

Portugal

Portuguese Ombudsman

International accreditation status and SCA recommendations

The Portuguese Ombudsman was last [reaccredited](#) with A status in November 2017. While acknowledging that the selection and appointment process is governed by the Parliament's rules of procedure, the SCA recommended the formalization of the process in relevant legislation. Also, the SCA encouraged the NHRI to advocate for the legal provision for an independent and objective dismissal process of the NHRI's deputies.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The legal framework governing the functioning and guarantees of the Portuguese Ombudsman is traditionally stable and has not undergone any changes in the last year.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

There have not been any relevant developments in the past year affecting the functioning of the Portuguese Ombudsman, apart from COVID-19 measures and impacts which are addressed in a dedicated section below.

Human rights defenders and civil society space

There have not been any significant changes with regard to the information provided in the 2020 Rule of Law Report.

Relevantly to known racist attacks to rights groups (e.g., the case of SOS Racismo), the Government recently created a working group on the prevention and combat to racial discrimination (1).

Updated figures of the Rule of Law Index 2020 for Portugal are available [here](#) (page 128). In this regard, Portugal has scored:

- Freedom of expression - 80%

- Freedom of association - 85%
- Civic participation - 77%.

References

- (1) <https://dre.pt/home/-/dre/153341296/details/maximized>
- World Justice Project's 2020 Rule of law Index:
https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf

Checks and balances

Guarantees and safeguards, as described in ENNHRI 2020 Rule of Law Report remain in place.

WJP Rule of Law Index figures for Portugal:

- Limits by legislature - 84%
- Limits by Judiciary - 76% Independent
- Auditing - 75%
- Non-governmental checks - 80%
- Lawful transition of power - 91%

Pursuant to Articles 23 of the Portuguese Constitution and 1(1) of the Ombudsman Act, the main function of the Portuguese Ombudsman is to defend and promote the rights, freedoms and guarantees and legitimate interests of citizens, ensuring that public authorities act fairly and in compliance with the law.

The limits to the Ombudsman's mandate are set out in Article 22 of the Ombudsman Act, excluding the political and jurisdictional functions from the Ombudsman competence. On the one hand, the Ombudsman cannot intervene with regard to courts or the Public Prosecution Service in order to scrutinize, monitor or influence the way in which judicial cases are handled. On the other hand, the Ombudsman cannot intervene in matters relating strictly to political choices, falling within the legislator's margin of discretion.

The Ombudsman may act on matters falling within his/her competence on the basis of complaints submitted by any person or group of persons (whether natural or legal persons), as well as on his/her own initiative.

The Portuguese Ombudsman has the following competences:

- To address recommendations to the competent bodies with a view to correcting illegal or unfair acts of public authorities or to improving their services and the administrative procedures followed by those services – i.e., administrative recommendations;
- To point out shortcomings in legislation, to issue recommendations concerning its interpretation, amendment or revocation, or to suggest the drafting of new legislation – i.e., legislative recommendations. Such recommendations or suggestions shall be forwarded to the President of the Parliament, to the Prime Minister and to the Ministers directly involved and, if applicable, to the Presidents of the Regional Legislative Assemblies and to the Presidents of the Governments of the Autonomous Regions – Azores and Madeira;
- To issue opinions upon request of the Parliament on any matter related to its activity;
- To promote the divulgation of the content and meaning of fundamental rights and freedoms, as well as of the purpose of the Ombudsman's institution, the means of action at its disposal and how to appeal to its decisions;
- To intervene in the protection of collective or diffuse interests when public authorities or companies and services of general interest, regardless of their legal status, are involved;
- To request the Constitutional Court to declare the unconstitutionality or illegality of any legal provisions or of legislative omissions;

If the Ombudsman deems it convenient, he/she may participate in the work of parliamentary committees for the purpose of dealing with matters within his/her competence.

To examine matters falling within his/her scope of competence, the Ombudsman has significant powers of investigation.

Where the circumstances so require, the Ombudsman may decide to issue statements or to publish information concerning the conclusions reached in the proceedings or any other matter related to his activity, using, if necessary, the State-owned media and benefiting in any event from the legal regime governing the publication of official statements, according to the applicable laws.

While the Ombudsman's mandate is generally performed without any obstacles, in Portugal there is no focal point in Parliament which would allow for a swift follow-up on the Ombudsman recommendations to Parliament.

References

- Portuguese Constitution; TC > (tribunalconstitucional.pt)
- Ombudsman Act. - Provedor de Justiça - Na defesa dos cidadãos (provedor-jus.pt)

Functioning of the justice system

Please refer to 2020 Rule of Law Report.

The Portuguese Ombudsman does not have a mandate to intervene with regard to courts or the Public Prosecution Service in order to scrutinize, monitor or influence the way judicial cases are handled. The Ombudsman's powers of inspection and monitoring can only be exercised with regard to administrative dimensions of the activity of courts – especially cases of judicial delay – and do not extend to the content or merits of judicial decisions.

Therefore, complaints submitted to the Ombudsman dealing with judicial acts are usually dismissed for lack of competence.

In 2020, the Ombudsman received approximately two hundred of complaints dealing with judicial delays and/or non-enforcement of judicial decisions.

WJP Rule of Law Index 2020 figures for Portugal:

- Accessibility and affordability - 69%
- No improper government influence - 77%
- No unreasonable delay - 43%
- Effective enforcement - 53%

Media pluralism and freedom of expression

Please refer to 2020 Rule of Law Report.

- WJP Rule of Law Index for freedom of expression - 80%.

Corruption

Please refer to 2020 Rule of Law Report.

Portugal is ranked 33 out of 180 countries in Transparency International's 2020 Corruption Perception Index (1).

WJP Rule of Law Index 2020 for Portugal:

- In the executive branch - 66%
- In the judiciary - 88%
- In the police/military - 87%
- In the legislature - 50%

Justice statistics identify 70 crimes of corruption registered with the police in Portugal in 2019, resulting in 57 convictions.

References

- <https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/Corrupcao.aspx>
- <https://www.transparency.org/en/countries/portugal>

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

In 2020, the state of emergency was in force from 18 March to the 3rd of May (1). The Government then issued several different restrictive measures on the basis of ordinary legislation (notably the Public Health Act and the Civil Protection Act).

On the 6th of November 2020, the President of the Republic declared again the state of emergency, which has been continuously renewed since.

During the state of emergency, several fundamental rights have been suspended, notably: (i) free movement and fixation in national territory; (ii) private property and economic and social initiative; (iii) worker's rights; (iv) right to travel internationally; (v) freedom of reunion and demonstration; (vi) freedom of religion; (vii) right to resistance; (viii) freedom to teach and learn; (ix) data protection; (x) right to health in its negative dimension and right to freely develop one's personality.

There has been a public debate on the proportionality of some measures imposed by the Government in response to the pandemic. The discussion has been most acute on measures adopted throughout the periods not covered by the state of emergency.

In 2020, a significant number of complaints submitted to the Ombudsman focused on various aspects of Covid-19 regulations touching upon very different rights-related issues (ranging from free movement of citizens to access to basic goods of people in confinement, lack of governmental support to independent workers, reimbursement of travel costs by travel agencies, lay-off schemes, banking services, domestic violence, parental responsibilities, access to education, among others).

There also was a dramatic increase of the number of calls to the hotline for the support of the elderly, who have been particularly affected by the pandemic and by the measures adopted in response.

In this context, throughout the pandemic, several types of COVID-19 issues arrived at the Ombudsman's Office, on for instance the obligatory use of masks, mandatory quarantine, testing and control of temperature, mandatory use of "stay-away Covid" application for mobile phones, right of access to information, and freedom of reunion and demonstration.

In general, the Ombudsman considered that constitutional safeguards were ensured in the majority of cases. However, in some situations, the Ombudsman manifested concerns issuing recommendations and asking for clarifications, for example: (i) on the need to have uniform quarantine regimes throughout the national territory, (ii) on the mandatory quarantine in Azores, in hotel facilities, exclusively for non-residents and at one's expenses; (iii) isolation measures for children placed in foster care; and (iv) suspension of distance learning in January 2021.

In this ambit, the Ombudsman further submitted several recommendations to different public authorities on Covid-19 measures:

- Recommendation on the adoption a specific temporary licence for prisoners;

- Recommendation on the adoption of an exceptional regime for the extension of medical certificates on disabilities/incapacities;
- Recommendation on the adoption of financial support measures for providers of services/independent workers
- Recommendation on breastfeeding and the right to have a companion of the mother's choice during delivery;
- Recommendation on the possibility of visits by family members to Covid-19 dying patients and on their presence in funerals;
- Recommendation on the suspension of tax and social security execution procedures;
- Question to the Government on the exclusion of medical professionals from the scope of application of the special protection regime applicable to chronic patients and immunosuppressed individuals;
- Questions to the Government on the scope of application of the lay-off regime

Furthermore, the Ombudsman decided not to refer the first presidential decree on the state of emergency to the Constitutional Court for lack of constitutional issues. More recently, a pandemic norm on the support regime applicable to rents of shops located in shopping centres was sent to the Constitutional Court (2).

Moreover, since March 2020, the Ombudsman increased its efforts to ensure closer monitoring of the Roma communities, especially in light of the need to protect Roma children and ensure access to education and to basic living conditions. Attention to the needy and homeless people has also been a priority of the Ombudsman action ever since.

At the international level, the Ombudsman has contributed to several questionnaires, surveys and requests from different entities, such as the UN High Commissioner for Human Rights, the European Ombudsman, the Global Alliance of National Human Rights Institutions and the Federación Iberoamericana de Ombudsman.

Lastly, the Ombudsman has initiated an in-depth, systemic and systematized analysis of the impact of the pandemic on rule of law issues, which resulted in the publication of a dedicated study available in the Ombudsman's website. The document is part of a set of three studies ("*Cadernos da Pandemia*") on the impact of the pandemic in Portugal, together with an analysis of the situation of the educational system and of the homeless.

References

- Please refer to 2020 Report.
- Covid legislation has been compiled in a dedicated online section of the official journal - <https://dre.pt/legislacao-covid-19-areas-tematicas#1>
- https://dre.pt/documents/10184/2816226/DPR_14-A_Traducao.pdf/9cd3619b-2bc6-47fb-a8f7-1e651113cb03
- 2020_11_20_Tribunal_Constitucional.pdf (provedor-jus.pt).
- All recommendations available here: Provedor de Justiça - Na defesa dos cidadãos (provedor-jus.pt)
- Study on the impact of the pandemic on rule of law issues: http://www.provedor-jus.pt/site/public/archive/doc/estado_direito_c3_2021.pdf
- “Cadernos da Pandemia”, available at <https://www.provedor-jus.pt/provedoria-de-justica-publica-cadernos-da-pandemia/>
- Analysis of the situation of the educational system: http://www.provedor-jus.pt/site/public/archive/doc/educ_c1_2021.pdf
- Analysis of the situation of the homeless: http://www.provedor-jus.pt/site/public/archive/doc/sem_abrigo_c2_2021.pdf

Most important challenges due to COVID-19 for the NHRI’s functioning

The work performed by the Ombudsman has suffered minor changes since the pandemic started in Portugal.

According to national legislation on the state of emergency, the Ombudsman keeps working in permanent session. In compliance with rules and recommendations and in order to limit social contacts, full time teleworking was progressively introduced for the Ombudsman staff since March 2020. The staff was granted access to computers and phone lines, and regardless of minor IT difficulties, has well adapted to current arrangements. A limited task force – composed of the Ombudsperson, two members of Cabinet, the two Deputy Ombudsmen, department coordinator, a public relations collaborator and two members of accounting and staff departments – keeps on working in the headquarters.

In person services were suspended for a few weeks during the first wave. All other services remained fully functional, with individuals submitting complaints through alternative means, notably the website, email and phone lines, and in presence once public attendance was resumed.

The three hotlines ran by the Ombudsman – for the protection of the elderly, children and persons with disabilities – kept operating as usual.

Visiting activities of the National Preventive Mechanism were suspended for several months but have been resumed since July 2020. Notwithstanding, considering the status of the pandemic some visits have been ensured by videoconferencing.

During the first state of emergency on site visits following the submission of a complaint were also suspended but have also meanwhile been resumed.