

Annual Rule of Law
Report - Council of
Europe input

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

2021

Directorate General Human Rights and Rule of Law (DG I)

Portugal

I Justice System

A. Independence

CEPEJ

CEPEJ – Country profile Portugal - Scoreboard (2019 data) (*content of the link will be available after acceptance of the CEPEJ Study for the Scoreboard by DG-Just*)

[CEPEJ Country Profiles Portugal Scoreboard](#)

CEPEJ European Judicial Systems Evaluation Report – Evaluation cycle 2018-2020 (2018 data) – Part 2 Country profile Portugal

[CEPEJ Evaluation Report - Country Profiles – Portugal](#)

CEPEJ website – General Country profile Portugal (including answers to the Evaluation Scheme)

[General CEPEJ Country profile](#)

European Judicial Systems CEPEJ Evaluation Report – Evaluation cycle 2018-2020 (2018 data) – Part 1 Tables, graphs and analysis

[CEPEJ Evaluation Report 2020 Part 1](#)

CEPEJ Dynamic database of European judicial systems

[CEPEJ-STAT](#)

1. Appointment and selection of judges and prosecutors

GRECO

<https://www.coe.int/en/web/greco/evaluations/portugal>

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

2. Irremovability of judges, including transfers of judges and dismissal

GRECO

<https://www.coe.int/en/web/greco/evaluations/portugal>

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

3. Promotion of judges and prosecutors

GRECO

<https://www.coe.int/en/web/greco/evaluations/portugal>

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

4. Allocation of cases in courts

GRECO

<https://www.coe.int/en/web/greco/evaluations/portugal>

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

5. Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

Department for the Execution of Judgments of the European Court of Human Rights
Ramos Nunes de Carvalho e SA v. Portugal (No. 55391/13) STAND: Lack of public hearing and limited extent of review by the Supreme Court in a case of disciplinary proceedings against a judge
Presentation on Hudoc.exec: <http://hudoc.exec.coe.int/eng?i=004-50780>
Latest information received: [Action report](#) of January 2020

GRECO

<https://www.coe.int/en/web/greco/evaluations/portugal>

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

6. Accountability of judges and prosecutors, including disciplinary regime and ethical rules.

GRECO

<https://www.coe.int/en/web/greco/evaluations/portugal>

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

7. Remuneration/bonuses for judges and prosecutors

8. Independence/autonomy of the prosecution service

GRECO

<https://www.coe.int/en/web/greco/evaluations/portugal>

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

9. Independence of the Bar (chamber/association of lawyers)

10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

GRECO

<https://www.coe.int/en/web/greco/evaluations/portugal>

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

11. Other - please specify

PACE

Democracies facing the Covid-19 pandemic

Rapporteur : [Mr Ian LIDDELL-GRAINGER](#), United Kingdom, EC/DA

[Doc. 15157](#)

Consultative Council of European Judges (CCJE)

Statement by the President of the CCJE on the role of judges during and in the aftermath of the COVID-19 pandemic: lessons and challenges (24 June 2020)

<https://rm.coe.int/ccje-2020-2-statement-of-the-ccje-president-3-lessons-and-challenges-c/16809ed060>

Opinion No. 23 (2020) of the CCJE on the role of associations of judges in supporting judicial independence (6 November 2020)

<https://rm.coe.int/opinion-23-en-ccje-2020/1680a03d4b>

Consultative Council of European Prosecutors (CCPE)

Opinion No. 15 (2020) of the CCPE on the role of prosecutors in emergency situations, in particular when facing a pandemic (19 November 2020)

<https://rm.coe.int/opinion-no-15-ccpe-en/1680a05a1b>

GRECO

[9 December 2020 – International Anti-Corruption Day - Newsroom \(coe.int\)](#)

GRECO President: “No quarter to corruption in healthcare, governments must lead by example”

CPT

Report on the CPT’s 2016 periodic visit, [CPT/Inf \(2018\) 7](#), paras. 10, 11 and 25

The right of access to a lawyer is guaranteed in the Portuguese Code of Criminal Procedure (CCP) to a person once he or she has formally become the subject of an investigation by law enforcement officials by being declared an “arguido”. On the basis of both Order 5863/2015 on Material Conditions in Police Premises and Decision no. 10717/2000 of the Minister of the Interior the right of access to a lawyer as from the outset of the deprivation of liberty is extended to all persons deprived of their liberty. As regards the Judicial Police, Article 5 of Order no. 12786/2009 states that the detained person has the right to immediately contact a lawyer. However, in 2016 CPT found that the right of access to a lawyer within the first few hours following deprivation of liberty by PSP or GNR depends on whether a detained person can afford a private lawyer. The majority of persons met did not have access to a private lawyer and they only had access to an ex officio lawyer at the court hearing before a judge, which could take place up to 48 hours after the moment of apprehension.

Number of allegations of physical ill-treatment during police questioning

B. Quality of justice

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12. Accessibility of courts (e.g. court fees, legal aid)

13. Resources of the judiciary (human/financial)

14. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys among court users or legal professionals)

15. Other - please specify

European Commission for the Efficiency of Justice (CEPEJ)

<https://www.coe.int/en/web/cepej/country-profiles/portugal>

C. Efficiency of the justice system

CEPEJ

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4th round: corruption prevention in respect of MPs, judges and prosecutors

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16. Length of proceedings

Department for the Execution of Judgments of the European Court of Human Rights

Group [Vicente Cardoso](#) (No. 30130/10) (ENHA): Excessive length of proceedings before civil and administrative and tax courts. The problem has been previously examined under older leading case (now closed) *Oliveira Modesto*.

Presentation on Hudoc.exec : [Vicente Cardoso](#)

Latest decisions of the Committee of Ministers: [CM/Del/Dec\(2018\)1331/H46-20](#)

Latest information received on 26/10/2020: [DH-DD\(2020\)952](#)

17. Enforcement of judgements

18. Other - please specify

European Court of Human Rights - country profile

https://echr.coe.int/Documents/CP_Portugal_ENG.pdf

Execution of Judgments of the European Court of Human Rights - country factsheets

<https://rm.coe.int/168070975e>

II Anti-corruption framework

Where previous specific reports, published in the framework of the review under the UN Convention against Corruption, of GRECO, and of the OECD address the issues below, please make a reference to the points you wish to bring to the Commission's attention in these documents, indicating any relevant updates that have occurred since these documents were published.

A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)

GRECO

Guidelines addressed to GRECO 50 Member States

[Corruption Risks and Useful Legal References in the context of COVID-19](#)

[Published 21/04/2020](#)

Office of the Commissioner for Human Rights

[Corruption undermines human rights and the rule of law - Human Rights Comments - Commissioner for Human Rights \(coe.int\) – published on 19 January 2021](#)

GRECO

<https://www.coe.int/en/web/greco/evaluations/portugal>

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

19. List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Where possible, please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant).

B. Prevention

GRECO

Guidelines addressed to GRECO 50 Member States

[Corruption Risks and Useful Legal References in the context of COVID-19](#)

[Published 21/04/2020](#)

GRECO

<https://www.coe.int/en/web/greco/evaluations/portugal>

4th round: corruption prevention in respect of MPs, judges and prosecutors

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20. Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information)

21. Rules on preventing conflict of interests in the public sector

22. Measures in place to ensure Whistle-blower protection and encourage reporting of corruption

23. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for preventing corruption in these sectors. (e.g. public procurement, healthcare, other).

24. Any other relevant measures to prevent corruption in public and private sector

C. Repressive measures

GRECO

<https://www.coe.int/en/web/greco/evaluations/portugal>

4th round: corruption prevention in respect of MPs, judges and prosecutors

3rd round: incrimination and transparency of Party Funding

- 25. Criminalisation of corruption and related offences,
- 26. Overview of application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)
- 27. Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

III Media pluralism

A. Media regulatory authorities and bodies

- 28. Independence, enforcement powers and adequacy of resources of media authorities and bodies

Relevant recommendation of the Committee of Ministers of the Council of Europe to member states:

[Recommendation Rec \(2000\) 23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector](#)

- 29. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media authorities and bodies

B. Transparency of media ownership and government interference

- 30. The transparent allocation of state advertising (including any rules regulating the matter)
- 31. Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)

Office of the Commissioner for Human Rights

[Time to take action against SLAPPs - Human Rights Comments - Commissioner for Human Rights \(coe.int\)](#) – published on 27 October 2020

- 32. Rules governing transparency of media ownership

Relevant recommendation of the Committee of Ministers of the Council of Europe to member states:

[Recommendation CM/Rec\(2018\)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership](#)

PACE

The impact of the Covid-19 pandemic on human rights and the rule of law

(Rapporteur : [Mr Vladimir VARDANYAN](#), Armenia, EPP/CD)

[Doc. 15139](#) / See also the [Opinion](#) by the Committee on Culture, Science, Education and Media on the aforementioned report.

C. Framework for journalists' protection

33. Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities

34. Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

Relevant recommendation of the Committee of Ministers of the Council of Europe to member states:

[Recommendation CM/Rec\(2016\)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors](#)

35. Access to information and public documents

Office of the Commissioner for Human Rights

[Access to official documents is crucial – let's make it a reality - Human Rights Comments - Commissioner for Human Rights \(coe.int\) – published on 1 December 2020](#)

36. Other - please specify

Office of the Commissioner for Human Rights

[Tapping the full potential of Equality Bodies for a fairer Europe Tapping the full potential of Equality Bodies for a fairer Europe - Human Rights Comments - Commissioner for Human Rights \(coe.int\) – published on 26 June 2020](#)

Platform to promote the protection of journalism and safety of journalists

<https://www.coe.int/en/web/media-freedom/portugal>

Freedom of expression chapters of the annual reports of the Secretary General of the Council of Europe featuring indicators on media pluralism and transparency of ownership, media independence and safety of journalists as well as country-specific assessments:

2018

<https://rm.coe.int/state-of-democracy-human-rights-and-the-rule-of-law-role-of-institutio/168086c0c5>

2017

<https://edoc.coe.int/en/an-overview/7345-pdf-state-of-democracy-human-rights-and-the-rule-of-law.html>

2016

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680646af8

2015

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168058e01e

IV Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

37. Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions).

38. Regime for constitutional review of laws

B. Independent authorities

39. independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies

C. Accessibility and judicial review of administrative decisions

40. modalities of publication of administrative decisions and scope of judicial review

41. implementation by the public administration and State institutions of final court decisions

D. The enabling framework for civil society

42. Measures regarding the framework for civil society organisations

43. Other - please specify

Expert Council on NGO Law report on criminalisation of NGO activity in relation to migration and a compendium of developments 2017-2019 in NGO law, freedom of association

<https://rm.coe.int/expert-council-conf-exp-2020-1-ngos-developments-in-standards-mechanis/16809ccd3a>

<https://rm.coe.int/expert-council-conf-exp-2019-1-criminal-law-ngo-restrictions-migration/1680996969>

Private Office procedure on human rights defenders interacting with the Council of Europe

https://www.coe.int/en/web/secretary-general/news-2019-thorbjorn-jagland/-/asset_publisher/9j1gCsAwfdMt/content/revised-private-office-procedure-on-human-rights-defenders-interacting-with-the-council-of-europe

CPT

Report on the CPT's 2016 periodic visit, [CPT/Inf \(2018\) 6](#), paragraphs 14 to 21 (police)