

# Portugal

## EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS

### MAIN ACHIEVEMENTS IN MEMBER STATES

The present survey presents short summaries<sup>1</sup> of a selection of the main reforms and achievements reported in final resolutions since the Convention system was amended in 1998 by Protocol No. 11, with a clear focus on recent reforms referring, however, also to important earlier developments.

In view of the wealth of cases closed, the selection concentrates on those which have led to changes of legislation or government regulations or the adoption of new policies or general guidelines from superior courts. As a rule, the survey does not cover information on measures aiming at providing individual redress to applicants.

The presentation is organised country-by-country and reforms are, in principle, presented in the order corresponding to the thematic domains used in the Council of Europe's specialised database HUDOC EXEC and the Committee of Ministers' Annual Reports on the Supervision of the Execution of the European Court of Human Rights' judgments.

Many reforms address issues which appear to be on-going challenges in the member State. The effects of reforms adopted at one point in time may thus need to be monitored and possibly re-evaluated as conditions change.<sup>2</sup>

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<sup>1</sup> The summaries are the sole responsibility of the Department for the execution of the judgments of the European Court of Human Rights.

<sup>2</sup> The presentation is limited to the information provided at the time of the adoption of the final resolution. It is recalled in this context that the Committee of Ministers has issued [Recommendation \(2004\)5](#) on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

## ➤ *Right to liberty and security*

As concerns confinement in a prison's psychiatric clinic, measures were taken in 2004 and 2007 to improve forensic examinations with a view to speeding up the judicial review of detention.

*Magalhães Pereira No. 2*  
(15996/02)  
[Final Resolution](#)  
[CM/ResDH\(2009\)53](#)

## ➤ *Functioning of justice*

### ▢ *Fairness of proceedings*

Reciprocal notification of the actions undertaken by the plaintiff and/or the Attorney-General's Department was ensured by an amendment of the Civil Procedure Code in 1996.

As from 2007, the annotations ("*despacho de sustentação*") made by the first instance judge and sent to the court of appeal had to be communicated also to the parties.

An upper limit on the sums that could be charged as court fees was introduced in the Court Fees Code of 2008.

In criminal investigations, in order to ensure that the use of undercover agents does not unduly interfere with the right to a fair trial, the requirement of a court's approval to be given within five days of the application and for a specific period was introduced in 1996.

*Lobo Machado (15764/89)*  
[Final Resolution](#)  
[CM/ResDH\(97\)221](#)

*Ferreira Alves No.4*  
(41870/05)  
[Final Resolution](#)  
[CM/ResDH\(2012\)45](#)

*Perdigao (24768/06)*  
[Final Resolution](#)  
[CM/ResDH\(2011\)243](#)

*Teixeira de Castro*  
(25829/94)  
[Final resolution](#)  
[CM/ResDH\(2001\)12](#)

### ▢ *Remedies for excessive length of proceedings*

The 1988 Code of criminal procedure introduced an autonomous remedy to accelerate the procedure. When the time-limits set by the law for the duration of each phase of the proceedings have expired, the Public Prosecutor, the accused, or the parties claiming damages may request expedition to be decided either by the General Prosecutor, if the case is under the direction of the Public Prosecutor, or by the Superior Council of the Judiciary if the case was brought before a court or a judge.

In 1992, the court system was reorganised, and the total number of courts and judges increased.

Subsequently, further major legislative measures lead to encouraging results with regard to criminal proceedings, as well as to first instance civil *ex parte* proceedings and civil proceedings, in general, before the higher courts.

The effectiveness of a compensatory remedy developed by court practice was recognised by the European Court in its case-law.

Administrative justice was enhanced by the creation of a higher administrative and fiscal tribunal in 1996 as well as changes to the administrative procedure.

*Moreira de Azevedo*  
(11296/84)  
[Final Resolution](#)  
[CM/ResDH\(92\)10](#)

*Gama Cidrais (18024/91)*  
[Final Resolution](#)  
[CM/ResDH\(94\)71](#)

*Oliveira Modesto and Others (34422/97+)*  
[Final Resolution](#)  
[CM/ResDH\(2016\)149](#)

*Martins Castro et Alves*  
*Correia de Castro group*  
(33729/06)  
[Final Resolution](#)  
[CM/ResDH\(2016\)99](#)

*J.M.C.S. (21599/93)*  
[Final Resolution](#)  
[CM/ResDH\(99\)117](#)

### ► Protection of family and private life

#### ▢ Child custody and international child abduction

The Civil and Criminal Codes were amended in 2008, in order to strengthen the sanctions in cases of child abduction and refusals to abide by visiting or custody agreements, and to ensure better mediation in reaching such agreements through a special procedure involving the prosecutor.

In 2015, the Law on the promotion and protection of children and youth in danger was amended in order to make the parents' legal representation obligatory in proceedings concerning the placement of their children.

*Reigado Ramos (73229/01)*  
[Final Resolution](#)  
[CM/ResDH\(2012\)132](#)

*Soares de Melo (72850/14)*  
[Final Resolution](#)  
[CM/ResDH\(2019\)123](#)

#### ▢ National security and protection of private life

In 2007, legislation improved the protection of private life in cases whereby employees were being investigated in the interest of national security. Effective remedies were provided to allow victims to obtain compensation through civil actions and the criminal or disciplinary sanctioning of the responsible official.

*Antunes Rocha (64330/01)*  
[Final Resolution](#)  
[CM/ResDH\(2013\)230](#)

### ► Protection against discrimination on the grounds of sexual orientation

The domestic courts' jurisprudence concerning parental authority and custody proceedings was further developed by interpreting the relevant provisions in a way to ensure equal treatment of parents living in same-sex relationships.

*Salgueiro da Silva Mouta (33290/96)*  
[Final Resolution](#)  
[CM/ResDH\(2007\)89](#)

### ► Freedom of expression

The Criminal Procedure Code was amended in 2007 so that the provision concerning the violation of a judicial secret ("*segredo of justiça*") is no longer applied automatically but only upon decision taken by the investigating judge or the prosecution. Courts no longer impose criminal penalties for defamation.

Under the Supreme Court's case-law developed in 2017, in cases concerning the protection of honour and reputation, domestic courts' decisions must be aligned with the European Court's case-law.

*Colaço Mestre and SIC (11182/03+)*  
[Final Resolution](#)  
[CM/ResDH\(2015\)115](#)

*Medipress Sociedade Jornalística Lda. (55442/12)*  
[Final Resolution](#)  
[CM/ResDH\(2019\)201](#)

### ► Protection of property rights

In 2008, the Court Fees Code placed an upper limit on the court fees so that they may not exceed the amount awarded to real property owners as compensation due to expropriation.

*Perdigao (24768/06)*  
[Final Resolution](#)  
[CM/ResDH\(2011\)243](#)