



FUNDAMENTAL RIGHTS
AND THE RULE OF LAW

Authorities' observations on the report on the visit to Portugal

6-7 October 2022



European Economic
and Social Committee

OBSERVATIONS FROM THE PORTUGUESE AUTHORITIES ON THE DRAFT REPORT OF
THE AD HOC GROUP ON FUNDAMENTAL RIGHTS AND THE RULE OF LAW OF THE
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Portugal would like to thank the Fundamental Rights and Rule of Law Group of the European Economic and Social Committee (FRRL Group EESC) for its visit to Portugal. Portugal attaches utmost importance to the respect for the fundamental values of the European Union and remains committed to the preservation and promotion of the rule of law throughout the Union.

The draft report of the FRRL Group is well balanced and reflects the general views of the stakeholders and interested parties contacted. Some of the topics touched upon may be further developed in future reports to give a deeper overview of the situation in the country, including through a wider consultation process.

1. Fundamental rights related to the social partners

Regarding the participation of social partners in decision-making¹, the Social and Economic Council is the constitutional body for consultation and social agreement, whose main objective is to promote the participation of economic and social agents in decision-making processes. This body is the main forum for dialogue between the Government, Social Partners, and other representatives of organised civil society².

The [Labour Code](#) foresees the participation and consultation of social partners and civil society, which takes place at the Social and Economic Council and in other specialised *forums* at company level.

Therefore, Portugal already complies with the participation of social partners in wages negotiations, as foreseen in the recently approved EU Directive on adequate minimum wages and will continue to reinforce the social dialogue while implementing it. The recent Medium-term agreement to improve incomes, wages and competitiveness between the government and social partners is a recent example³. New labour inspectors (58) were recently recruited, thus reinforcing the implementation of labour laws⁴.

¹⁴ *Social partners, however, felt that their participation in decision-making should be increased* (para. 3, line 1)

² <https://ces.pt/home-en/>

³ <https://www.portugal.gov.pt/pt/gc23/comunicacao/documento?i=acordo-de-medio-prazo-para-a-melhoria-dos-rendimentos-dos-salarios-e-da-competitividade>

⁴ <https://www.act.gov.pt/pt-PT/SobreACT/Recrutamento/Paginas/Concursoexternodeadmiss%C3%A3oest%C3%A1gioparaingress>

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It is also important to mention the National Council for Solidarity, Volunteering, Families, Rehabilitation and Social Security Policies⁵ which is an Advisory body to the government representing the various sectors, in order to ensure an adequate and efficient articulation between central, regional and local government with the social partners and other entities representing associations and other civil society entities, to promote the broad participation of all entities that intervene in the matter in question. It also aims to strengthen the role of the advisory bodies, not only in terms of following up and monitoring the development of public policies, but also in terms of drafting proposals for improvement and identifying priority intervention areas in the different thematic areas covered.

The rights on citizen participation in the parliamentary legislative process can be found in the Constitution of the Portuguese Republic (on participation in the elaboration of labour law, education law, professional career law, etc.); in the Rules of Procedure of the Assembly of the Republic (labour and local authority legislation, as well as any matter deemed particularly relevant), and in the Labour Code. The diversity of norms which require the hearing of various other entities - the governmental bodies of the autonomous regions; associations representing local authorities; non-governmental environmental organisations; the High Council of the Judiciary; the High Council of the Public Prosecution Service, *i.a.* - complements this framework, linking the legislator to the consultation of the bodies representing the interests to be legislated for.

Regarding civil society participation in legislative and executive processes, several examples were presented during the meeting, including the general right to petition as well as the online platforms that are available for public consultation: <https://www.consultalex.gov.pt/Homescreen.aspx> and www.participa.pt.

The High Commission for Migration Management Board is supported, in its decision-making and definition of broad lines of action, by its Council for Migration. Composed by public and private entities, the Council ensures the participation from actors across different sectors of society on migration policies. Representation of social partners at the Council is ensured by its internal rules, whereby two representatives of employers' associations and two representatives of unions' associations have a seat (as long as they also have a seat at the Economic and Social Council). Therefore, participation of social partners in decision-making, in this field is possible and encouraged. Regarding the comment on the need to step up CSO involvement in decision making⁶, it should be added that the Council for Migration' Internal Regulation foresees the participation of representatives from migrant communities, which are regularly elected by Migrant Associations, and as well to Institutions which work with migrants.

The Commission for Citizenship and Gender Equality (CIG) has an Advisory Board which is a consultation body on the design, implementation, and evaluation of public policies for citizenship education and the promotion and defence of gender equality, which provides the representation of government departments and organisations representing civil society, including social partners. It has three sections: Governmental, NGO's and Technical-scientific. The Section of Non-Governmental Organisations is composed of 40 representatives of non-governmental organisations, as such

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⁵ <https://dre.pt/dre/detalhe/decreto-lei/48-2017-107047290?ts=1663286400034>

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recognised under the law, whose statutory purpose is primarily for the promotion of the values of citizenship, the defence of human rights, women's rights and gender equality, especially by combating various forms of discrimination on the grounds of sex, gender, age, social status, ethnicity, sexual orientation, gender identity, belief or religion and disability situations, the objectives of which are consistent with those of CIG.

⁶ “Participants believed that CSO involvement in decision-making still needed to be stepped up” (para. 4, line)

2. Freedom of association and freedom of assembly

The rights to freedom of assembly and of association are enshrined in the Portuguese Constitution as fundamental rights ([articles 45 and 46](#), respectively). [Decree-law No. 406/74, of 29 August 1974](#), regulates the right to freedom of peaceful assembly and demonstration, the exercise of which does not depend on prior authorisation from the public authorities. Regarding the right to freedom of association, everyone has the right to freely form associations, without the prior requirement of any authorisation, provided that such associations are not intended to promote violence and their purposes are not contrary to the law. Associations shall pursue their purposes freely and without interference from the public authorities and may not be dissolved by the State or have their activities suspended, except in cases provided for by law and only by judicial decision⁶.

Regarding Civil Society Organisations (CSO) funding, the sources are varied according to the areas of intervention of the organisations, and may come from the central state, municipalities, EU funds or private entities. At national level, two examples can be mentioned in this regard: (i) the technical and financial support provided by Commission for Citizenship and Gender Equality (CIG) to Women's Non-Governmental Associations in the implementation of national policies for the promotion of equality between women and men, prevent and combat all forms of violence against women and girls and trafficking in human beings; and (ii) the support given by the High Commission for Migration (ACM) to immigrants associations, namely to programmes, projects and actions that aim to promote migrants and refugee's integration.

3. Freedom of expression and freedom of the media

The Portuguese Constitution ensures the full independence of journalists while exercising their

⁶ <https://www.provedor-jus.pt/documentos/2018 - Direito a liberdade de associacao e reuniao.pdf>

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professional activity, bearing in mind the right to inform and to be informed without interference, which represents a pillar of the democratic rule of law. Any interference, whether political or economic, or any form of censorship is prohibited ([Article 37](#)). The independence of journalists is also featured in the Statute of Journalists, approved by [Law No. 1/99 of 1 January. Article 38 b\)](#) of the Constitution guarantees the right of journalists, in accordance with the law, to access sources of information (...). The Statute of Journalists contains provisions aimed at ensuring this right, namely its [article 6](#). In addition, [Law No 26/2016 of 22 August](#) regulates access to administrative documents and administrative information, transposing [Directive 2003/4/EC of the European Parliament and the Council of 28 January 2003](#) into the internal legal order. It is important to note that the violation of the right of access to administrative documents, in addition to the possibility of recourse to the Administrative and Tax Courts, in accordance with the Code of Administrative and Fiscal Procedure, may also give rise to a right of complaint before the Commission for Access to Administrative Documents, which has the nature of an independent administrative entity that operates before the Parliament, which has the task of ensuring compliance with the rules on access to administrative documents.

Portugal has a solid labour legislation framework for all workers, which adds in the case of journalists, in addition to its own trade union, the protection given by specific collective regulatory instruments (collective contracts, collective agreements and company agreements). The difficulties faced by journalists stem from the successive crises that have affected the media sector. It became a structural issue since audiences have migrated from traditional news media to new media and citizens' appetite to pay for journalistic contents has decreased.

The Portuguese Regulatory Authority for the Media (ERC) is a fully independent authority which complies with the criteria of Article 30 of the "Media and Audiovisual Services" Directive, namely in the framework of obligations arising from the participation in ERGA. ERC is also supported by a national legal framework which, since 2005, allows it to duly respond to all existing requests, without needing more resources. For the pursuit of its activity, the ERC relies on its own revenues, as well as on those coming from the Portuguese State Budget.

4. The right to non-discrimination

[Law No. 93/2017, of August 23](#) establishes the legal framework to prevent, prohibit and combat discrimination based on racial and ethnic origin, colour, nationality, ancestry and territory of origin. In response to the EU's call, Portugal was the first Member State to approve (in July 2021) a National Plan to combat racism and discrimination 2021-2025. The Plan is based on 4 principles: (i) deconstruction of stereotypes; (ii) coordination, integrated governance and territorialisation; (iii) integrated intervention in the fight against inequalities; and (iv) 'intersectionality'. It plans to act in 10 areas, from education to security, justice, health, housing, employment, and data collection. In 2021, the High Commission for Migration (ACM) signed two protocols with security forces (PSP, GNR) to promote training, awareness and increase confidence and proximity to the security forces. In March

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2022, the ACM and the Lisbon Regional Council of the Bar Association signed a protocol to develop training actions on combating racism and discrimination, including the training of lawyers in conjunction with higher education and representative associations. The protocol foresees is a pilot project for legal support and counselling to victims of racial discrimination.

The High Commission for Migration (ACM) is aware of how important is for migrants to access information on public policies and tools designed to help them in their integration process⁷. In this regard, ACM established National Support Centres for the Integration of Migrants, a one-stop-shop where migrants can find support, information, counselling, and mediation services. In addition to legal support, language training, employment and entrepreneurship, other governmental areas are also present, such as the Immigration and Border Services, Social Security, Health, Education, Justice, and Finance ministries. This good practice has been internationally recognised, including by the United Nations, in 2019, with the Public Service Award, one of the most prestigious international recognitions of excellence in public service.

Also, other achievement at national level is the approval in 2018 of the National Strategy for Equality and Non-Discrimination 2018-2030 (ENIND), which started a new cycle in the promotion of women's rights and eliminating discrimination with a systemic and comprehensive approach to public policies on gender equality, preventing and combating violence against women and girls (including harmful practices such as FGM and forced marriages) and combating discrimination on the basis of sexual orientation, gender identity and expression, and sexual characteristics. These three areas correspond to ENIND's three action plans that run from 2018-2021.

ENIND emphasises the multidimensional nature of disadvantage stemming from the intersection of various discrimination factors, such as sex with age, disability, race and national or ethnic origin. It also enhances collaboration between public administration, private sector, and civil society. ENIND's approach is more action-based and operational, with indicators and yearly targets to be met.

It is also important to mention the training programmes of the Security Forces and Services (FSS), which address various issues related to equality, human rights, and the proscription of discrimination. In this regard a [Plan for the Prevention of Manifestations of Discrimination in the FSS](#) was concluded in 2021, which includes the appointment of Human Rights Officers within the FSS who will be in charge of the implementation and monitoring of the Plan. Furthermore, there are also training modules and programmes: (i) the curricula in the various training for the *Guarda Nacional Republicana* (GNR), promotion and refresher courses include subjects related to the Rule of Law and Human Rights. The GNR, as part of the Internal Security System, is also governed by a Code of Ethics of the Police Service which states that "the establishment of ethical and professional standards of conduct common to all members of the security forces is an indispensable condition for the credible and efficient exercise of police service, as an integral part of the democratic rule of law"; (ii) training courses for different police careers of the *Polícia de Segurança Pública* (officers, chiefs and agents)

⁷ " *Participants commenting on the matter of migrants, including asylum seekers, regretted that legislation in that area was too scattered, thus hindering their ability to enjoy the rights afforded them by law, for example in the area of reception and integration.*" (para. 5, line 1-3)

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also promotes a culture of training aimed at promoting the rule of law. In the courses, curricular units related to fundamental rights, respect for ethnic, religious, sexual, gender and cultural diversity are taught; (iii) the Higher Institute of Police Sciences and Internal Security, has courses with a strong legal component to disseminate the principles of the rule of law.

5. The Rule of law

In the field of independence and integrity of the judiciary, consistent data on these matters recognises that Portugal benefits from a sound and strong position, as stated by the Council of Europe and European Commission documents, namely the European Commission report for the efficiency of justice and the Justice Scoreboard, respectively.

In the context of organisation of the judiciary, and based on the observations on the regulatory bodies, it should be noted that the Competition, Regulation and Supervision Court has jurisdiction over matters relating to the appeal and execution of decisions, orders and other measures in misdemeanour proceedings that are appealed, *inter alia*, those issued by the Competition Authority, National Communication Authority, and the Portuguese Securities Market Commission. The decisions of this Court can be appealed to the Courts of Appeal. The allegation that there are very limited possibilities for judicial review as regards administrative sanctions applied by these entities does not seem to be confirmed by reality.

As regards the digitalisation of justice, although judges are not included in the board in charge of controlling the IT system used, this does not mean that they are not involved in the process of digitalisation of the justice system. For instance, in the context of the adoption of the legal framework that created the court system management (CSM) of administrative and tax courts (SITAF) the High Council of the Administrative and Tax Courts was consulted. The same process was adopted for the CSM used in judicial courts where the High Council of the Judiciary was consulted.

Concerning the speed of justice and, in particular, financial resources, it must be underlined that the 2023 State budget increases the expenditure of the justice area in comparison with 2022 (EUR 1 701.1 billion⁸ v. EUR 1 610.5 billion⁹). As to the length of the investigation phase in white-collar criminality it is important to stress the evolution made through specialised bodies such as the Central Department of Criminal Investigation and Prosecution (DCIAP), within the Public Prosecution

⁸https://www.dgo.gov.pt/politicaorcamental/OrcamentodeEstado/2023/Proposta%20do%20Or%C3%A7amento/Doumentos%20do%20OE/OE2023_doc16_Relatorio.pdf, see page 186

⁹https://www.dgo.gov.pt/politicaorcamental/OrcamentodeEstado/2022/Proposta%20do%20Or%C3%A7amento/Doumentos%20do%20OE/OE2022_1_Relatorio.pdf, see page 139

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Service, and the Criminal Police (PJ). Bearing in mind the challenges around the lack of resources allocated to the police and the PPS, it is important to highlight the reinforcement of human resources of the DCIAP and PJ. The DCIAP has nowadays a global team of more than thirty Public Prosecutors, specialised in the investigation of serious and organised crime, including corruption, foreign bribery, and related crimes. The regional DIAPs in Porto, Coimbra, Lisbon and Évora have also around forty Prosecutors. In the PJ, the National Unit to Combat Corruption (UNCC) has in recent years increased the number of criminal investigation personnel. In 2022, 197 new inspectors entered the PJ, with another course for 70 more new inspectors and open competitions for 65 entries for scientific police specialists remaining. In addition, [Ordinance n. 245/2022, of September 27](#), presented the programme for recruiting personnel for the careers of criminal investigation, forensic specialist and security of the PJ, for the five-year period from 2022 to 2026. This ordinance was approved in the context of the National Strategy Against Corruption, foreseeing a very significant investment in the human resources of the PJ: another 1 100 persons will enter the PJ, reinforcing the careers of criminal investigation, forensic specialist, and security of the PJ. Such reinforcement of the PJ, whose mission is also to assist the judicial authorities in criminal investigation, implies, consequently, a substantial reinforcement of the entire criminal justice system.

In relation to the existence of a complex legal framework on corruption matters, as mentioned in the EESC report, it should be noted that domestic law has been growing in consistency and in its holistic approach to the problem, showing political will to act in this area. This compromise is also demonstrated by the substantial reinforcement of the Criminal Police or the creation and effective implementation of the MENAC.

As regards the reference to the implementation of MENAC, there have been recent developments in this regard, and it will be soon fully operational. MENAC facilities have already been made available by the Ministry of Justice, the essential organic components of MENAC are already functioning, namely its President, Vice-President and Secretary General are all already in office, its Advisory Board met in September, its Monitoring Committee met in October, technical and administrative staff is being provided and already working. On 9 December, Ordinance n. 292-A/202211 created the maps of the staff of MENAC, at both management and technical levels. An awareness raising campaign has already been launched by the MENAC on the same date, encompassing, for example, media advertising directed to the Portuguese population in general. Also in the area of the fight against corruption, the OECD Working Group on Bribery, within the scope of Phase 4 of its evaluation proceedings, recognised a number of good practices adopted by Portugal in this field, namely: (i) the adoption of the National Anti-Corruption Strategy in 2021; (ii) the General Regime for the Prevention of Corruption; (iii) the establishment of the National Mechanism Against Corruption (MENAC); (iv) the adoption of legislation on whistleblower protection; (v) awareness-raising and training efforts in the public and private sectors.

Concerning access to justice and costs of judicial proceedings, legal aid is granted by [Law No. 34/2004, of 29 July](#). In addition, the legal framework on procedure costs ([Decree-Law No. 34/2008 of 26 February](#)) establishes an array of exemption situations including defendants in pre-trial detention and defendants serving a sentence where their economic hardship is established under Law No. 34/2004. Online access to court decisions is made public through two free-of-charge webpages (<http://www.dgsi.pt/> and <https://jurisprudencia.csm.org.pt/>). Currently, all civil, commercial, criminal,

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and administrative case law from the highest instance is available as well as all administrative judgments from the second instance. The availability of all first instance case law of the several jurisdictions still needs improvement. However, [criteria for publishing judicial decisions](#) are under consideration by the High Council for the Judiciary.

Regarding European Court of Human Rights case law on prison conditions, it should be underlined that pursuant to article 46 of the ECHR, the execution of the [Petrescu](#) ruling is under supervision and Portugal submitted to the Committee of Ministers on the 4th quarter of 2021 relevant information regarding this case, *inter alia*, all the measures adopted to improve prison conditions. Lastly, as mentioned in the [report on the 2023 State budget^{10 11}](#), an Action Plan for the gradual closing of the Lisbon Prison Establishment is announced.

With respect to references made to the bar association, it should be highlighted that a legislative procedure is currently pending in Parliament that aims to introduce changes to the legal framework of all public professional associations governed by [Law No. 2/2013, of 10 January](#). Examples of professions framed by this type of associations include not only lawyers, but also architects, doctors, nurses, *i.a.*

¹⁰ [Portaria n.º 292-A/2022 | DRE.](#)

¹¹ https://www.dgo.gov.pt/politicaorcamental/OrcamentodeEstado/2023/Proposta%20do%20Or%C3%A7amento/Documentos%20do%20OE/OE2023_doc16_Relatorio.pdf see page 252



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