected them. Clinical directors were also elected by physicians. The new legal framework replaced the system of election with nomination by the state. Nominees would be accountable to the Ministry of Health, and professional bodies would be represented in an advisory council. Although the new framework met with the opposition of health professionals and of their professional associations (Medical Association and physicians' and nurses' unions), the law was signed by the President of the Republic. The media took up the issue, and several opinion pieces discussed whether management of public services should be accountable to their staff and their professional bodies or to the state, as the embodiment of public interest. Doubts were expressed, however, on whether all public services fall in the same category of hospitals. Schools or universities were mentioned as instances of public institutions where management should be accountable to the different bodies constitutive of the institutions. But a more general point was made that as recipients of public funds, all public institutions should be subject to external audits and evaluations, in order to be made accountable to society and to the citizens regardless of how their management is chosen.

A further issue concerned the definition of the role of professionals in different types of public services and of how conflicting loyalties to the public, to employers and to peers in the profession are handled. These issues are amplified by the already mentioned extent of the power of professional corporations in Portuguese society.

**Table 6: Management of Health Services**

<b>Description</b>	
<b>AREA</b>	Health Care, Public Administration
<b>ISSUE(S)</b>	Management, responsibility
<b>ACTORS INVOLVED</b>	Ministry of Health, Medical Association, Unions, Media
<b>PROCESS</b>	In late 2001, a reform was initiated by the government to replace the current mode of management of hospitals within the National Health Service. This reform was strongly opposed by physicians, nurses and their Unions and by the Medical Association.
<b>PUBLIC ACCOUNTABILITY RELEVANCE</b>	Issue of whether public service organizations should be accountable to their staff and to the professional groups they belong to or whether they should be accountable to the state.
<b>PUBLIC ACCOUNTABILITY PROCEDURES</b>	Nomination of administrations and management of public services and requirement of nominated members to be accountable to relevant state department or ministry.
<b>OUTCOMES/LESSONS LEARNT</b>	The definition of the role of professionals in public service and of their accountability to the public and to employers is likely to raise issues of conflicting loyalties. In Portuguese society, this problem is amplified by the extent of corporatist power in professions.

## 5.2. The Paleolithic Engravings of Foz Côa

In November 1994, during the preliminary works for the construction of a dam in a rural area of Northeastern Portugal, prehistoric engravings were discovered in an area which was expected to be flooded by the dam. It came out publicly that EDP, the public power company who was in charge of the construction, had known of the engravings for some time, but had followed a course of secrecy, in order to prevent the suspension of the construction. A public controversy ensued, which involved archaeologists, engineers, the power company, experts in dating, political parties and the local population. Media coverage was extensive and generally favourable to the suspension of the construction of the dam. The construction was actually suspended and the archaeological findings were subject to systematic inspection and study. At stake was the dating of the engravings, which turned out to be one of the most important paleolithic sets ever found. A decision on whether the construction of the dam should be abandoned altogether led to a heated debate on local development alternatives and on the role of the engravings. A remarkable degree of openness in discussion was achieved. In late 1995, a general election was won by the Socialist Party, who had advocated abandoning the construction of the dam. Due to the cultural value and irreplaceability of the engravings as part of common human heritage, a decision was made to initiate a local development process which would integrate the protection and public display of the engravings, the building of an archaeological site and museum and the promotion of cultural tourism. The first phase of this



process seemed to point towards a newly found openness of government and a genuine promotion of participatory local development. But in the period that followed, hesitations, lack of initiative and the erosion of the broad alliance of actors – local, national and international – who had come together in defence of the engravings seem to be taking things back to the usual practice of lack of openness and accountability of public institutions to citizens.

This case is a good example of how the mobilization of a heterogeneous set of actors around a purpose, and with wide media coverage, is capable of reversing the usual practices of secrecy and lack of responsiveness of public administrations and public companies to citizens' concerns. It also shows the vulnerability of initiatives that, though widely supported, may collapse or be eroded due to the lack of sustained information, action and accountability by the state. The fact that the height of the controversy coincided with a pre-electoral period also raises the interesting question of how the dynamics of party political struggle may be explored for the purpose of demanding more openness and a more responsive government and administration.

**Table 7: The Paleolithic Engravings of Foz Côa**

<b>Description</b>	
<b>AREA</b>	Environment, local development, cultural policies
<b>ISSUE(S)</b>	Information, transparency, participation
<b>ACTORS INVOLVED</b>	Ministry of Culture, Ministry of Industry, EDP (power company), archaeologists, engineers, local population, media
<b>PROCESS</b>	During the preliminary works for a dam in a rural area of Northeast Portugal, paleolithic engravings were discovered which would be flooded by the dam. After a controversial process, the engravings were assessed as of particular cultural value and as irreplaceable heritage. The new government decided to suspend the building of the dam and instead to launch a process of local development centred on the exploitation of the potential of the paleolithic site for tourism and education.
<b>PUBLIC ACCOUNTABILITY RELEVANCE</b>	This case shows how the mobilization of a heterogeneous set of actors around a purpose and with wide media coverage is capable of reversing the usual practices of secrecy and lack of responsiveness of public administrations and public companies to citizens' concerns.
<b>PUBLIC ACCOUNTABILITY PROCEDURES</b>	Disclosure of information on the engravings, public accounts of scientific, technical and political controversies, large and sustained media coverage, alliance between scientists (in this case archaeologists), cultural activists, environmental organizations, the media and government to ensure visibility and support to public policy and development scheme.
<b>OUTCOMES/LESSONS LEARNT</b>	Public mobilization involving the convergence of heterogeneous actors is an important factor in making state institutions more accountable and to force them into disclosing information on controversial matters.

### **5.3. Management of Hazardous Industrial Waste**

Over the last fifteen years, the Portuguese state has tried and failed to define effective ways of managing hazardous industrial waste. The task is premised upon an inventory of the different kinds and quantities of waste produced by industrial units across the country. This is a task that has not been fulfilled due to the lack of response of the industrial units themselves. Despite the compulsory character of the inventory, the state has been unable to take any action against the non-complying companies. This means that the extent of the problem of hazardous waste and the composition of the latter is basically unknown, or estimated from available, partial information. To this problem should be added another one: among the range of possible methods for handling hazardous industrial waste – including the regeneration of used oils and solvents, treatment of some organic muds through distillation, centrifugation and thermal absorption, incineration and co-incineration in cement kilns and landfills –, official discourse has considered only two methods as viable: incineration and co-incineration, whereas environmental associations and citizens have highlighted the viability of other methods, less aggressive for the environment and human health. The decision to use co-incineration as a method met with the opposition of local populations, environmentalists and some scientists in the locations chosen by a Scientific Committee appointed by the government. Currently, these locations are in Souselas, near the city of Coimbra, in Central Portugal, and Outão, in the middle of the National Park of Arrábida, to the South of Lisbon. Two scientific reports related to the procedure were issued, focusing on the process and on its effects on public health. Both were strongly criticized and opposed, namely on the basis of their omission or dismissal of evidence contrary to the conclusion that co-incineration would be an innocuous procedure, with no significant adverse effects on the environment and on public health. Public debate has been a constant feature of this process. It has opened up a space for citizens, social movements and environmental associations to engage in public controversies of a socio-environmental nature and to challenge authoritarian modes of policy making. As part of the process, a medical report was elaborated by a team of physicians nominated by the government to identify possible hazards to the health of the population around the locations of co-incineration units. It relied upon published materials and concluded for the basically innocuous character of co-incineration. This conclusion was reached before any actual epidemiological study of local populations was conducted. The report should have been completed before final decisions on the use of co-incineration were reached, and those decisions were, in principle, dependent on the conclusions of the report. The latter should have been based on the collection of information on the health status of the

local population and on its public availability, in order to allow comparisons with later assessments of the possible consequences of exposure to emissions from co-incineration. The report was published online and presented at a press conference. A period of sixty days was opened for citizens or organizations to send written comments to a department of the Ministry of Environment. Over the sixty days, 11,650 responses were received. A summary statement of the Ministry of Environment concluded that these contributions added nothing relevant to the report. It should be noted that among the comments sent in, environmental associations presented detailed criticisms of the inadequacies and omissions of the report, based on updated scientific information. That these contributions were dismissed as irrelevant suggests that the existence of a consultation procedure *per se* does not guarantee that inputs by the public or by social and civic movements and organizations will be taken up as relevant contributions and responses. This also highlights the ways minimalist and restrictive definitions of disclosure, openness and duty to inform may be used to effectively limit accountability and responsiveness to criticism by the public.

According to the prevailing national legal framework, to European Directives and to international conventions subscribed by the Portuguese government, citizens are to be consulted as part of the decision-making process and of the risk definition and risk assessment procedures. Actual experience points towards a discrepancy between legal and formal requirements for disclosure of information, consultation and public debate and the actual enactment of these requirements. After the last general election, in March 2002, the new liberal government decided to suspend the process and reinitiate the discussion of alternative strategies for the management of hazardous industrial waste management. Developments are expected over the next months. It remains to be seen whether broader public debate and participation will be encouraged and facilitated.

This case is an exemplary illustration of broader issues related to accountability, disclosure of information and public participation in Portuguese society, and, in particular, of the discrepancies between legal frameworks and formal definitions of rights and the actual enactment of those rights. It also points towards the ambiguous domestic effects of European and international frameworks for environmental regulation, accountability and citizen participation.

**Table 8: Management of Hazardous Industrial Waste**

<b>Description</b>	
<b>AREA</b>	Environment
<b>ISSUE(S)</b>	Participation, transparency, responsibility
<b>ACTORS INVOLVED</b>	Ministry of Environment, local government, citizens, environmental associations
<b>PROCESS</b>	Over the last fifteen years, the Portuguese state has attempted to create a system for managing hazardous industrial waste. Up to now, only two procedures have been considered – incineration and co-incineration. Both have given rise to a range of protests by the populations affected and by environmental associations. Since 1998, the procedure that has prevailed is co-incineration.
<b>PUBLIC ACCOUNTABILITY RELEVANCE</b>	Public debate has been a constant feature of this process. It has opened up a space for citizens, social movements and environmental associations to engage in public controversies of a socio-environmental nature and to challenge authoritarian modes of policy making.
<b>PUBLIC ACCOUNTABILITY PROCEDURES</b>	This experience points towards a discrepancy between legal and formal requirements for disclosure of information, consultation and public debate and the actual enactment of these requirements.
<b>OUTCOMES/LESSONS LEARNT</b>	This case is an exemplary illustration of broader issues related to accountability, disclosure of information and public participation in Portuguese society, and, in particular, of the discrepancies between legal frameworks and formal definitions of rights and the actual enactment of those rights.

#### **5.4. Environmental Impact Assessment (EIA)**

Environmental Impact Assessment (EIA) was introduced into domestic law after Portugal joined the EC, in 1986. It was included in the first comprehensive legal framework on the environment (1987), but it was regulated only in 1990. The legal framework for EIA has since gone through changes derived from European Directives, which were intended, originally, to broaden citizen participation, public consultation and public discussion. According to current legislation, reports of environmental impact assessment studies are to be publicized, and open to public discussion or comments. These may take the form of public sessions, where citizens may question the experts in charge of the report, or comments or criticisms may be presented in writing or online.

From the formal point of view, EIA procedures provide opportunities for citizens to access information on the alleged benefits and hazards of public and private projects and to make developers and public administration accountable for the consequences of carrying out these projects. Over the last few years, however, the process has been emptied of its potential as a tool for fostering public accountability and public participation. Obstacles to public questioning have been raised, such as the technical language used by experts in reports and in public sessions and the asymmetrical relationship between experts and citizens that follows

from it, the need for citizens to present their questions or comments in writing, the possibility of avoiding face to face contact between experts and publics or the lack of adequate publicity of public sessions. It should be added that the citizens have no way of ensuring that their contributions have actually been taken as inputs to conclusions or recommendations following from the report and its discussion.

The case of EIA is a very instructive illustration of how a process devised to disclose and disseminate information on presumed benefits and hazards of public and private interventions with environmental impacts and to facilitate and promote citizen participation in debate and deliberation may be turned into an instrument for limiting discussion and excluding citizens from access to information and from participation in assessing that information.

**Table 9: Environmental Impact Assessment (EIA)**

<b>Description</b>	
<b>AREA</b>	Environment
<b>ISSUE(S)</b>	Assessment, transparency, participation
<b>ACTORS INVOLVED</b>	Organizations performing the assessment, Ministry of Environment, Environmental associations and movements, citizens, experts
<b>PROCESS</b>	Environmental Impact Assessment (EIA) was introduced into domestic law after Portugal joined the EC. The legal framework for EIA has since gone through changes derived from European Directives, aiming at a broader participation of citizens in public discussion.
<b>PUBLIC ACCOUNTABILITY RELEVANCE</b>	From the formal point of view, EIA provides a framework for public accountability procedures and for public participation. Overtime, however, the process has been emptied of its virtuosities, through a series of obstacles to citizen participation, such as the language of the reports, the lack of communication between experts and publics, the obligation to contribute to the discussion through written documents or the lack of adequate publicity of public sessions.
<b>PUBLIC ACCOUNTABILITY PROCEDURES</b>	Publicity of reports, public sessions with the presence of experts responsible for reports (not required, may be replaced by call for written contributions).
<b>OUTCOMES/LESSONS LEARNT</b>	The case of EIA is a very instructive illustration of how a process devised to disclose and disseminate information and to facilitate and promote citizen participation in debate and deliberation may be turned into an instrument for limiting discussion and excluding citizens from debate and participation.

### 5.5. CNADS Report / GMO

GMOs appeared for the first time as a problem with public relevance in Portugal in 1997. Greenpeace and Quercus prevented the unloading, in Lisbon, of transgenic maize from the United States. The government made contradictory decisions concerning the permission to import GM seeds, without defining any clear position towards the issue. In 1999, Portugal

joined other EU countries in subscribing to a precautionary policy towards GMOs and GM food. This, however, never gave rise to clear political statements for the Portuguese public. An independent advisory committee to the state, the National Council for the Environment and Sustainable Development (CNADS), elaborated a detailed report on the controversy around GMOs. This was based on a careful and thorough review of available scientific evidence, on current controversies and on policy initiatives. Scientists, experts in agriculture, food safety and health, economics, law and public policy and other actors concerned were consulted. The report made detailed recommendations for a comprehensive policy towards research and regulation of GMOs and GM food. After its publication, a public discussion with all the actors concerned was organized at Parliament.

This was the first comprehensive attempt at dealing with the GM issue, and at providing detailed information on benefits and hazards, on scientific and policy controversies. It also made a number of recommendations to launch a campaign of public information and public debate and to create the conditions for open and reasoned policy-making in this field. The challenge, however, was taken up neither by the government nor by Parliament, and the GM issue was kept outside the agenda of public discussion in Portugal. Once again, an initiative aimed at providing information to citizens on issues of relevance to the environment, economy, food safety and health failed to cross the boundaries of a limited circle of “knowledgeable” insiders. The case provides a clear example of how the active involvement and commitment of government or parliament is a necessary condition for making an issue accountable in a country where the centrality of the state in public life makes it a crucial actor in endowing an issue with the legitimacy and seriousness of a public problem.

**Table 10: CNADS Report / GMO**

<b>Description</b>	
<b>AREA</b>	GMOs, environment, public health, food safety
<b>ISSUE(S)</b>	Responsibility, transparency, right to information
<b>ACTORS INVOLVED</b>	Parliament, Advisory Committee for the Environment and Sustainable Development, environmental associations, researchers, experts
<b>PROCESS</b>	GMOs entered Portugal as a problem in 1997. By 1999, Portugal aligned itself with other EU countries in adopting a precautionary policy towards GMOs and GM food. An advisory committee elaborated a detailed report on the controversy around GMOs, and made some recommendations for a comprehensive policy towards research and regulation of GMOs and GM food. The report was published and a public discussion with all the actors concerned was organized at Parliament.
<b>PUBLIC ACCOUNTABILITY RELEVANCE</b>	This was the first comprehensive attempt at dealing with the GM issue, and of providing detailed information on benefits and hazards, on scientific and policy controversies.
<b>PUBLIC ACCOUNTABILITY PROCEDURES</b>	Report prepared through extensive collection of available information and consultation with scientists, experts in agriculture, food safety and health, economics, law and public policy and other actors concerned. The report was published and public discussion was organized in Parliament. Recommendations were made to the government for initiatives in the fields of information and public debate.
<b>OUTCOMES/LESSONS LEARNT</b>	This case provides a clear example of how the active involvement and commitment of government or parliament is a necessary condition for making an issue accountable in a country where the centrality of the state in public life makes it a crucial actor in endowing an issue with legitimacy.

### 5.6. Genetic Information

In Portugal, the situation concerning the creation, use and access to human genetic information for medical, research or other purposes has been, until recently, that of a legal void. In the wake of recent debates and controversies following the publication of the map of the human genome and of research on embryos and reproductive and therapeutic cloning, a small parliamentary party, the Left Block (BE), presented to Parliament a bill intended to regulate issues pertaining to genetic information. The bill was passed by a majority in Parliament and voted together with a resolution proposed by the Socialist Party on the regulatory framework for human genetics. The bill was circulated and discussed prior to parliamentary discussion by the College of Genetics of the Medical Association and the National Council for Ethics in the Life Sciences, as well as by several legal experts and researchers in the Life and Social Sciences.

For the first time in Portugal, genetic information was the object of a law which clearly defines a hierarchy of rights and those who are made accountable for their protection. The law defines the conditions under which genetic information on human subjects may be

produced and by whom, who owns the information, and the conditions for accessing and using the information for research purposes. The law also defines the entities responsible for the conservation and management of the information, who are accountable to the citizens who own the latter. Rights to privacy and to the protection of personal information are defined as a priority.

The law is still in Parliament for a discussion of its detailed wording. Its effectiveness, once again, depends on the existence of an additional regulatory framework. This means that although there is a general definition of who is accountable to citizens in matters of genetic information, the enactment of legal means to make them actually accountable is impossible for all practical purposes.

**Table 11: Genetic Information**

	<b>Description</b>
<b>AREA</b>	Health care, citizen's rights
<b>ISSUE(S)</b>	Right to information, right to privacy
<b>ACTORS INVOLVED</b>	Researchers, physicians, lawyers, ethicists, political parties, citizens
<b>PROCESS</b>	The legal void in issues related to the creation, use and access to human genetic information for medical, research or other purposes led a small parliamentary party, the Left Block (BE), to draft a bill regulating these issues. The bill was passed by a majority in Parliament and voted together with a resolution proposed by the Socialist Party on the regulatory framework for human genetics. Prior to parliamentary discussion and vote, advice on the bill was asked of the Medical Association and the National Council for Ethics in the Life Sciences, as well as of several experts in the Life and Social Sciences and Law.
<b>PUBLIC ACCOUNTABILITY RELEVANCE</b>	For the first time in Portugal, genetic information was the object of a law which clearly defines a hierarchy of rights and those who are made accountable for their protection.
<b>PUBLIC ACCOUNTABILITY PROCEDURES</b>	Legislative process preceded by consultations. Accountable actors are bound to protect rights defined in law.
<b>OUTCOMES/LESSONS LEARNT</b>	This is an example of an existing law defining citizens' rights and accountability procedures related to their protection, which, however, requires an additional regulatory framework to be effective.

### 5.7. Assessment of Schools

In 2001, the Ministry of Education made public the results of a study of schools (public and private), which aimed at assessing their physical conditions (labs, security, resources, etc.), the main characteristics of the population of each school (socio-economic environment), the ratings in both internal and national tests in several subjects, including Portuguese and Mathematics, and problems in teacher/student relationship (comparative advantages of schools). The Ministry of Education resisted publication of the results, invoking



the need for a comparative assessment of the strengths and weaknesses of schools that would help them identify their problems and improve their performance. This could be jeopardized by ranking schools on the basis of grades, which would be the likely consequence of publicizing the results. Teachers' unions, in turn, resisted publication invoking the need for assessing a broader range of social, economic and cultural conditions affecting school performance and working conditions of teachers.

Ultimately, and after considerable pressure (particularly from opposition parties, opinion makers in the media and parents' associations), echoed by a vigorous media campaign, the results were published and a lively public debate in the media followed. The law on the disclosure of administration documents was drawn upon as a decisive means for forcing publication.

This was the first instance of a comprehensive evaluation of schools and it was celebrated as a significant step towards a culture of accountability in education. Controversies focused on items and dimensions evaluated and on the elaboration by the media of a ranking of schools based on average grades in a range of subjects. The indicators stressed in public debate, however, tend to favour competitive assessment and do not define how to move to an improvement of school performance. This exercise had little practical consequences besides providing public information on some dimensions of school performance and launching a debate on the social and economic contexts of schooling.

**Table 12: Assessment of Schools**

<b>Description</b>	
<b>AREA</b>	Education
<b>ISSUE(S)</b>	Evaluation, transparency, information
<b>ACTORS INVOLVED</b>	Schools, FNE (National Federation of Schools), Media, Teachers
<b>PROCESS</b>	During 2001, the Ministry of Education publicized the results of schools evaluation. Results were published after considerable public pressure and publication was followed by a lively public debate in the media.
<b>PUBLIC ACCOUNTABILITY RELEVANCE</b>	This was the first instance of a comprehensive evaluation of schools and it was celebrated as a significant step towards a culture of accountability in education.
<b>PUBLIC ACCOUNTABILITY PROCEDURES</b>	Publication (electronic and print) was followed by a debate in the media involving editors, educators, university professors, teachers, parents, politicians, policymakers and union leaders.
<b>OUTCOMES/LESSONS LEARNT</b>	First publication of assessment of schools. It took place after considerable public pressure and resistance to publication by the Ministry of Education. Law of disclosure of administration documents was called upon as decisive means for forcing publication. But methods and indicators chosen tend to favour competitive assessment and do not define procedures for improvement of educational system and schools.

### **5.8. Access to Justice**

The Portuguese judicial system is currently facing two kinds of demands: the demand for access to justice and the demand for the expediency of justice. The latter has been the central concern of government, whereas the former, which relies on adequate and accessible information and outreach to the citizen, has actually been conditioned by the state of congestion of courts of law. A recent initiative aimed at responding to this situation was the creation, by the Ministry of Justice, of Legal Advisory Offices, for the provision of information and advice to citizens and of legal support for those in need. Law is one of the most important interfaces between society and citizens, on the one hand, and the state, on the other. Promoting access to justice and providing information to citizens on their rights is thus a crucial dimension of the exercise of democracy. The way the judicial system works, in turn, is a good proxy to the way accountability is enacted by the state.

Promoting access to the judicial system under the current pressure for expediency, however, means that broader access would make the response of the system even slower due to the increased accumulation of cases. This double bind has led to a discrepancy between the formal endorsement of the right of citizens to know their rights and to have access to expedient justice and the impossibility of an adequate response. Former systems of auditing of the judicial system which evaluated the performance of each of the professional groups (judges, public prosecutors and officers of the court) involved in the working of courts of law proved ineffective, since they failed to assess courts of law as institutions.

**Table 13: Access to Justice**

<b>Description</b>	
<b>AREA</b>	Justice
<b>ISSUE(S)</b>	Right to information, access
<b>ACTORS INVOLVED</b>	Ministry of Justice, judicial system, magistrates, lawyers, citizens
<b>PROCESS</b>	Over the last years, the Portuguese judicial system has faced two kinds of demands: the demand for access to justice and the demand for the expediency of justice. A recent initiative aimed at responding to this situation was the creation, by the government, of Legal Advisory Offices. Promoting access to the judicial system under the current pressure for expediency, however, means that broader access would make the response of the system even slower due to the increased accumulation of cases.
<b>PUBLIC ACCOUNTABILITY RELEVANCE</b>	Since Law is the most important interface between society and the state, promoting access to justice and information of citizens' legal rights is a crucial dimension of the exercise of democracy. The way the judicial system works is a good proxy to the way accountability is enacted by the state.
<b>PUBLIC ACCOUNTABILITY PROCEDURES</b>	Creation of Legal Advisory Offices for the promotion of information and advice to citizens and for providing legal support for those in need.
<b>OUTCOMES/LESSONS LEARNT</b>	Former systems of accountability which evaluated the performance of each of the professional groups involved in the working of courts of law proved ineffective, since they failed to assess courts of law as institutions and the judicial system as a whole.

## 6. Conclusion

Issues of public accountability have entered Portuguese society and public debate after 1974. In different contexts, they were expressed through different vocabularies. During the revolutionary period, political and social actors conceived of themselves as being accountable to “the people”, to popular assemblies, committees and organizations. The “normalization” of parliamentary democracy after 1976 brought with it a lack of concern with accountability and the stress on a “minimalist” definition of democracy. Accountability meant, above all, being accountable to the constitutional and legal order and running for elections.

The prevailing vocabulary since Portugal joined the EC, in 1986, and from the mid-1990s on in particular is that of responsibility, transparency, disclosure of information and participation. Concerns with public accountability can be traced through a number of cases that have in common two features. First, they acquired visibility through their resonance in the media, even if the breadth and impact of the cases is variable. Secondly, they appear at the intersection of the gap between legal frameworks and administrative, political and social practices with the “partial and uneven Europeanization” of Portuguese society. These cases cover a range of fields, from environmental impact assessment to public health, from justice

to public administration, from education to waste management. Each case is an instance of emerging configurations of actors, processes demands and responses – or lack of response – by the government, Parliament, public administration or the judicial system. A gap – another one – seems to be opening between the growing concerns about and demands for public accountability and the limited capacity of the state, of public administration, of government, Parliament and the judiciary to respond to citizens, to their movements, initiatives and organizations.

## References

Baganha, Maria Ioannis e Pedro Gois (1998/99), "Migrações internacionais de e para Portugal", *Revista Crítica de Ciências Sociais*, 52/53, 229-280.

Cabral, Manuel Villaverde (1997), *Cidadania política e equidade social em Portugal*. Oeiras: Celta Editora.

Constituição da República Portuguesa, 1976.

Constituição da República Portuguesa, Revisão Constitucional de 1982.

Constituição da República Portuguesa, Revisão Constitucional de 1997.

Gonçalves, Maria Eduarda (2000), "Ciência, política e participação: o caso de Foz Côa", in Maria Eduarda Gonçalves (org.), *Cultura científica e participação pública*. Oeiras: Celta Editora.

Gonçalves, Maria Eduarda (2001), "Europeização e direitos dos cidadãos", in Boaventura de Sousa Santos (org.), *Globalização. Fatalidade ou utopia?*. Porto: Edições Afrontamento.

Mozzicafredo, Juan (1997), *Estado providência e cidadania em Portugal*. Oeiras: Celta Editora.

Rosas, Fernando (1992), "Portugal e o Estado Novo (1930-1960)", in Joel Serrão e Oliveira Marques (orgs.), *Nova história de Portugal*, 12. Lisboa: Presença.

Santos, Boaventura de Sousa (1990), *O Estado e a sociedade em Portugal (1974-1988)*. Porto: Edições Afrontamento.

Santos, Boaventura de Sousa (org.) (1993a), *Portugal: um retrato singular*. Porto: Edições Afrontamento.

Santos, Boaventura de Sousa (1993b), "O Estado, as relações salariais e o bem-estar social na semiperiferia: o caso português", in Boaventura de Sousa Santos (org.), *Portugal: um retrato singular*. Porto: Edições Afrontamento.

Santos, Boaventura de Sousa (1994), *Pela mão de Alice. O social e o político na pós-modernidade*. Porto: Edições Afrontamento.

Santos, Boaventura de Sousa *et al.* (1996), *Os Tribunais nas sociedades contemporâneas: o caso português*. Porto: Afrontamento.

Sapage, Sónia (2002), "Vigilantes da natureza", *Visão*, 493, August 14.

Wallerstein, Immanuel (1974), *The Modern World System*. New York: Academic Press.

## **Interviews**

Viriato Soromenho Marques (philosopher, environmentalist, member of the National Council for the Environment and Sustainable Development), University of Lisbon, September 2001.

José Manuel Viegas (expert in design of transportation systems and transportation policies), Instituto Superior Técnico, Lisbon, October 2001.

Guilherme de Oliveira (legal scholar, legal issues in health and medicine), University of Coimbra, School of Law, November 2001.

Margarida Olim (expert, transportation policies and management), Gabinete de Planeamento, Informação e Relações Exteriores, Lisbon, December 2001.

Conceição Gomes (legal scholar and sociologist of law), Permanent Observatory of Justice, Center for Social Studies, February 2002.

António Casimiro Ferreira (Sociologist, expert in labour relations and labour law), School of Economics (University of Coimbra) and Center for Social Studies, June 2002

João Paulo Dias (researcher), Permanent Observatory of Justice, Center for Social Studies, June 2002.