2021 RULE OF LAW REPORT -targeted stakeholder consultation Questionnaire

Portugal

ABOUT YOU

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The Portuguese Constitution (CRP) consecrates the existence of the Supreme Administrative Court (STA). The STA is the top entity in the hierarchy of the administrative and tax courts, that are the competent courts for handling disputes arising from administrative and tax relationships, in the terms of Art. 4, of the Statute for the Administrative and Tax Courts (ETAF)[1]. It is located in Lisbon and its jurisdiction extends to the entirety of the national territory.

The STA Works in sections and in plenary. It comprises two sections, the Administrative Litigation (1st section) and the Tax Litigation (2nd section). Both sections work in a three-judge-formation or in full formation. Each section of the STA comprises the president of the court, the vice-president and the remaining nominated judges.

This information is available in the oficial website of the Supreme Administrative Court and may be accessed here: https://www.stadministrativo.pt/tribunal/apresentacao/

[1] Approved by Law 13/2002, 13 September and last modified under Law 114/2019, 14 September.

JUSTICE SYSTEM- PORTUGAL

Independence

1) Appointment and selection of judges, prosecutors and court presidents (the reference to 'judges' concerns judges at all level and types of courts as well as judges at constitutional courts)

The principle of independence is present in the process of appointment and selection of Portuguese judges and presidents of the courts. The recruitment of magistrates from the administrative and tax jurisdiction is based on merit, whether it concerns career access or career promotion. The ETAF establishes the requirements and rules regarding this process and ensure there is no political interference in the process. Namely:

Appointment of judges:

- The admission process comprises a competition (Arts. 5 and 6), a training course at the Center for Judicial Studies (CEJ) and an admission stage (Art. 30, 2 and 3). In accordance with Art. 14 of Law 2/2008[2], selection methods include an exam of theoretical knowledge, a curricular assessment and a selective psychological examination. The jury of the written stage of examinations includes, at least, three members that are subject to the following rule of proportion: one judge of the administrative and tax jurisdiction; a magistrate from the public prosecutor´s office, and a jurist of recognized standing or a person of recognized merit from another scientific or cultural area. The jury of the oral stage of examinations and of the curricular assessment is composed by five members, in the following proportion: two magistrates – one from the administrative and tax jurisdiction and one from the Public Prosecutor´s office, and three members- namely lawyers, people of recognized merit in the legal, scientific or cultural areas, or recognized representatives from other areas of the civil society[3].

- Any vacancies of judges from the Central Administrative Courts (TCAs)[4] are either filled by transfer (from judges working in other section of the same court or another TCA), or by promotion (determined by a competitive curricular selection

[2] Last modified under Law 21/2020, July 2.
[3] Cf. Call for tender for the initial theoretical-practical training course, with 30 openings for magistrates at the administrative and tax courts (Notice 2116/2020, 31 December).
[4] Appeal Courts or Courts of Second Instance.

process between judges of the Courts of First Instance – Arts. 61; 68 and 69, 1, ETAF).

- Access to the bench of the Supreme Administrative Court (STA) also requires either a transfer of judges from a different section of the court or a competitive curricular selection process that is open to judges from the TCAs, to public prosecutors and to other meritorious jurists (Arts. 61; 65; 66, 1, and 67 of the ETAF).

With regards to access to the TCAs, applicants must present their *curriculums* before a jury comprised by 2 magistrate members, whose category is not inferior to that of an appeals judge, 2 non-magistrate members and a law professor whose category is not inferior to that of an associate professor (Art.69, 3, ETAF).

Concerning access to the STA, the jury is comprised of 2 magistrate members, whose category is that of a councilor judge, a non-magistrate member, a member of the Superior Council of the Public Prosecutor´s office and a law professor whose category is that of university lecturer (Art.66, 3, ETAF).

Presidency of the Courts:

According to the ETAF: the roles of President and Vice-President of the STA are exercised by magistrates, elected under secrecy, with five-year mandates and no possibility of re-election (Arts.19, 1 & 2 and 20, ETAF); the President and Vice-president of the Appeal Courts are exercised by magistrates, elected under secrecy, with five-year mandates and no possibility of re-election (Art.33, 3, ETAF), and the Presidency of the Administrative and Tax Courts of 1st Instance is exercised by magistrates designated by the CSTAF, with a three-year mandate, nominated in a service commission (Arts.43 and 48, ETAF)

In this context, it is important to note that the amendment to the Statute of Administrative and Tax Courts (ETAF), by Decree Law 214-G/2015, 2 October[5], and Decree Law 114/2019, 12 September, redefining the regime for the presidency of first instance courts, namely requirement of a previous, specific qualification targeted at presidential functions (Art. 43, 5), will contribute to a better and more efficient performance of justice.

[5] Notwithstanding having entered into effect 60 days after its publication, it is applicable at the time in question (Art.15, 1, Decree-Law 214-G/2015).

2) Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

- Irremovability of judges:

The judges of the administrative and tax jurisdictions rule in accordance with the Constitution, the ETAF and, on a subsidiary basis, the Statute of Judicial Magistrates (Art. 57). The latter (EMJ) is used with the necessary adjustments, in matters regarding the appointment, position or transfer of magistrates. The EMJ (amended under Law 67/2019, 27 August, having entered into force on 1 January, 2020), establishes the lifelong nomination of judicial magistrates and the prohibition of their transfer, suspension, promotion, retirement or demission, with the exception of the cases stated in Art. 6, EMJ. It follows that any modification in the affectation of a judge is dependent on the cases specified in the Statutes, reinforcing the principle of the lifetime nomination of judges. Any change in affectation depends on the willingness of the judge in question or in the cases where a disciplinary sanction so determined (Arts. 43; 91, 1, subparagraph *"c",* and 94 of EMJ).

- Transfer and dismissal as disciplinary infractions:

In the Portuguese legal framework, actions by judges that breach the principles and statutory duties consecrated in the EMJ or that are incompatible with the principles of independence, impartiality and dignity, constitute a disciplinary infraction. The non-compliance to these principles leads to disciplinary proceedings, and the gravity of the infringement determines the sancion, in accordance with the principle of proportionality. Sanctions extend from mere warnings (applicable to the lighter infractions, in the terms of Arts. 92 and 98, EMJ), penalty fines (Arts.93 and 99, EMJ), transfers (Arts.94 and 100, EMJ), to more serious sanctions, such as suspensions (Arts.95 and 101, EMJ), compulsive retirement (Arts. 96 and 102, EMJ), and dismissal (Arts. 97 and 102, EMJ).

- Retirement of judges:

  The regime for the retirement of judges takes into account objective rules, such as the age and time in service (Art.64, EMJ, *ex vi* Art.57, ETAF).

3) Promotion of judges and prosecutors

The ETAF establishes the rules for promotion of the judges of the administrative and tax jurisdictions, in the terms of Art. 58. Accordingly, judges become judges of 2nd instance/ Appeal courts or of the Supreme Court (Councilor Judge), via a test or a professional

selection, should there be vacancies to fill. Seniority, together with the results of the evaluation constitute the main criteria for the promotion of magistrates.

The decision for the appointment, assignment, marking and promotion lies with the CSTAF (Art. 74). From the foregoing, it follows that the current system of recruiting judges, as well as the procedures relating to the respective promotion, ensures an adequate participation of the judiciary in the selection, appointment and promotion of judges whilst limiting excessive executive or parliamentary interference in this process.

4) Allocation of cases in courts

In the administrative and tax jurisdiction, the distribution of court cases is electronic (Art.26, CPTA)[6], via a system that executes a random allocation in line with a pre-established algorythm. The system takes into account a set of data that is in line with the principles of impartiality and of natural justice, in the following criteria:

a) types of procedures (established by the CSTAF, under proposal of the president of the court);
b) workload for the judges and repsective availabilty for service;
c) type of subject under appreciation (provided that are at least 3 judges assigned to the appreciation of the subject).
Moreover, Art. 74, 2, subparagraph “o”, ETAF, establishes the competence of the CSTAF to define the criteria for the distribution in the administrative courts, in line with the principle of natural justice.

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)

The Portuguese legislation ensures the independent and effective work of judicial councils. The CSTAF is the collegiate body responsible for managing and disciplining judges from the administrative and tax jurisdiction. It is independent from the executive power and it is constitutionally responsible for the nomination, allocation, transference and

[6] Approved by Law 15/2002 of 22 of February, last edited by Law 118/2019 of September 17

promotion of judges (Art. 217, 2, Portuguese Constitution – CRP, and Arts. 74 and 75, ETAF).

- Regarding the composition and nomination of its members, the CSTAF comprises two full members designated by the President of the Republic, four full members elected by Parliament[7] and four judges, full members, elected by their peers. The fact that the CSTAF does not currently have a majority of judges in its composition does not mean that the independence of the judiciary power is not guaranteed. The pluralist and heterogenous composition ensures the autonomy of the judges in the administrative jurisdiction, and its members enjoy the exemption and impartiality required to exercise their functions,

- Regarding the powers of the body tasked with safeguarding the independence of the judiciary: the competence of the CSTAF is established in Art.74, ETAF, and its actions are subject to constitutional parameters of justice, impartiality, proportionality and equality, as well as to a judicial legality control before the administrative litigation section of the STA (Art.24, 1, subparagraph "*vii",* ETAF)

6) Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

Portuguese judges may be subject to civil, criminal and disciplinary responsibility, according to Art. 22 of the CRP, by actions and omissions practiced during the exercise of public functions that result in the violation of rights, freedoms and guarantees or in damages. The CRP establishes that, in conformity with the principle of independence, judges cannot be made responsible for their decisions except in the cases established by law (Art. 16, 2). Among such exceptions, criminal responsibility may be determined for judges that commit a crime during the exercise of his/her(s) functions, such as a serious violation of the duty of professional secrecy (Art. 371, Penal Code[8]).

Disciplinary responsibility may be established for cases where there is a violation of the rules of conduct, as established in Statute of Judiciary Magistrates (EMJ). The disciplinary regime consecrated in the EMJ includes the ethical principles that should guide

[7] As well as three substitute members, also elected by Parliament.
[8] Decree Law 48/95, 15 March, last revised under Law 58/2020 of August 31.

the actions of magistrates. In this regard, Art.82 determines that actions by magistrates in violation of the principles and duties stated in the Statute, as well as other actions that are incompatible with the requirements of independence and impartiality, constitute a disciplinary infraction.

In the matter of civil responsibility, taking into account that it involves the matter of liability during the exercise of the jurisdictional function and the principle of (ir) responsibility of the judges, it befalls on the State the responsibility to cover any damages that result from manifestly unconstitutional, illegal or unjustified legal decisions rendered by judges, in accordance with Art. 13 of the Regime for Civil Extracontractual Responsibility of the State and Other Public Entities[9].

7) Remuneration/bonuses for judges and prosecutors

According to the EMJ, the remuneratory system of judicial magistrates is exclusive, autonomous and comprises a basic remuneration and a supplementary compensation established in the Statute, adjusted to the dignity of the sovereign function, with a view to ensure the conditions of independence of the judicial power (Art.22).
In general terms, a judge´s remuneration varies according to the professional category, and, within it, according to the seniority (with the exception of Councilor judges), in the terms of Art.23, EMJ:

- *"the structure of the basic renumeration of judicial magistrates develops in line with the indexed scale of the map in Annex I of the present Statute, (...)"* (Art.23, 1);
- *"seniority is counted from the time of admission as an auditor of justice in the Center for Judiciary Studies (CEJ), (...)"* (Art.23, 2);
- *"judicial magistrates earn in line with index 135 of the scale of the map on Annex I of the present Statute, from the time they take office as judges of law"* (Art.23, 3);
- *"basic renumeration is annual and automatically reviewed, and independent of any formality, via the updating of the value corresponding to índex 100, in accordance with Art.2, Law 26/84 31 July (...)"* (Art.23, 4);
- *"basic remuneration is payed in 14 monthly charges, 12 of which corresponding to the monthly remuneration, including the holiday period, and the Christmas bonus, payed in November of each year and amounting to the corresponding monthly remuneration,*

[9] Approved by Law 67/2007 of 31 December, last edited under Law 31/2008 of 17 July.

as well as the holiday bonus, payed in June of each year and amounting to the corresponding monthly remuneration" (Art.23, 5).

Bonuses for judges:

In accordance with Art.26-A, EMJ, the Ministry of Justice provides furnished housing for judicial magistrates against a monthly payment when deemed necessary for the exercise of functions. As an alternative, magistrates are entitled to a compensation subsidy whose value is determined by the government members responsible for the Justice and Finance sectors in the Ministry of Justice.

On the other hand, judges are entitled to the free use of colective public transportation, within the administrative area of their jurisdiction. The charge is defined on a case-by-case basis, depending on the expenses (Art.17, subparagraph *"d").*

With regards to representation expenses, the president and the vice-presidents of the STA, as well as the presidents of the Central Administrative Courts (TCAs), are entitled to an amount corresponding to 20%, respectively, and to 10%, as basic remuneration, for representation expenses (Art.27, EMJ).

Judges in the STA that reside outside the áreas of Lisboa, Oeiras, Cascais, Loures, Sintra, Vila Franca de Xira, Almada, Seixal, Barreiro, Amadora and Odivelas, are entitled to the allowance established for government members for each day they participate in court sessions (Art. 30, EMJ).

All charges are public and integrated in the General Account of the State.

8) Independence/autonomy of the prosecution service

The Portuguese Public Prosecutor is a judicial body that enjoys an autonomous statute and is organized under the principles of separation and parallelism to the judiciary (Arts. 219, 2, CRP and 96, 1, Statute of the Public Prosecutor (EMP)[10]. This autonomy is linked to legality and objectivity criteria as well as to the exclusive subjection of its magistrates to the directives, orders and instructions established in the EMP (Art.3, 2).

The representation of the Public Prosecutor in the Administrative and Tax Courts is ensured under Art.52, ETAF.

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

[10] Approved by Law 68/2019, 27 August, last edited under Law 2/2020, 31 March.

The Portuguese Bar Association (OA) is an independent legal entity ruled by public law that represents advocacy professionals. It conducts its activities independently from State bodies, it is free and autonomous and exercises an important role in the defense of the Rule of Law. It is also attributed with ensuring the dignity and respect of the lawyer profession through the promotion of the values and deontological principles, as well as by representing lawyers and defending their interests, rights, prerogatives and immunities.

The Statute of the Portuguese Association Bar[11] determines that the lawyer maintains his/her independence regardless of any circumstances, and that he/ she maintains the freedom to act outside of any pressure, especially the kind that pertains to his/her own interests or to any exterior influences. Lawyers must also abstain from neglecting professional deontology with the aim of pleasing the client, the colleagues, the court, or third parties (Art. 89).

10) Significant developments capable of affecting the perception that the general public has of the Independence of the judiciary

To ensure the independence and integrity of the judicial activity, several documents have been approved, namely:

- Document *«Strengthening Integrity in Justice 2020»,* elaborated by the Portuguese Judges Union Association (*Associação Sindical dos Juízes Portugueses* (ASJP)), November 2020, containing a set of proposals addressed to the CSTA;
- Amendment to the Statute for Judicial Magistrates, or EMJ - alternatively applicable to the administrative and tax jurisdictions - under Law 67/2019, 27 August, which looked at *"strengthening the structural principles of Independence and impartiality of the judicial magistrates",* highlighting the safeguards of the freedom of judges before any instructions from other entities, reaffirming their exclusive bond to the Constitution and the law.

  On the matter of evaluation, *"a more vigilant and pedagogic model was adopted from the start of the career of the judges, with the establishment of the requirement of an inspection by the end of the first year in the exercise of functions, (…) which could culminate with either a positive or negative assessment. In the case of the latter, corrective measures are then adopted and assessed after one year".*

  With regards to disciplinary matters, an in-depth consolidation of the duties of judicial magistrates was undertaken, as was a typification and classification of the infractions and of its corresponding sanctions.

[11] Approved by Law 145/2015 of 19 September, last edited under Law 23/2020 of 7 July.

- Law 52/2019, 31 July[12] (concerning the regulation of the exercise of public functions by holders of political and other high public posts, their reporting obligations and respective sanctioning regime). In accordance with Art. 5, judicial magistrates and public prosecutors are also subject to the reporting obligations established in the respective statutes.

Currently under discussion:

- Code of conduct of magistrates of the administrative and tax jurisdictions, currently in the process of being approved, that seeks to define a framework of ethical standards, principles and duties regarding the exercise of the judiciary function and the observance of obligations on the declaration of income, conflicting interests and in matters referring to institutional offerings and hospitality, deriving from Law 52/2019, 31 July (approving the regulation of the exercise of public function by holders of political posts and of high public posts). Among these rules, the Code of ethics includes the principles of independence (Art. 4), impartiality (Art. 5), integrity (Art. 6), as well as the duties of professional secrecy and diligence.
- Project for the Regulation on reporting obligations of magistrates of the administrative and tax jurisdiction, on the matter of income, assets, interests, incompatibilities and impediments as well as procedures and inspections, approved in the CSTAF session of February 2 (in line with Art.19, 3, Law 52/2019, 31 July and Arts. 7-E and 149, 1, subparagraph *"x",* EMJ, applicable *ex vi* Art.7, ETAF).

[12] Last edited under Law 69/2020 of 9 November.

QUALITY OF JUSTICE

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

As for the possibility of paying court fees electronically, Ordinance 419-A/2009, 17 April, with the last modifications introduced under Ordinance 267/2018, 20 September, specified how court costs and other fines are prepared and charged.

- Art. 17, on electronic payment methods, states that: *"Any person may pay RCP debts via the available electronic means, ATM and Homebanking, or in person at the bank entities indicated by the Treasury and Public Credit Management Institution (IGCP), in line with the information made available by the General Directorate for the Administration of Justice (DGAJ) and the IGFEJ, published in the Digital Services Area of the Courts",* available here: https://tribunais.org.pt
- Art. 18, on the single billing document (DUC), defines that the execution of payment by electronic means follows the orientations of the DUC, in accordance with Ordinance 1423-I/2003, 31 December;
- Art. 20, on the emission of DUC in courts and conservatories, clarifies that: *"Whenever requested, court proceedings sections or conservatories proceed to the emission of the DUC, with the limitation of up to 3 DUC per person, simply by indicating the necessary elements for the emission".*

Filing an application for legal aid is also possible in the official website of the Portuguese social security[13].

12) Resources of the judiciary (human/financial/material)

The allocation of human and budgetary resources has become, in the past years, a concern expressed by the main judicial operators.

- Human resources:

According to a CSTAF Report, in 2019 *"the insufficient number of judges to fill in the normative boards"* remained. The problema resides, in essence, in the accumulation of pendencies in the first and second instance courts. These delays are a result of the chronic insufficiencies of staff and personnel, and the consequent congestion of efforts.

At the end of 2019 there were 11 vacancies for the office of Appeal judges and 29 vacancies for the office of judge – nothwithstanding the fact that some (around 31) openings were already considered allocated due to service comissions and transfers to "pendencies recovery teams", which implied that those judges were no longer actively exercising functions and that there remained, in fact, 60 openings for the office of judge.

[13] Acessible here: http://www.seg-social.pt/documents/10152/21736/PJ_1_DGSS

- Financial and material resources

  In accordance with the 2021 State Budget (OE)[14],– document that evaluates the political measures directed by the government to the justice sector- "*the greatest expenditure is still the court´s subsystem, incorporating the Appeal Courts and the Central Administrative Courts, the Administrative and Tax Judiciary, the General Directorate for the Administration of Justice (...), the Center for Judiciary Studies and the Commission for the Assistance to Justice Auxiliaries. In the 2021 State Budget, the Courts weigh in (396,7 Million Euros), i.e, 26,5% vis-à-vis the 25,5% in 2020"*[15].

13) Training of justice professionals (including judges, prosecutors, lawyers, court staff)

According to the document *«European Justice Training Strategy for 2021-2024»*[16], the priority is to train judges and prosecutors, notwithstanding the training of all justice professionals: court staff, lawyers, notaries, bailiffs, mediators, legal interpreters and translators, court experts, and in certain situations, prison staff and probation officers. In Portugal, training justice professionals is not only essential but also inevitable to guarantee a higher quality of justice. The training is carried out by different official entities.

-Judges and prosecutors:

The CEJ is responsible for the initial and ongoing training of judges and public prosecutors for courts of law and for administrative and tax courts. The Center carries out research activities and studies on judicial matters and provides legal and judicial training for lawyers, legal agents (*solicitadores*) and other professionals of the justice system. The CEJ also cooperates in actions organized by other institutions.

The continuing training specifically looks to develop the adequate skills for professional performance and personal appreciation during the magistrate´s career. Judges in the administrative and tax jurisdiction are entitled (and expected) to participate in ongoing trainings, in at least two sessions per year. In turn, the CSTAF may determine the obligatory

[14] Approved by Law 75-B/2020, 31 December.
[15] Information collected from the document :«OE 2021-Orçamento do Estado, Dossier da Justiça». Accessible here: https://app.parlamento.pt/webutils/docs/doc.pdf?path=6148523063446f764c324679626d56304c334e706447567a4c31684a566b786c5a793950525338794d4449784d6a41794d4445774d5449765247396a6457316c626e527663314e6c6447397959576c7a4c7a457a4a5449774c5355794d4535766447456c4d6a4246654842736154e6864476c32595355794d4539464d6a41794d5355794d43306c4d6a424b64584e3061634f6e595335775a47593d&fich=13+-+Nota+Explicativa+OE2021+-+Justi%C3%A7a.pdf&Inline=true
[16] Accessible here: https://ec.europa.eu/info/law/cross-border-cases/training-legal-practitioners-and-training-practices_en#the-european-judicial-training-strategy-for-2021-2024.

participation of judges in ongoing training sessions, for specialization reasons (Art.17, subparagraph *"h",* EMJ and Arts. 6 and 8, of the Regulation for Training Activities of Judges in the Administrative and Tax Jurisdiction[17]).

The "Continuing Training Plan for 2020-2021" may be consulted here: http://www.cej.mj.pt/cej/forma-continua/fich-pdf/formacao_2020_21/PFC_2020_2021.pdf[18]

- Regarding lawyers:

  Participating in continuous trainings constitutes a duty of all lawyers. It is up to the Portuguese Bar Association (OA) to organize the training services destined to ensure a constant updating of the technical-legal knowledge, of the deontological principles and its premises, predominantly concerning the latest developments in legal science, technological advancements and the evolution of the civil society. To this end, the OA sets up or endorses conferences and study sessions (Arts.3, subparagraph *"d"* and 197, Statute of the Bar Association)[19].

- Regarding court staff:

The initial and on-going training of court clerks in particular, and of court staff in general, is a competence of the Directorate-General of the Administration of Justice (DGAJ), through its Training Centre. In accordance with the Statute for Justice Workers (EFJ)[20], it is a duty of the workers to participate in the training actions for which they are called to participate (Art.66, subparagraph "d"). The "2021Training Plan" may be consulted here: https://dgaj.justica.gov.pt/Tribunais/Formacao-de-funcionarios-de-justica/Plano-de-formacao-2021.

14) Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

In the current pandemic context, new technologies acquire a special relevance as they provide the digital tools and solutions that allow for remote communication. The *"Court + 360"* [21], which will be implemented until 2023, develops the concept of *"Court of the*

[17] Deliberation (extract) 1108/2016, 12 July.
[18] We highlight the web-conference: «*Temas de Direito Administrativo*», taking place in the upcoming month of March. The conference will look at the substancial and procedural issues in Administrative Law, at an international, european and national level.
[19] Law 145/2015, 9 September, last edited under Law 23/2020,6 July.
[20] Decree-Law 343/99, 26 August, last edited under Decree Law 73/2016,11 August.
[21] Accessible here: ttps://justicamaisproxima.justica.gov.pt/medida/tribunal-360/

Future", under the paradigm "*Digital Only",* where the exclusively electronic proceedings and use of new digital tools that allow for greater efficiency and service, will be tested.

-In the administrative and tax jurisdiction:

Within the legislative measures, in what concerns the implementation of health measures ensuring the safety of all judicial workers, we highlight Law 16/2020, 29 May. This law introduced Art. 6 to Law 1-A/2020, 19 March 19, stating that the exceptional situation brought about by the COVID 19 pandemic justifies a temporary and exceptional procedure regime that is in effect during this period. This article affirms that the inquiring of witnesses and trial hearings should take place physically and follow the recommendations of the security measures set by the Ministry of Health (such as the limitation of a maximum number of people and of social distancing (Art. 6, 2, subparagraph *"a"*). It also foresees the recourse to suitable long distance communication systems activated from the court, such as conference calls, video calls and others (Art.6, 2, subparagraph *"b").* With regards to diligences that require the physical participation of individuals representing the parties, for example, participation may take place in the form of adequate distant means of communication (such as conference calls - Art.6, 3, subparagraph *"a").* However, when the former is not possible, participation should take place in person and in observance of the security measures set by the Ministry of Health (Art.6, 3, *subparagraph "b*").

The article safeguards individuals who may be over 70 years of age or that have a high-risk health condition, in which case long-distance communications may take place from their legal residence (Art. 6, 4).

The article also safeguards the right of the defendant to be physically present for the preliminary hearing and to render statements during the trial, as well as to listen to the testimony of witnesses (Art.6, 5).

It is important to note, in this context, that it is pending in Parliament Law Proposal 30 XIV, on the *"Professional Representation of Interests".* This proposal adds to the aforementioned Law 1-A/2020, 19 March, the Art.6-A, on "deadlines and diligences", and reads the following:

"In diligences regarding procedures and proceedings taking place in judicial, administrative and tax, constitutional courts (…), the following is observed:

a) *For diligences that require the physical attendance of the parties, its mandataries or other procedural actors, the practice of any procedural actions involves the use of adequate means of distant communications, namely teleconferencing, videocalling or others;*

b) *When it is not possible to conduct the diligences that require the physical attendance of the parties, its mandataries or any other procedural actors, (…), the diligence is conducted in person whenever it is possible to respect the maximum number of people allowed, as*

well as to observe the remainder of the security and sanitary rules established by the Directorate General for Health"

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

The administrative and tax courts forward to the respective Superior Council the statistical data that is deemed necessary (Art.91, ETAF), in accordance with the rules in the Statute. On the other hand, the Council forwards the collected information to the Directorate-General for the Politics of Justice (DGPJ), the department competent to disclose the official statistics in the Justice sector, that then makes the information available, via the *"Information System of the Justice Statistics*"[22].

16) Geographical distribution and number of courts/jurisdictions ("judicial map") and their specialization

- Number of courts/ jurisdictions

In accordance with Art.8, ETAF, the Statute acknowledges as bodies in the administrative and tax jurisdiction :

a)The Supreme Administrative Court, located in Lisbon and with national jurisdiction; b) two Central Administrative Courts (North and South), located in Oporto and in Lisbon, competent to decide on the Appeals lodged in First Instance courts, and c), seventeen administrative and tax courts, whose main function is to handle administrative and tax disputes.

- Geographical distribution:

In accordance with Decree 366/2019, 10 November, first instance courts are distributed into 4 geographic areas:

a) Central Area, headquartered in Coimbra, comprising the jurisdiction of the administrative and tax courts of Aveiro, Castelo Branco, Coimbra, Leiria and Viseu;

b) Lisbon and Islands Area, headquartered in Lisbon, comprising the jurisdiction of the Administrative Circle Court of Lisbon, the Tax Court in Lisbon and the administrative and tax courts of Funchal and Ponta Delgada;

[22] Accessible here: https://estatisticas.justica.gov.pt/sites/siej/pt-pt

c) North Area, headquartered in Oporto, comprising the jurisdiction of the administrative and tax courts of Braga, Mirandela, Penafiel and Oporto;

d) South Area, headquartered in Almada, comprising the jurisdiction of the administrative and tax courts of Almada, Beja, Loulé and Sintra.

Regarding specialization:

The recent revision of the ETAF, under Law 114/2019, 12 September, consecrated the matter of specialization in the administrative circle courts and tax courts, establishing the creation of four new types of specialized chambers: a common administrative chamber; a social administrative chamber; a public contracts chamber and a urbanity, environment and territorial planning chamber (Art.9, ETAF).

Decree-Law 174/2019, 13 December executed that goal and proceded to the creation of specialized chambers, in the terms of the ETAF.

Decree 121/2020, 22 May established the day of September 1st, 2020, as the date of entry into effect of the specialized chambers of the administrative and tax courts.

EFFICIENCY OF THE JUSTICE SYSTEM

(Under this topic, you are not required to give statistical information but should provide input on the type of information outlined under "type of information".)

17) Length of proceeding

The information now provided was collected at Justice Statistical Data System produced by the Directorate General for Justice Policy (DGPJ)[23].

The average duration (months) of completed cases in the first instance administrative and tax courts (last updated 30.10.2020) corresponds to the following:

AVERAGE DURATION		**YEAR**
MATTER	**TYPE OF PROCEEDING**	**2019**
ADMINISTRATIVE	Adminstrative action	43
	Other actions	230
	Impugnation procedure	187
	Urgent procedure – pre-contratual litigation	7
	Urgent procedure – court order	2
	Urgent procedure – other	4
	Provision measures – formation of contracts	6

[23] Accessible here: https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/tribunais.aspx.

	Provision measures - others	5
	Appeal in offence procedure	10
	Enforcements	25
	N.S. other procedures	39
	Administrative Total	30
TAX	Impugnation procedure	71
	Administrative action	53
	Other actions	5
	Objections/opposition	46
	Tax enforcement incidents	6
	Urgent procedure – court order	9
	Urgent procedure - other	6
	Provisional measures	4
	Claming credits	124
	Appeal in offence procedure	20
	Enforcement of decided cases	20
	N. S. other procedures	17
	Tax Total	44
Grand Total		39

The average duration (in months) of completed cases in the High Administrative and Tax Courts (last updated 30.10.2020) corresponds to the following:

Average length (months)	YEAR
Type of procedure	2019
Civil enforcement actions	15
Special actions	26
Provisional orders	2
Jurisdictional appeals	18
Other	7
Grand total	18

18) Other - please specify

Does not apply.

ANTI-CORRUPTION FRAMEWORK – PORTUGAL

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

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

Corruption prevention is a national priority for Portugal and the Portuguese Government has, in this regard, produced the document *"National Strategy to Fight Corruption 2020-2024*" (ENCC2020-2024)"[24].

The competences to prevent, investigate and process corruption are shared between different national entities:

- The Central Department for Investigation and Criminal Action (DCIAP) of the Attorney General of the Republic[25], competent in the fight against violent criminality, highly organized or especially complex financial and economic criminality , presents a board constituted by 30-36 magistrates of the Public Prosecutor, in line with Decree 9/2020, 17 January. Moreover, the 2021 State Budget allocates the amount of 48.941.416€ to the Attorney General of the Republic, in the *"Map on the organic classification of expenses in the subsector of the Central Administration";*
- The Unit for the Fight Against Corruption (UNCC) of the Judiciary Police[26] (PJ), is competent in the prevention, detection, criminal investigation and coassistance of judiciary authorities with regards to the crimes of corruption, embezzlement, influence peddling and economic participation in business. In 2020, the PJ strenghtened its staff with 38 inspectors. In 2021, the 2020-2023 pluriannual plan for admission in the security forces and services, the government is set to proceed to the opening of tender procedures in the PJ;
- The Unity for the Prevention and Fight against Fraud (UPCF)- entity that safeguards the use of public funds through the alteration of the model of prevention and fight against fraud and the development of intelligence lead and investigation

[24] Accessible here: https://www.portugal.gov.pt/pt/gc22/comunicacao/documento?i=estrategia-nacional-de-combate-a-corrupcao-2020-2024.
[25] Accessible here: https://dciap.ministeriopublico.pt/contato/departamento-central-de-investigacao-e-acao-penal.
[26] Accessible here: https://www.policiajudiciaria.pt/uncc/

directed at the detection of signs of corruption and fraud, has allocated 6 inspectors (1 element of the DCAP and 1 element of the Support Center to Internal Control), in line with Ordinance 2975/2020, 5 March;

- The Court of Auditors (TC)[27], competent to supervise the legality and regularity of revenues and expenses and to assess the good and effective management of the responsiibility for financial infractions, is comprised by the President and 16 judges, in its headquarter, and by 1 judge in each regional section, in line with Arts. 15 and 23 of the Law for the Organization and Process in the Court of Auditors[28]. Current and capital expenditures are supported by the funds inscribed in the 2021 State Budget, in the amount of 27.651.507€.
- The Council for the Prevention of Corruption[29], working with the Constiutional Court (CC), engages in a nation wide activity in the domain of the prevention of corruption and conected infractions, and is comprised by the following bodies: Director-General of the Court of Auditors; Inspector-General of Finance; Inspector-General of Public Work, Transportation and Communication; Inspector-General of the Local Administration; a magistrate from the Public Prosecutor, designated by the CSM; a lawyer, nominated by the general board of the OA, and an individual of recognized merit in the area (Art.3). The board of technical and administrative assistance service of the CPC is established by Decree of the Ministry of Finance and Public Administration, after proposal of the CPC, and may only be filled by resorting to the mobility instruments of the public function (Art.8, Law 54/2008, 4 September).
- The Entity for Transparency (TC), competent to evaluate the income, patrimony and interest statements of politicians and other high public offices, is comprised by 3 members: 1 president and 2 elected in plenary members (one of which should be a lawyer), enlisted by the TC (Art.4, 1). The 2021 Budget established a reinforcement of 646 000 Euros in funding for the TC, destined for maintenance expenses, and ensuring a total expenditure budget of 19 484 714 Euros for the Constitutional Court.

Prevention

20) Integrity framework including incompatibility rules (e.g.: revolving doors)

[27] Accessible here: https://www.tcontas.pt/pt-pt/Pages/homepage.aspx
[28] Approved by Law 98/97 of 26 July, last edited under Law 27-A/2020 of 24 July.
[29] Accessible here: https://www.cpc.tcontas.pt/index.html

A State that is in line with the Rule of Law, built on the values of integrity, probity, transparency and accountability, implements a regime of incompatibilities and impediments, that ensure the State acts in a clear and fair manner. In this context, several rules have been adopted to strengthen the regime of regulation of the so-called "*portas giratórias*" ("*revolving doors*"), brought about by the legislative alterations introduced by the "*transparency package*". The Council for the Prevention of Corruption issued Recommendation 3/2020, on *"Management of Conflicts on Interests in the Public Sector*"[30], alerted to cases where politicians, managers, consultants and workers, leave public offices to take on private functions, or that hold private interests that may threaten the exemption in the exercise of public offices, and, in particular, cases where these individuals partake in functions in the public and private sector.

With regards to the administrative and tax jurisdiction, the law does not allow magistrates to: a) perform any other public or private function in a professional manner, with the exception of teaching or engaging in scientific investigations that are not remunerated, as well as steering functions in union associations of the judiciary, in line with the principle of exclusivity; b) engage in party-political activities of a public nature; c) occupy political offices, and, e), exercise extra-judicial offices without authorization from the CSTAF.

In the last year, with the purpose of ensuring the independence and integrity of the judicial activity, the CSTAF approved several documents, namely:

- Deliberation of the CSTAF on the *"compatibility of the exercise of management functions (without any remuneration) in non-profit associations with the exercise of the judiciary",* under the terms and for the purposes of article 8-A, n 2 of EMJ, September 2020.
- Deliberation on the *«authorization for the exercise of functions of President of the Council of Justice of the Portuguese Football Federation»,* June, 2020;
- Deliberation on the *«request for the exercise of functions of the President of the Council of Justice of the Portuguese Football Federation»,* May, 2020;
- Deliberation on the *«authorization for the exercise of functions of member of the CAAD and member of the Council of Justice of the Portuguese Football Federation»*, May, 2020;
- Deliberation on the *«clarification regarding the application of the impediment provided for in subparagraph "e" of paragraph 1, article 7 of the EMJ»,* April, 2020;
- Deliberation on «participation of judges of the Courts of First Instance, appeals judges and councilors jugdes of the administrative and tax jurisdiction, in

[30]Accessible here:
https://www.cpc.tcontas.pt/documentos/recomendacoes/recomendacao_cpc_20200108.pdf

conferences, seminars, congresses, lectures and other similar events – standardization of procedures for obtaining authorization and exemption from service under the terms of Art.10-A, 1, EMJ», March, 2020.

21) General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political

In Portugal, it is up to Public Administration entities to pursue the public interest, in line with the respect for the rights and legally protected interests of the citizens (Art.6, CPA). The actions of the Administration obey legal principles, and private citizens may control this activity by activating the administrative and litigation supervision instruments that are necessary to defend their interests. It should be highlighted that the 2021 State Budget (OE) consecrated the *"four-eyes principle",* establishing that any administrative decision that grants a significative economical advantage must be signed by more than one holder of office of the competent body, or confirmed by a superior entity, and published in an online portal where it may be examined by any citizen (https://justica.gov.pt/en-gb/Noticias/OE2021-Prioridades-na-area-da-Justica[31]).

On the other hand, three legal projects were approved and discussed on the whole at Parliament on January 15, 2021:

- Law Project 30/XIV/1- Regulating the activty of the Professional Interests Representation (lobbying)[32];
- Law Project 181/XIV/1- Regulating the lobbying activity and proceeding to the creation of a Transparency record and of a Mechanism for Legislative footprints (corresponding to the 1st alteration to the Organic Law 4/2019, 13 September, and to the 4th alteration to Law 7/93)[33] -; and
- Law Project 253/XIV- Approving transparency rules that are applicable to private entities that engage in lawful representation before public entities and proceeding to the creation of a transparency record in the representation of interests[34].

22) Rules on preventing conflict of interests in the public sector

Decision taking in the public sector presupposes complete exemption and rigor. This matter is especially relevant in the case of public, political and administrative offices,

[31] Cf «*OE2021: Prioridades na área da Justiça*», accessible here: https://justica.gov.pt/en-gb/Noticias/OE2021-Prioridades-na-area-da-Justicaj
[32] Accessible here: https://www.parlamento.pt/ActividadeParlamentar/Paginas/IniciativasLegislativas.aspx
[33] Accessible here: https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=44356
[34] Accessible here: https://www.parlamento.pt/ActividadeParlamentar/Paginas/IniciativasLegislativas.aspx

whether elected or not elected. In the Portuguese legal order there are several rules that contemplate the control of conflicts of interests, namely:

- The Portuguese Constitution (CRP): responsibility and regime of the officers in the public administration;
- Code of Administrative Procedure (CPA): Arts.69-73;
- Statute of the members of Parliament, approved by Law 60/2019, 13 August (Art.27);
- Code of conduct of members of Parliament, approved by Resolution from the Council of Ministers 210/2019, 20 September (Art.8);
- Statute of the Public Manager, re-published by Law 8/2012, 18 January (Arts.21 and 22);
- General Law of Working in Public Functions, approved by Law 35/2014 (Art.23, subparagraph "*f");*
- Regime for Incompatibilities of freely designated staff by holders of political office, approved by Decree-Law 11/2012, 20 January (Art.8);
- Statute of Steering Staff in the Central Regional and Local Administration of the State, approved by Law 2/2004, 15 January and re-published by Law 64/2011, 22 December (Art.17);
- Code of Conduct of the Government, approved by Resolution 184/2019, 3 December of the Council of Ministers (Art.6);
- Code for Public Procurement, approved by Decree-Law 18/2008, 29 January[35] (Art.67).

In this context one should also highlight the measures identified in the CPC Recommendation from January 8, 2020, on *"Managing Conflicts of interest in the public sector"*[36].

23) Measures in place to ensure whistleblower protection and encourage reporting of corruption.

The existence of reporting channels and an adequate protection of whistleblowers is essential to guarantee that abiding the law does not make someone a target for retaliation. In the aforementioned document "ENCC 2020-2024" several norms for protecting whistleblowers are referred, such as:

-a) Law 93/99, 14 July (witness protection); b) Law 19/2008, 21 April (Art.4), on fighting corruption; c) Law 83/2017, 18 August (Art.108, 5); d) on fighting money laundering

[35] Cf. Parliament Resolution 16/2020, proceeding to the termination of Decree-Law 170/2019, 4 December, that corresponded to the 11th alteration to the Code of Public Procurement.

[36] https://www.cpc.tcontas.pt/documentos/recomendacoes/recomendacao_cpc_20200108.pdf

and terrorism, Art.116-AA of the General Regime of Credit Institutions and Financial Societies (Decree-Law 298/929) and, e) Art.305-F of the Code of Securities (Decree-Law 486/99, 13 November). These norms require, however, a diploma that establishes a legal regime that protects whistleblowers.

It should also be noted that the transposition of Directive 2019/1937 from the European Parliament and European Council, dated October 23rd, on *"the protection of people that denounce EU Law violations",* is still ongoing.

With the goal of facilitating the reporting of a crime or filing a complaint, there are several reporting channels, namely:

-The Attorney General of the Republic has an electronic reporting system in its website, designated:
"*Corruption:Report it here*" - https://simp.pgr.pt/dciap/denuncias/index2.php ;

-The Association "Transparency and Integrity", has an electronic reporting system, located in its website, designated *"Support System for Reporters and Victims of Corruption"*- https://transparencia.pt/provedoria/ ;

-The platform for reporting to the Portuguese Football Federation on matters of corruption in sport and match fixing- https://integridade.fpf.pt/ ;

-Regarding some types of crime, it is possible to file a criminal complaint on the Internet, here: https://queixaselectronicas.mai.gov.pt/ .

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

- Public Procurement

Public procurement is one of the areas where a legal alteration is justified, in order to make the proceedings more transparent and reducing the facilitating corruption contexts.

This outcome may be achieved in the following ways:

a) ample publication of the contractual procedure; b) improving the regime on impediments; c) rigorous densification of the principle of impartiality, extending the conflict of interests to the phase of preparation of public contracting: and d), cropping the entities involved in selecting participants for the procedure.

The Council for Corruption Prevention addresses the issue of *"preventing risks of corruption in public procurement",*[37], via a Recomendation dated October 2nd, 2019.

- Management of EU funds

With regards to EU funds, it is necessary to perfect the current model of monitoring the management, strengthening transparency via the publication of procedures and implementing mechanisms that allow to not just anticipate fraudulent situations, but also to ensure the delivering of accountability.

With the goal of fighting fraud with european funds, the Attorney General of the Republic has created a new portal designated: "Think Tank – Risk of Fraud in Financial Resources"[38].

- State subsidies

It is necessary to create a general regime that complements Law 64/2013, 27 August[39], (diploma that regulates the mandatory publication of the benefits conceded by the public administration to private citizens).

25) Measures taken to address corruption risks in the context of the COVID-19 pandemic

With a view to prevent the risks of corruption during the pandemic, Parliament Resolution 4/2021, 25 January[40], recommends that the government *"implements in all public entities and bodies that intervene in the management or control of funds, measures that:*

a) ensure the necessary control to guarantee the lack of conflicts of interests, the transparency in public procurement procedures and the integrity in the execution of public contracts, particularly in the health and infrastructure sectors;

b) strengthen the means and necessary instruments to ensure transparency, impartiality and integrity in the attribution of public aid and of social benefits, with the eventual recourse to digital information platforms or to transparency portals;

[37] Accessible here:https://www.cpc.tcontas.pt/documentos/recomendacoes/recomendacao_cpc_20191002.pdf
[38] Accessible here: https://dciap.ministeriopublico.pt/pagina/think-tank-riscos-de-fraude-recursos-financeiros-uniao-europeia
[39] Last edited by Law 13/2014, 14 March.
[40] Accessible here: https://dre.pt/home/-/dre/155084433/details/maximized

c) ensure the creation of monitoring and evaluation instruments, concomitant with the implementation of public aid, in line with the principle of efficiency and efficacy in the use of public funds;

d) exercise an effective control over public intervention operations in the corporate sector and in other beneficiary private entities, taking into account the risk of irregularities, in order to safeguard legality, the correct application of resources and its allocation to the envisioned ends".

One should also highlight the Recommendation of May 6th 2020 of the Council for the Prevention of Corruption on the "*prevention of corruption risks and connected infractions pertaining to the measures addressing the Covid-19 pandemic*"[41]

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

In the document "ENCC2020-2024", several measures are presented to prevent corruption in the public and private sector, namely:

- The creation of a general regime for corruption prevention, involving duties to the public and private sector and establishing consequences for the infringement
- The creation of an anticorruption mechanism, with initiative, control and sanctioning powers and with attributions in the level of collection and treatment of information, and of organization of activity programs between public and private entities related with corruption;
- The adoption of compliance programs, as a way to promote ethics in the Administration and to facilitate the creation of a true system of corruption prevention;
- The adoption and implementation of compliance programs in companies (which has been seen as a way to improve the commitment of the private sector in the fight against corruption).

REPRESSIVE MEASURES

27) Criminalisation of corruption and related offences.

The majority of the legal and criminal Framework to fight corruption is already under effect, as referred in the last year´s report, namely: the passive and active bribery in the public

[41]Accessible here: https://www.cpc.tcontas.pt/documentos/recomendacoes/recomendacao_cpc_20200506.pdf

and private sectors, influence peddling, embezzlement and illegitimate appropriation, are crimininalised and tipified in the Penal Code[42].

Regarding repression, the Portuguese government has proposed some corrections in the existing mechanisms, namely[43]:

- Waiver of penalty, penalty mittigation and the provisional suspension of procedures, improving legislation;
- Strengthening of the acessory penalty of prohibition of exercise of public office, applied to the holders of public office that commit medium or high level crimes: with longer timeframes applied to the holders of political office, and suggesting the same prohibition applies to the managers and administrators of companies that commit crimes of corruption;
- Corrections in Penal Proceedure Law, with a view to separate cases in the investigation stage, thus avoiding the "megacases";
- Executing agreements on the applicable penalty during trial, based on free and unreserved confessions of the alleged facts, regardless of the nature or severity of the crime.

28) Data on investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards the implementation of EU funds

Data collected and analysed by the Attorney General, pertaining to 2019, account for 2155 new inquiries for crimes of corruption (phenomenon that entails crimes of active and passive corruption, influence peddling, illegitimate appropriation of public assets, harmful administration, embezzlement, participation in economic fraud and abuse of power), corresponding to a slight decrease *vis-à-vis* the 2018 statistics, year that accounted for 2586 inquiries. The practice of the crimes led to 170 accusations, 33 temporarily suspended cases and 1152 dropped inquiries.

In the same period there were accounted 204 new inquiries for the investigation of laundering crimes, constituting a decrease *vis-à-vis* 2018 (387 inquiries), and 2017 (494).

Forty nine (49) charges were brought and 61 cases were archived pertaining to this type of crime[44].

[42] Arts. 372, 373, 374, 375 and 335, Penal Code. Art. 8 (Passive corruption in the private sector) and Art. 9 (Active corruption in the private sector), Law 20/2008, 21 April, creating the new criminal regime for corruption in the interantional trade and in the private sector.
[43] Cf. Document *«Estratégia Nacional de Combate à Corrupção 2020-2014».*
[44] Information collected in the document «ENCC 2020-2024».

29) Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation).

In accordance with Art.32, subparagraph *"e",* Law for the 2021 State Budget, the government has until the 31st May 2021 to present to Parliament a pluriannual plan of investment for criminal investigations that identifies and quantifies measures for a 4-year period, and that will consider, among others, the identification of obstacles or hindrances of legislative nature to the efficacy of criminal investigations.

30) Other – please specify

Does not apply.

III- Media Pluralism

Media authorities and bodies

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

(Art.30 of Directive 2018/1808)

Directive 2018/ 1808 was transposed by the Portuguese Parliament under Law 74/ 2020, 19 November. It entered into effect in February 2021 and will be regulated by the Government within 60 days of this date[45].

In Portugal, the media is regulated by the *Entidade Reguladora para a Comunicação Social* (ERC). This entity was created in 2005, instituted by the Portuguese Constitution (CRP) and enacted by Parliament under Law 53/2005, 8 November, together with its Statutes. It is an independent administrative entity, and its mandate extends to all legal collective persons that exercise social communication activities under the jurisdiction of the Portuguese State, including news agencies, journals, radio networks and television providers, according to Arts.1 and 6 of the Statute of the ERC. The ERC regulates social media mediums regardless of any instruction from the public authorities, in an exclusive compliance with the CRP and the Law,

[45] Arts. 11 and 13, Law 74/2020, 19 November. Available here: https://dre.pt/web/guest/home/-/dre/148963298/details/maximized?serie=I&day=2020-11-19&date=2020-11-01

meaning it is independent from the State, in line with Art.4 of the Statutes of the ERC. With regards to enforcement powers, the ERC must inform Parliament on its decisions and activities via monthly and annual reports, in the terms of Art.73, of the Statute of the ERC. The powers of regulation and supervision of the ERC are limited to the Principle of Speciality, in the terms of Art. 5, 1 of the Statutes, that reserves the exercise of the legal capacity of the ERC to:" (*…) the rights and obligations that are necessary to the prosecution of its object" and* forbids the *"(…) exercise of powers outside of the scope of its attributions, as well as the use of its resources to a different aim"*, Art.5, 2, Statute. In the exercise of its enforcement powers, the ERC is equated to the State, namely with regards to the *"coercive collection of fees, service incomes and other credits (…)",* in line with Art.12 of the Statute. One example of the power of enforcement of the ERC can be found in Art. 17, 1, Law 78/2015, 29 July *("Law that regulates the promotion of transparency in the ownership, management and of the means of financing of social communication entities"*), where it is stated that it falls under the competence of the ERC *"to prosecute and punish the administrative infringements established under the respective Law, in line with the sanctioning procedure in the regime of social infringement and, subsidiarily, in the Penal Code".* Finally, the adequacy of resources of the ERC is ensured by the provision of an autonomous administrative and financial structure, as well as its own patrimony, in accordance with Art.1, 1 of the Statute.

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

The appointment and dismissal of the head/ members of the collegiate body of media regulatory authorities and bodies is regulated in Law 53/2005, 8 November, that incorporates the Statute of the ERC. According to Art.13, the ERC is comprised of a Regulatory Board, an Executive Directorate, an Advisory Board and a Statutory Auditor. The Regulatory Board includes a president, a vice president and three members. It falls under the competence of Parliament to appoint four of the five members of the Board, via a Resolution, and the members appointed co-opt on the designation of the fifth member, under consensus, in the terms of Arts. 15 and 17. The president and vice president are elected by the five members of the Regulatory Board (Art. 29, 3, subparagraph "*a*"), and serve a five-year mandate, with no possibility of renovation (Art. 20, Statute). The nomination of the members of the Regulatory Board requires renowned merit, independence and aptitude and its candidates are subjected to the incompatibilities and impediments established for the holders of high public offices, as well as the rules that guarantee the independence of the role, namely with regards to conflict of interest

and the previous exercise of functions in the central and/or regional government, or in the local municipalities (Art.18, Statute). The dismissal of the head and of the members of the Regulatory Board are stated in Art. 22, 1 Statute and include the following possibilities: *"a) Natural ending of the period of the mandate; b) Death, permanent incapacity or subsequent incompatibility of the holder of office; c) Resignation; d) By failing to be present in three consecutive meetings or nine non- consecutive meetings (…); e) By parliamentary resolution, approved in a 2/3 majority of present members (…) for cases of a serious breach of statutory duties that have been proven to have been committed in the exercise of functions, and f) by dissolution of the Regulatory Board".*

33- Existence and functions of media councils or other self-regulatory bodies

As previously stated, and according to Art.13, the ERC is comprised of a Regulatory Board, an Executive Directorate, an Advisory Board and a Statutory Auditor. The Regulatory Board *"(…) is the collegiate body responsible for the definition and implementation of the regulatory activity of the ERC" (*Art.14 Statute). The Executive Directorate is *"responsible for the direction of the services and for the administrative and financial management of the ERC"* (Art.32, Statute). As for the Advisory Board, it serves as a *"consulting body and as a participant in the definition of the general lines of the ERC, contributing to the articulation between the public and private entities that represent relevant interests in the field of social communication and other connected sectors"* (Art.38, Statute). Finally, the Statutory Auditor is responsible for the "(…) *control of the legality and efficiency of the financial and patrimonial management of the ERC and also serves as a consultor to the Advisory Board on this matter"* (Art. 34, Statute).

TRANSPARENCY OF MEDIA OWNERSHIP AND GOVERNMENT INTERFERENCE

34- The transparent allocation of state advertising (including any rules regarding the matter); other safeguards against state/ political interference

Transparency safeguards for state advertising are established in Law 95/2015, 17 August. Publicity campaigns are also bound to the rules on public procurement, in the terms of the Code for Public Procurement, established under Decree-Law 18/2008, 29 January. The Code

establishes the mandatory inspection of contract execution (Art.303, Code for Public Procurement), namely with regards to subcontracting and to the acquisition of advertising spaces (Art. 5, 3, Law 95/2015).

Law 95/2015, 17 August establishes measures for state advertising in the regional and local press and radio (Art.1, 2, Law 95/2015), as well as the distribution of advertising campaigns for the written press, radio, television and digital media, in the terms of Art.8, Law 95/2015. The supervision of the compliance for the transparent allocation of state advertising falls under the competence of the ERC (Art.10, Law 95/2015), through access to a specific internet portal that contains all public advertising campaigns.

Other safeguards against state or political interference translate in the duties of communication and transparency to the ERC of entities that engage with state advertising, in the terms of Art.7,1 Law 95/2015. The duty of communication to the ERC integrates a listing of information pertaining to institutional advertising initiatives by the State in the activity reports of the entities (Art.7, 2, Law 95/2015). The ERC is therefore the primary entity responsible for assuring the independence of the entities that endeavour in social communication activities v*is-à-vis* the political and economic powers, in the terms of Art.8, subparagraph *"c",* of the Statute of the ERC.

Moreover, the safeguard against political interference is constitutionally guaranteed (Art.38, 4 and 6, CRP), as it attributes to the State the responsibility to "*ensure the freedom and independence of the media from the economical and political powers",* as well as from *"(…) the government, the administration and other public powers".*

35) Rules governing transparency of media ownership and public availability of media ownership information.

Media ownership must be communicated to the ERC and follow a strict listing of requirements, according to Art.3, Law 95/2015. The requirements include the communication to the ERC of the *"(…) relation between the holders and the usufructuaries of shares in the social capital of entities that engage in social communication activities, as well as of the composition of its social bodies and the identification of those responsible for editorial orientation and supervision of the dissemination of content" (Art.3, 1, Law 95/2015).* Moreover, the communication of the relation between the holders and the owners must include: "(..) *a) the identification and discriminate percentage of the social participation of its holders; b) the identification and discriminate listing of the entities that are ascribed the participation of at least 5%, (…), and c),*

the designation of the social participations of holders in collective entities that own direct or indirect shares in other social communication bodies" (Art.3, 2, Law 95/2015).

The public availability of media ownership information is ensured in Art. 6, Law 95/2015. According to Art.6, 1 *"the information transmitted to the ERC (…) is accessible to the public with the exception of cases where the fundamental interests of the parties justify an exclusion to the rule"*. Moreover, *"the information is made available in the official ERC website, allowing an easy access and consultation to a database especially created for the public"* (Art.6, 2).

FRAMEWORK FOR JOURNALIST´S PROTECTION

36) Rules and practices guaranteeing journalist´s independence and safety

The independence of the journalist´s is firstly and foremost guaranteed in the Portuguese Constitution (CRP). Freedom of the press and of social media outlets is constitutionally protected in Art. 38, CRP. According to Art.38, 2, CRP, freedom of the press comprises :"*a)freedom of expression and creation of journalists and collaborators, as well as the intervention of journalists in the editorial orientation of the respective social media bodies (…), b) the right of journalists, in the terms of the law, to access sources of information as well as to the protection of the independence and professional secrecy, (…) and c) the right to the foundation of journals and any other publications, regardless of administrative authorization, collateral or previous qualification".*

The Statute of Journalists approved under Law 1/99, 13 January establishes the rights of journalists in its Art.6, and its subparagraph *"d"* states the right of journalists to have their independence guaranteed. The assurance of the independence of journalists is further elaborated in Art.12 of the Statute. Art.12, 1 clearly states that *"journalists cannot be constrained into expressing or subscribing opinions, nor in abstaining from doing so, or in performing professional tasks that run contrary to their conscience or may be subjected to a disciplinary action by virtue of those facts".*

37) Law enforcement capacity to ensure journalists 'safety and to investigate attacks on journalists

The safety of journalists is constitutionally attributed to the ERC, as it is responsible for ensuring the freedom of the press and the respect for the "rights, liberties and personal guarantees" of social media actors (Art. 39, 1, subparagraphs *"a"* and *"d",* CRP).

More specifically, Art.19, 1, Statute of Journalists, establishes a punitive measure of up to 1 year in prison or a fine up to 120 days for anyone who, in attempting against the freedom of the press, *"apprehends or damages any materials that are integral to the journalistic activity of the holders of such titles as disposed in the present law or hinders the entry or permanence in public spaces for the pursuit of media coverage (…)".*

38) Access to information and public documents

Access to information and to public documents that are held by public authorities is safeguarded in the Portuguese legislation. The CRP ensures the journalists´ access to sources of information, in the terms of Art. 38, 2, subparagraph *"b".* As for access to administrative documents and information, this is regulated in Law 26/2016, 22 August.

The violation of the respect for the right of access to public information may be contested in the administrative and tax courts (REFERENCIA LEGISLATIVA) and may be the subject of a complaint to the independent administrative commission, the Commission for Access to Administrative Documents[46] *(Comissão de Acesso aos Documentos Administrativos*).

39) Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse

Case L.P Carvalho vs Portugal, European Court for Human Rights (ECHR)[47].

In this case, decided by the ECHR on 8 October 2019, the Court considered that *"notwithstanding the fact that the fine instituted against L.P was minor and its conviction would not have originated to a criminal record, the imposition of a penal sanction in its own led to an inhibitory effect on the exercise of the freedom of expression".*

40) Other-please specify

[46] Website available here: https://www.cada.pt

[47] Requisitions 24845/13 and 49103/15.

Does not apply.

THE PROCESS FOR PREPARING AND ENACTING LAWS

41) Framework, policy and use of impact assessments, stakeholders/ public consultations (particularly consultation of judiciary on judicial reforms) and transparency and quality of the legislative process

The Portuguese legislative process comprises the involvement of different stakeholders. In matters pertaining to specific matters stated in the Constitution, when a relevant national interest is at stake, or even by initiative of the citizens, a referendum may be held, in the terms of Arts.115 and 167, 1, CRP. It is up to Parliament to establish the referendum regimes, in line with Art.164, subparagraph "b", CRP.

Public consultations constitute a part of the legislative process of Parliament and are considered a good parliamentary practice. The Parliament has regulated on public consultations in a document entitled: "*Public Consultations on the Parliamentary Legislative Procedure"* (*"Consulta Pública no Processo Legislativo Parlamentar*")[48].

The CRP enshrines the general right of citizens to participate in the public and political affairs of the country and to be informed and enlightened on public actions, in accordance with Art. 48, CRP.

With regards to the judiciary and judicial reforms, this is a matter than falls under the relative legislative competence of Parliament (meaning the Government may legislate in these matters if it is attributed an authorization to legislate by Parliament), according to Art.165,1, subparagraph "p", CRP. The Superior Council of the Judiciary and the Superior Council of the Public Prosecutor are, nonetheless, competent to issue advisory opinions, as well as to propose legislative initiatives pertaining to the efficacy and improvement of judicial institutions (Art. 149, 1, subparagraphs *"i"* and *"j",* Law 21/85, 30 July[49] and Art. 21, 2, subparagraphs *"f"* and *"i",* Law 68/2019, 27 August[50]).

[48] https://www.parlamento.pt/ArquivoDocumentacao/Documents/Consulta_publicaProcessoLegislativoParlamentar.pdf

[49] Last revised under Law 2/2020, 31 March.
Available here: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=5&tabela=leis&so_miolo=

[50] Available here: https://dre.pt/home/-/dre/124220738/details/maximized

The legislative initiative of the Government requires the execution of impact assessments on the economic costs and benefits of the legislative proposal, in accordance with Art. 55 of Decree-Law 169-B/2019, 3 December and Art.131, 2, subparagraphs *"g"* and *"h",* Regiment of the Parliament 1/2020, 31 August[51].

42) 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)

Use of fast-track procedures and emergency procedures are provided for in the CRP and imply a reduction of the deadlines for discussion and appreciation of the legislative proposal. The procedures require a legal recommendation from the competent parliamentary commission and a plenary debate on the matter. REFERêNCIA LEGISLATIVA.

43) Regime for constitutional review of laws.

The constitutional review of laws falls under the competence of the Constitutional Court, in the terms of the Constitution. The preventive constitutional review may be requested by the President of the Republic, the Regional Representatives of the Republic, the Prime Minister and a 1/5 of Parliamentary deputies (in the case of organic laws that have been sent to the President of the Republic to promulgate), in accordance with Art.278, CRP. The declaration of unconstitutionality by the Constitutional Court implies the compulsory veto of the norm by the President (Art.279, 1, CRP). The Constitutional Court assesses and declares conformity of any norms via the abstract constitutional review, established in Art.281, CRP. The competence to request the constitutional review in these terms is stated in Art.381, 2, CRP, and include a larger number of actors then those allowed to request the preventive constitutional review. The effects of the declaration of unconstitutionality in these terms imply the reinstation of norms that had been revoked by the norm deemed unconstitutional (Art.282, 1, CRP), and safeguards the *res judicata* (Art.282, 3, CRP).

[51] Available here: https://dre.pt/web/guest/pesquisa/-/search/141382322/details/normal?q=regimento+assembleia+republica

In addition, the constitutional review of laws also includes the omission of the duty to comply with the Constitution, namely by failing to produce and legislate the necessary measures to implement constitutional norms, in the terms of Art. 283, 1, CRP.

44) Provide an update on significant developments with regard to emergency regimes in the context of the COVID-19 pandemic (judicial review of emergency regimes and measures; oversight by Parliament of emergency regimes and measures taken to ensure the continued activity of Parliament- including best practices-)

The emergency procedures were established during the pandemic. The first state of emergency was declared by the President of the Republic, after hearing the Council of State and the government, and once authorized by Parliament (Decree of the President 14-A/2020, 18 March and Resolution of Parliament 15-A/2020, 18 March). The state of emergency was subsequently extended two times, ending on March 3rd 2020. The state of calamity followed and the state of emergency was reinstated by Presidential Decree 51-U/2020, 6 November (Parliament Resolution 83-A/2020, 6 November) and later reinstated twice for the following 30 days (Presidential Decree 59-A/2020 and authorization of Parliament Resolution 87-A/2020, 20 November and then Presidential Decree 61-A/2020, 4 December and authorization of Parliament Resolution 89-A/2020, 4 December). The state of emergency was regulated by the government under Decree 9/2020, 21 November and Decree 11/2020, 6 December. Parliament authorized a reinstation of the state of emergency via Resolution 90-A/2020, 17 December and the President enacted Decree 66-A/2020, 17 December (Decree 11-A/2020, 21 December).

With the sudden peak of the pandemic in January, the state of emergency was reinstated under parliament authorization 1-A/2021, 6 January and formalized under Presidential Decree 6-A/2021, 6 January and regulated by the government under Decree 2-A/2021, 7 January. The reinstatement of the state of emergency, under Resolution 1-B/2020, 13 January was formalized under Decree 6-B/2020, 13 January and regulated under Decree 3-A/2021, 14 January. A new parliamentary authorization under Resolution 14-A/2021, 28 January and Decree 9-A/2021, 28 January led to Decree 3-D/2021, 29 January was enacted, followed by its reinstation by Decree 11-A/2021, 11 February, under authorization via Resolution 63-A/2021, 11 February and regulated by Decree 3-E/2021, 12 February.

The current state of emergency (the 12th since the start of the pandemic), was approved by parliament on February 26 and will be in place until March 16.

The state of emergency can only be declared by the President after hearing the Council of State and the government and receiving authorization from Parliament (Arts. 17 and 29, Law 44/86, 30 September). The government must present reports to Parliament on the implementation of the state of emergency, thus allowing Parliament to exercise an *a posteriori* control of the adopted measures and establish civil and/or criminal responsibility actions in the case of any infringements to the emergency regime.

INDEPENDENT AUTHORITIES

45) Independence, capacity and powers of NHRIs of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

The office of the Ombudsman (*Provedor de Justiça*) is the primary *"national human rights institution in Portugal since 1999, credited with the "A" statute and is in absolute conformity with the United Nations Paris Principles"*[52]. It is a constitutionally consecrated institution, independent, nominated by Parliament and receives cooperation from the bodies and actors of Public Administration[53]. According to Art.23, 1, CRP, citizens may submit complaints regarding actions or omissions exercised by public actors and the Ombudsman will then assess and provide the necessary recommendations to improve any inefficiencies and repair injustices. The Ombudsman is a member of the Council of State (Art.142, subparagraph "*d*", CRP).

The Ombudsman is the national mechanism for the prevention of torture and its mandate includes the defense and promotion of fundamental rights and liberties, informally ensuring the fairness and legality of the public powers (Art.1,1 Law 9/91, 9 April – Statute of the Ombudsman-). It may request information and proceed with any investigations and enquiries it sees fit. The Ombudsman may also request the constitutional review of laws (acts and omissions), in line with Art.281, 2, subparagraph *"d*", CRP, and to provide recommendations

[52] Official website of the Portuguese Ombudsman (Provedor de Justiça). Available here: https://www.provedor-jus.pt/?idc=29
[53] Art.23, CRP.

to Parliament. The Ombudsman informs on the respect by public authorities for the independence and integrity of the institution in the exercise of its functions.

Unjustified failure to cooperate with the Ombudsman results in a crime of disobedience (Art.29, 6, Statute of the Ombudsman).

Accessibility and judicial review of administrative decisions

46.Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data) and judicial review (incl. scope, suspensive effect)

The transparency of administrative decisions and sanctions in indirectly consecrated in the Portuguese Constitution (CRP). According to Art. 266, 1 CRP, the fundamental principles of public administration institutions serve the ultimate goal of the pursuit of public interest, in the respect for the rights and legally protected interests of the citizens. The fundamental principles, established in Art.266, 2 CRP, correspond to *"(…) equality, proportionality, justice, impartiality and good faith".* The transparency of the actions (and omissions) of public administration institutions is therefore a necessary corollary of the constitutionally consecrated principles, as it is the only means by which citizens may exercise their rights and liberties and seek justice for illegal actions and omissions committed by the public administration. Art. 267, 1, CRP states that the *"participation of citizens in the effective management (…)"* of the public administration seeks to ensure the proximity between the citizens and the public services and is the justification for the structuring of decentralized and deconcentrated forms of action by the public administration (Art. 267, 2, CRP). Likewise, Art.268, 1, 2 and 3, CRP, establishes the rights of citizens to be informed by public authorities on actions or disputes that directly involve them, as well as the right to access archives and administrative records and prescribes the mandatory notification and the *"explicit and accessible justification*" to citizens that have legally protected rights and interests at stake in administrative actions.

The transparency of administrative decisions is also guaranteed by Law 26/2016, 22 August (Regime for access to administrative and environmental information and to the re-use of administrative documentation, transposing Directives 2003/4/CE, 28 January and 2003/98/CE, 17 November. In Art.2, 1 Law 26/2016 it is clearly stated that *"access to administrative information are ensured in accordance with the other principles of the administrative activity (…)".* The rules of publication in order to ensure the transparency of the acts of the public

administration are established in Art. 2, 2 and 3, Law 26/2016, as it states that the public information is *"actively disclosed in a periodic and updated manner by the respective bodies and entities".* The disclosure of the information, as well as its availability is ensured in Art.2, 3, as it states that the information provided in the Internet must be *"understandable, freely and universally accessible, and its quality, integrity and authenticity of the published data ensured (…)".*

The lack of respect for the right to access administrative documents may be contested in the administrative and tax courts. LEGISLAÇÃO

With regards to the enforcement of the rules on transparency and access to public documents, it is up to the Commission on Access to Administrative Documents (CADA) to ensure the practical implementation of the regime (Art.28, 1, Law 26/2016). The Commission provides opinions, draws annual reports, assesses any complaints that are brought about in the terms of Arts 16 and 26, Law 26/2016, and deliberates on the fees that should be imposed for this kind of administrative offense (Art.30, 1, subparagraphs "b" and "j", Law 26/2016).

47. Implementation by the public administration and State institutions of final court decisions.

In accordance with the Portuguese Constitution (CRP), final court decisions are*" mandatory to all public and private entities and prevail over the decisions of any other authorities"* (Art.205, 2, CRP) and must be executed in line with the Law (Art.205, 3, CRP). The right to judicial protection is therefore constitutionally guaranteed and is directly referenced towards the relation between citizens and the public administration in Art.268, 4, CRP. This constitutional principle is reaffirmed in Art. 2, 2, of the Code of Procedure for the Administrative Courts (CPTA), that states that *"to all rights and legally protected interests corresponds the adequate protection".*

The several revisions of Administrative Law have led to a greater implementation of the right to the effective judicial protection of citizens. The 2002 reform led to an increasing tutelage of this principle, such as the creation of a new context of declarative jurisdiction, allowing the private citizen to obtain from the court the conviction of the public administration to execute due actions. Likewise, this reform also eliminated the consequences regarding the mandatory nature of administrative sentences to public authorities and instead established the

spontaneous duty to execute within a certain deadline, reversing the burden of proof so that citizens no longer need to request the declaration of execution from the public entities[54].

The Enabling Framework for Civil Society

48. Measures regarding the framework for civil society organizations (e.g access to funding, registration rules, measures capable of affecting the public perception of civil society organizations, etc)

Civic participation is protected under Portuguese law.LEGISL The space allocated to civil society in Portugal is considered to be *"open"* for CIVICUS[55].

Cooperation and development NGOs enjoy a special legal status[56], given the important role they play in the application of social, cultural, environmental, civil and economical programs. Associations representative of women, migrants, young people and people with disabilities, as well as people that are involved in environmental protection, are also subjected to specific legislation. LEGISL

The current framework appears to ensure the open space for civil society organizations, as well as the safe exercise of their activities, in an environment that preserves their autonomy and security, as considered by the 2020 R+eport provided by the European Network of National Human Rights Institutions[57]. The same Report, however, also referred a number of challenges related to the availability of funding and the reduced diversity of funding sources.

INITIATIVES TO FOSTER A RULE OF LAW CULTURE

49. Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, etc.)

[54] Vieira de Andrade, Jose Carlos; *A Justiça Administrativa*, 17th Edition, Almedina, 2019
[55] CIVICUS is an international non-profit organisation, which describes itself as *"a global alliance dedicated to strengthening citizen action and civil society around the world."*
[56] Law 66/98 of 14 October.
[57] Official website: http://ennhri.org/

-Tv program *“Prós e Contras”*. Channel RTP. Provides coverage of a live debate on a relevant topic pertaining to the state of the nation and the rule of law whilst ensuring the participation of the public, as wel as the presentation of both sides of an issue.

More info here: https://www.rtp.pt/programa/tv/p30738

-Tv News program *“Opinião pública*”. Channel SIC NOTÍCIAS. Allows citizens to participate by calling in directly to the network on the issues presented after the news report.

More info here: https://sicnoticias.pt/programas/opiniaopublica

50. Other- please specify

Does not apply.