

EUROPEAN CONVENTION
ON HUMAN RIGHTS



CONVENTION EUROPÉENNE
DES DROITS DE L'HOMME

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Annual Rule of Law
Report - Council of
Europe input

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

Portugal

I Justice System

A. Independence

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)

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

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

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

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

16. Length of proceedings

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

<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

<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

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)
- 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](#)

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

- 36. Other - please specify

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)